



R \$386.00

D \$0.00

2009069842

DECLAR

07/14/2009 01:24:08 PM 77 Page(s)

Jefferson County, Colorado

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

SOLTERRA PATIO HOMES

(A Residential Planned Community)

**County of Jefferson,
State of Colorado**

MB 00/
386.

1-11

AFTER RECORDING, RETURN TO:

J. Christopher Kinsman, Esq.
Fairfield and Woods, P.C.
1700 Lincoln Street, Suite 2400
Denver, Colorado 80203

TABLE OF CONTENTS

2

PREAMBLE..... 1

ARTICLE ONE DEFINITIONS 2

ARTICLE TWO SCOPE OF THE DECLARATION 7

 2.1 Property Subject to this Declaration..... 7

 2.2 Conveyances Subject to this Declaration. 7

 2.3 Owner’s Rights Subject to this Declaration. 7

 2.4 First Phase, Number of Lots..... 7

 2.5 Identification of Lots/Lot Boundaries. 7

 2.6 Master Association..... 7

ARTICLE THREE COMMON AREAS 7

 3.1 Duty to Manage and Care for the Common Areas. 7

 3.2 Owner’s Rights in the Common Areas..... 8

 3.3 Delegation of Use..... 9

ARTICLE FOUR THE ASSOCIATION..... 9

 4.1 Name..... 9

 4.2 Purposes and Powers. 9

 4.3 Board of Directors/Managing Agent. 9

 4.4 Articles and Bylaws..... 9

 4.5 Membership..... 9

 4.6 Voting Rights..... 10

 4.7 Declarant Control of the Association. 10

 4.8 Election by Owners. 11

 4.9 Budget..... 11

 4.10 Association Agreements..... 12

 4.11 Indemnification..... 12

 4.12 Certain Rights and Obligations of the Association. 12

 4.13 Certain Rights and Obligations of Declarant..... 13

 4.14 Disclaimer Regarding Security..... 13

 4.15 Master Association. 13

ARTICLE FIVE ASSESSMENTS 13

 5.1 Obligation..... 13

 5.2 Purpose of the Common Expense Assessments. 14

 5.3 Assessment Commencement Date; Declarant’s Right Of Offset..... 14

 5.4 Levy of Assessments and Fines..... 15

 5.5 Due Date..... 16

 5.6 Remedies for Nonpayment of Assessments. 16

 5.7 Assessment Lien..... 17

3

5.8 Assignment of Assessments..... 18

5.9 Surplus Funds..... 19

5.10 Working Capital Fund..... 19

5.11 Certificate of Assessment Status..... 19

5.12 No Offsets..... 20

ARTICLE SIX ARCHITECTURAL APPROVAL/DESIGN REVIEW..... 20

6.1 Generally..... 20

6.2 Committee Approval of Improvements Required..... 20

6.3 Membership of the Committee..... 20

6.4 Address of the Committee..... 21

6.5 Submission of Plans/Design Review Fee..... 21

6.6 Delegation/Waiver..... 21

6.7 Criteria for Approval..... 22

6.8 Decision of the Committee..... 22

6.9 Appeal to the Board..... 23

6.10 Failure of Committee to Act on Plans..... 23

6.11 Prosecution of Work after Approval..... 23

6.12 Notice of Completion..... 23

6.13 Inspection of Work..... 23

6.14 Notice of Noncompliance..... 24

6.15 Failure of Committee to Act after Completion..... 24

6.16 Appeal to the Board of a Finding of Noncompliance..... 24

6.17 Correction of Noncompliance..... 24

6.18 Meetings of the Committee..... 25

6.19 No Implied Waiver or Estoppel..... 25

6.20 Estoppel Certificates..... 25

6.21 Architectural Standards/Design Guidelines..... 25

6.22 No Liability for Committee Action..... 25

ARTICLE SEVEN USE RESTRICTIONS..... 26

7.1 Limitations and Restrictions..... 26

7.2 Land Use and Occupancy..... 26

7.3 Building Locations, Height Restrictions and Lot Coverage..... 26

7.4 Temporary Structures..... 27

7.5 Restrictions on Garbage and Trash..... 27

7.6 Nuisances..... 27

7.7 No Annoying Lights, Sounds or Odors..... 27

7.8 No Hazardous Activities..... 28

7.9 No Unsightliness..... 28

7.10 Utilities..... 28

7.11 Restrictions on Signs and Advertising Devices..... 28

7.12 Compliance with Insurance Requirements..... 28

7.13 Compliance with Laws..... 28

7.14 Household Pets..... 29

7.15 Vehicular Parking, Storage and Maintenance..... 29

7.16	Owner Caused Damages.....	30
7.17	Exterior Equipment Prohibition.....	30
7.18	Antennas and Satellite Dishes.....	31
7.19	Lease of a Home.....	31
7.20	Fences and Other Exterior Improvements.....	32
7.21	Window Coverings.....	32
7.22	Rules.....	32
7.23	Exemptions for Declarant.....	32
7.24	Enforcement.....	33
ARTICLE EIGHT EASEMENTS		33
8.1	Generally.....	33
8.2	Utility Easements.....	33
8.3	Easements for the Association and Owners.....	33
8.4	Emergency Easements.....	33
8.5	Recording Data Regarding Easements.....	34
8.6	Easements Deemed Appurtenant.....	34
8.7	Reservation of Easements, Exceptions and Exclusions.....	34
ARTICLE NINE INSURANCE/CONDEMNATION		34
9.1	Authority to Purchase/General Requirements.....	34
9.2	Hazard Insurance.....	35
9.3	Liability Insurance.....	36
9.4	Fidelity Insurance.....	37
9.5	Additional Insurance.....	37
9.6	Payment of Insurance Premiums.....	38
9.7	Separate Insurance.....	38
9.8	Damage to Property.....	39
9.9	Condemnation.....	39
ARTICLE TEN RESTORATION UPON DAMAGE OR DESTRUCTION.....		39
10.1	Duty to Restore Common Areas.....	39
10.2	Use of Insurance Proceeds.....	39
ARTICLE ELEVEN MAINTENANCE		39
11.1	Maintenance of the Common Areas and the Common Area Improvements, If Any. ..	39
11.2	Maintenance of the Lots and Homes.....	40
11.3	Owner's Failure to Maintain and/or Repair.....	41
11.4	Maintenance of the Drainage Pattern.....	41
11.5	Association Responsibility.....	41
11.6	Board Access.....	42
ARTICLE TWELVE EXPANSION		42
12.1	Reservation of Right to Expand.....	42
12.2	Supplemental Declarations.....	42
12.3	Expansion of Definitions.....	42

4

12.4	Declaration Operative on New Properties.....	42
12.5	Interests on Enlargement.....	43
12.6	Taxes, Assessments, and Other Liens.....	43
12.7	Project Treated as a Whole.....	43
12.8	Termination of the Right of Expansion.....	43
ARTICLE THIRTEEN DECLARANT RIGHTS		43
13.1	Reservation.....	43
13.2	Rights Transferable.....	44
13.3	Limitations.....	45
13.4	Interference with the Declarant Rights.....	45
13.5	Use by Declarant.....	45
13.6	Models, Sales Offices and Management Offices.....	45
13.7	Declarant's Easements.....	45
13.8	Signs and Marketing.....	45
13.9	Other Reserved Rights.....	45
13.10	Exercise of Declarant Rights.....	45
ARTICLE FOURTEEN ELIGIBLE MORTGAGEE PROVISIONS.....		46
14.1	Notices of Action.....	46
14.2	Amendment to Documents/Special Approvals.....	46
14.3	Implied Approval.....	48
14.4	Books and Records.....	48
ARTICLE FIFTEEN MANDATORY DISPUTE RESOLUTION		48
15.1	Statement of Clarification.....	48
15.2	Alternative Method for Resolving Disputes.....	48
15.3	Claims.....	49
15.4	Claims Subject to Approval.....	49
15.5	Notice of Claim.....	50
15.6	Timely Initiation.....	50
15.7	Right to be Heard.....	50
15.8	Right to Inspect and Repair.....	51
15.9	Good Faith Negotiations.....	52
15.10	Mediation.....	52
15.11	Arbitration.....	53
15.12	Consensus for Association Action.....	54
15.13	Liability for Failure to Maintain an Action against Declarant.....	55
15.14	Utilization of Funds Resulting from the Cause of Action.....	55
15.15	Exclusive Remedy.....	55
15.16	Binding Effect.....	56
15.17	Amendment.....	56
15.18	Limited Warranty.....	56

5

ARTICLE SIXTEEN DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION.....	57	
16.1 Duration.....	57	
16.2 Amendments by Owners.	57	
16.3 Amendments by Declarant.	58	
16.4 Amendment Terminology.....	58	
16.5 Consent of Declarant Required.	58	
16.6 Consent of Eligible Mortgagees Required.....	58	
16.7 Termination.	59	
ARTICLE SEVENTEEN GENERAL PROVISIONS	59	
17.1 Right of Action.	59	
17.2 Successors and Assigns.	59	
17.3 Severability.....	59	
17.4 No Waiver.	59	
17.5 Registration by Owner of Mailing Address; Notices.	59	
17.6 Conflicting Provisions.....	59	
17.7 Captions.....	60	
17.8 Numbers and Genders.	60	
17.9 Mergers.....	60	
MASTER DECLARANT CONSENT.....	63	
MORTGAGEE CONSENT	64	
EXHIBIT A.....	65	
EXHIBIT B.....	66	
EXHIBIT C.....	67	
EXHIBIT D.....	71	

6

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
OF
SOLTERRA PATIO HOMES**

7

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SOLTERRA PATIO HOMES ("Declaration") is made on the date hereinafter set forth by Remington Homes of Colorado, Inc., a Colorado corporation ("Declarant").

PREAMBLE

WHEREAS, Solterra Investments, LLC, a Colorado limited liability company, is the owner of that certain real property located in the County of Jefferson, State of Colorado, as more particularly described on the attached **Exhibit A** ("Property"); and

WHEREAS, Declarant intends to create a residential planned community on the Property, the name of which is Solterra Patio Homes, together with other improvements thereon, and reserves the right to annex all and/or portions of that certain real property located in the County of Jefferson, State of Colorado, more particularly described on the attached **Exhibit B** ("Expansion Property") into the Planned Community; and

WHEREAS, Declarant will convey said Property subject to the protective covenants, conditions and restrictions as hereinafter set forth; and

WHEREAS, Solterra Investments, LLC consents to subjecting the Property to the terms of this Declaration as hereinafter set forth.

NOW THEREFORE, Declarant and Solterra Investments, LLC hereby submit the real property described on **Exhibit A**, together with all rights, and appurtenances thereto and improvements thereon to the provisions of the Colorado Common Interest Ownership Act ("Act"), as it may be amended from time to time. In the event the said Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable. Declarant reserves the right to annex into the Planned Community all and/or a portion of the Expansion Property described on **Exhibit B**, together with all rights, appurtenances thereto and improvements thereon.

Declarant and Solterra Investments, LLC hereby declare that all of the said real property described on said **Exhibit A** shall be held and conveyed subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be for the protection of the value of the said real property, and for the benefit of any Persons having any right, title or interest in the said real property. Said covenants, conditions and restrictions shall be deemed to run with the land and shall be a burden and a benefit to any Persons acquiring such interest, their grantees, heirs, legal representatives, successors and assigns, and acceptance of such interest by any such Persons shall constitute such Persons' agreement to be bound by the same.

**ARTICLE ONE
DEFINITIONS**

8

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 “Act” means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.*, as it may be amended from time to time.

1.2 “Agencies” means and collectively refers to the Federal National Mortgage Association (“FNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”), the Department of Housing and Urban Development (“HUD/FHA”), 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 those currently performed by any of such entities.

1.3 “Allocated Interests” means the Common Expense Assessment Liability and the votes in the Association that are allocated to each of the Lots in the Planned Community. The formulas used to establish the Allocated Interests are as follows:

(a) *Common Expense Assessment Liability.* Subject to Sections 5.3 and 5.4 below, all Common Expenses shall be levied against Lots on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots then within the Planned Community.

In the event that Declarant exercises its right to enlarge this Planned Community in Phases by submitting to the Planned Community additional real property in accordance with Article Twelve below, the Common Expense Assessment Liability set forth above will be reallocated by Declarant in accordance with the above.

(b) *Votes.* Owners shall be entitled to one (1) vote for each Lot owned within the Planned Community.

1.4 “Articles” means the Articles of Incorporation of the Association.

1.5 “Assessments” means: (a) Common Expense Assessments; (b) Special Assessments; (c) Individual Assessments; (d) Fines; and (e) Costs of Enforcement levied pursuant to this Declaration.

1.6 “Assessment Lien” means the statutory lien on a Lot for any Assessment levied against that Lot together with all Costs of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the installment is a lien from the time it becomes due, including the due date set by the Association’s acceleration of installment obligations.

1.7 “Association” means Solterra Patio Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns, the Articles and Bylaws of which, along with this

Declaration, shall govern the administration of the Planned Community. The Members of the Association shall be all the Owners of the Lots within the Planned Community.

9

1.8 “Board” means the Board of Directors of the Association duly elected pursuant to the Bylaws or appointed by Declarant as provided in the Bylaws. The Board is the governing body of the Association and shall act on behalf of the Association.

The term Board as used herein is synonymous with the term Executive Board as the latter term is used in the Act.

1.9 “Budget” means the annual budget of the Association prepared and adopted in accordance with Section 4.9 below.

1.10 “Bylaws” means the Bylaws of the Association which are adopted by the Board for the regulation and management of the Association.

1.11 “Common Areas” means the real property, including all Common Area Improvements located thereon, owned and maintained by the Association, if any, all of which are held for the common use and enjoyment of the Owners unless otherwise provided herein (e.g., Limited Common Areas which are defined below).

The term Common Areas as used herein is synonymous with the term Common Elements as the latter term is used in the Act.

Notwithstanding the foregoing, certain of the Common Areas may be “Limited Common Areas” which are either limited to or reserved in this Declaration, in a recorded amendment to this Declaration executed by Declarant pursuant to Article Thirteen below or by authorized action of the Association, for the exclusive use of an Owner, or are limited to and reserved for the common use of more than one (1) but fewer than all Owners.

1.12 “Common Area Improvements” means those Improvements located on the Common Areas, if any, which are owned and maintained by the Association. Said Common Area Improvements are held for the common use and enjoyment of the Owners and their Guests, except as otherwise provided herein.

1.13 “Common Expense Assessments” means the funds required to be paid by each Owner in payment of such Owner’s Common Expense Assessment Liability as more fully defined in Section 5.2 below.

1.14 “Common Expense Assessment Liability” means the liability for the Common Expense Assessments allocated to each Lot determined in accordance with that Lot’s Allocated Interests as set forth in Section 1.3(a) above.

1.15 “Common Expenses” means expenditures made by, or liabilities incurred by or on behalf of the Association, together with allocations to reserves.

1.16 “Costs of Enforcement” means all fees, late charges, interest and expenses, including receivers’ fees, and reasonable attorneys’ fees and costs incurred by the Association in connection

with the collection of Assessments and the enforcement of the terms, conditions and obligations of the Project Documents.

10

1.17 “County” means Jefferson County, Colorado.

1.18 “Declarant” means Remington Homes of Colorado, Inc., a Colorado corporation, or its successors or assigns. A Person shall be deemed a “successor or assign” of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of the Declarant under this Declaration, and shall be deemed a successor or assign of Declarant only as to the particular rights or interests of the Declarant under this Declaration which are specifically designated in the written instrument.

1.19 “Declarant Rights” means the development, special declarant and other rights granted to or reserved by Declarant for the benefit of Declarant as set forth in this Declaration and the Act.

1.20 “Declaration” means this Declaration, the Plat and any supplements and amendments thereto recorded in the office of the County Clerk and Recorder.

1.21 “Design Review Committee” or “Committee” means the Committee formed pursuant to Article Six below to review and approve or disapprove plans for Improvements, as more fully provided for by this Declaration.

1.22 “Design Review Guidelines” means the Design Review Guidelines for Solterra Patio Homes, as amended and supplemented. These guidelines may be adopted by the Design Review Committee to implement and interpret the Architectural Approval/Design Review provisions of Article Six of this Declaration and may contain, among other things, guidelines that will clarify the design, materials, heights, size of structures and the maximum and minimum setbacks that will be considered in Architectural Approval and/or Design Approval.

1.23 “Eligible Mortgagee” means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Lot encumbered by its First Security Interest, requesting that the Association notify them on proposed actions described under Article Fourteen below.

1.24 “Fines” means those fines described in Section 5.4(c) below.

1.25 “First Mortgagee” means any Person who owns, holds, insures or is a guarantor of a First Security Interest encumbering a Lot within the Planned Community. A First Mortgagee shall also include the holder of executory land sales contracts wherein the VA is the Seller, whether such contract is recorded or not.

1.26 “First Security Interest” means a Security Interest that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.27 “Guest” means: (a) any Person who resides with an Owner within the Planned Community; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Home within the

Planned Community, and any members of his or her household, invitee or cohabitant of any such Person; or (d) a contract purchaser.

1.28 “Home” means the residence constructed on each Lot within the Planned Community and any replacement thereof.

1.29 “Impacted Owner” means an Owner who would reasonably be affected by any proposed Improvement, excluding the Owner making the proposal to the Committee. Impacted Owners are identified by the Design Review Committee who take into account the physical proximity of their Lots to the proposed Improvement and as well as other factors deemed pertinent by the Committee.

1.30 “Improvements” means:

(a) All exterior improvements, structures and any appurtenances thereto or components thereof of every type or kind; and

(b) The grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, and change of drainage pattern; and

(c) All landscaping features, including, but not limited to, buildings, outbuildings, patios, patio covers, awnings, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, private drives, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, cooling, heating and water softening equipment; and

(d) Any change, alteration, modification, expansion, or addition to any previously approved Improvement, including any change of exterior appearance, finish material, color or texture.

1.31 “Lot” means each platted Lot shown upon the Plat of the Planned Community which is subject to this Declaration, together with all appurtenances and Improvements now or hereafter located thereon. Lot shall include any Home constructed thereon. The term Lot as used herein is synonymous with the term Unit as the latter term is used in the Act.

1.32 “Lots That May Be Created” means one hundred fifty-one (151) Lots, including those Lots which shall be included if all of the real property described on **Exhibit B** is annexed to the Planned Community and made subject to the Declaration. As set forth in Article Twelve below, Declarant reserves the right, but is under no obligation, to annex additional Lots into the Planned Community.

In the event that the process of entitlement for Declarant to obtain building permits is placed on “hold” (e.g., moratorium, anti-growth legislation, etc.) for reasons beyond the control of Declarant, the time limitations set forth in this Declaration shall be extended until the impediment to entitlement is removed.

1.33 “Master Association” means Solterra Home Owners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

1.34 “Master Declaration” means that certain Declaration of Covenants, Conditions and Restrictions for Solterra, a Planned Community recorded on November 26, 2007 at Reception No. 2007129904, in the office of the County Clerk and Recorder, as amended. 12

1.35 “Managing Agent” means any one (1) or more Persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

1.36 “Member” means each Owner, as defined in Section 1.38 below.

1.37 “Notice and Hearing” means a written notice and an opportunity for a hearing before the Board in the manner provided in the Rules.

1.38 “Owner” means the record owner of the fee simple title to any Lot which is subject to this Declaration.

1.39 “Period of Declarant Control” means that period of time as defined in Section 4.7 below.

1.40 “Person” means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture or any other entity recognized as being capable of owning real property under Colorado law.

1.41 “Phase” means each phase of the development of the Planned Community as determined from time to time by Declarant.

1.42 “Planned Community” means the Property, the Lots, the Common Arcas and the Common Area Improvements. The name of the Planned Community is Solterra Patio Homes.

1.43 “Plat” means Solterra Subdivision Filing No. 3, recorded in the office of the County Clerk and Recorder on September 18, 2008, at Reception No. 2008087634, and any supplements or amendments thereto, and any plat affecting any real property described on Exhibit B hereto.

1.44 “Project Documents” means this Declaration, the Plat, the Articles, the Bylaws, the Design Review Guidelines and the Rules (and any other documents promulgated by the Board or the Committee), as they may be amended or supplemented from time to time.

1.45 “Rules” means the Rules and Regulations adopted by the Board for the regulation and management of the Planned Community, as amended from time to time.

1.46 “Security Interest” means an interest in real estate or personal property created by contract which secures payment of an obligation. The term “Security Interest” includes a lien created by a deed of trust, contract for deed, land or sales contract and UCC-1.

1.47 “Special Assessments” means those Assessments defined in Section 5.4(d) below.

1.48 “Supplemental Declaration” means an instrument that amends this Declaration in accordance with the amendment provisions herein or under the Act if not otherwise provided herein.

In the event additional real property is made subject to this Declaration in the manner provided for in Article Twelve below, certain terms defined above shall be expanded to encompass said property from the date such additional real property is made subject to this Declaration.

13

**ARTICLE TWO
SCOPE OF THE DECLARATION**

2.1 Property Subject to this Declaration. Solterra Investments, LLC, as the owner of fee simple title to the Planned Community, and Declarant, do hereby subject the Planned Community to the provisions of this Declaration.

2.2 Conveyances Subject to this Declaration. All covenants, conditions and restrictions which are granted or created by this Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any Person having any interest in the Planned Community, their respective heirs, successors, personal representatives or assigns.

Any instrument recorded subsequent to this Declaration and purporting to establish and affect any interest in the Planned Community shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.3 Owner’s Rights Subject to this Declaration. Each Owner shall own his or her Lot in fee simple and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

2.4 First Phase, Number of Lots. The number of Lots within the first Phase of the Planned Community is the number of Lots set forth on the attached **Exhibit A**, subject to the Declarant Rights as set forth in Article Thirteen below and elsewhere herein. Declarant reserves the right, but not the obligation, to create additional Lots by the expansion of the Planned Community in accordance with Article Twelve below.

2.5 Identification of Lots/Lot Boundaries. The identification number of each Lot is shown on the Plat. The boundaries of each Lot are located as shown on the Plat.

2.6 Master Association. This Planned Community is established as a sub-association under the Master Association in accordance with the terms of the Master Declaration. The Property and each Lot shall be subject to both this Declaration and the Master Declaration. In the event of a conflict between any provision of the Project Documents and the Master Association documents, the provisions of the Master Association documents shall control.

**ARTICLE THREE
COMMON AREAS**

3.1 Duty to Manage and Care for the Common Areas. The Association shall manage, operate, care for, insure, maintain, repair, reconstruct, modify and improve all of the Common Areas

and the Common Area Improvements conveyed to it by Declarant and Solterra Investments, LLC, if any, and keep the same in an attractive and desirable condition for the use and enjoyment of all of the Owners, their Guests and the general public as the case may be.

14

3.2 Owner's Rights in the Common Areas. Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Areas, if any, which right and easement shall be appurtenant to and shall pass with the title of the Lot to such Owner; *provided, however,* that the right to use and enjoyment of the Limited Common Areas, if any, are limited to the Owners of the Lots to which such Limited Common Areas are allocated pursuant to this Declaration. An Owners' right to own and use their Lot and the Common Areas shall be subject to the Declarant Rights reserved herein and the following rights of the Board:

(a) To borrow money to improve the Common Areas and to mortgage said Common Areas as security for any such loan; *provided, however,* that the Association may not subject any portion of the Common Areas to a Security Interest unless approved by (i) Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant, and (ii) all Owners to which any Limited Common Area is allocated agree to subject that Limited Common Area to a Security Interest, as more fully set forth in §312 of the Act.

(b) To convey or dedicate all or any part of the Common Areas for such purposes and subject to such conditions as may be agreed to by (i) Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant, and (ii) all Owners to which any Limited Common Area is allocated agree to convey or dedicate that Limited Common Area, as more fully set forth in §312 of the Act.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Section 3.2(b), as more fully set forth in §312 of the Act.

(c) To promulgate and adopt Rules with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of an Owner for any period during which any Assessment remains unpaid and for any infraction of the Project Documents.

(e) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(f) To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of the Common Areas by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate (also see Section 4.12(b) below).

(g) To temporarily close or limit the use of the Common Areas while maintaining, repairing and making replacements in the Common Areas, or to permanently close or limit the use of Common Areas if approved by (i) Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant, and (ii) all Owners to which any Limited Common Area is allocated agree to close or limit the use of that Limited Common Area, as more fully set forth in §312 of the Act.

15

(h) To make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(i) The rights granted to the Association and Board in Section 4.12 below.

3.3 Delegation of Use. The Board may allow members of the general public to use the Common Areas, subject to reasonable limitations and provided that such use does not unreasonably interfere with or impair the rights of use and enjoyment of the Common Areas by Owners. Any Owner may delegate his or her right of enjoyment to the Common Areas and Common Area Improvements to their Guests.

ARTICLE FOUR THE ASSOCIATION

4.1 Name. The name of the Association is Solterra Patio Homeowners Association, Inc., a Colorado nonprofit corporation.

4.2 Purposes and Powers. The Association, through its Board, shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and the Common Area Improvements and keep the same in an attractive and desirable condition for the use and enjoyment of all Owners and their Guests. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Board shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association.

4.3 Board of Directors/Managing Agent. The affairs of the Association shall be managed by a Board of Directors. By resolution, the Board may delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws.

4.5 Membership. Members of the Association shall be every record Owner of a Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from

ownership of any Lot. Where more than one (1) Person holds an interest in any Lot, all such Persons shall be Members.

The membership of the Association shall at all times consist exclusively of all Owners or, following termination of the Planned Community, of all former Owners entitled to distributions of proceeds under §218 of the Act, or their heirs, personal representatives, successors or assigns.

4.6 Voting Rights.

(a) *Association.* The Association shall have one (1) class of voting membership. Owners shall be entitled to one (1) vote for each Lot owned within the Planned Community.

The vote for such Lot, the ownership of which is held by more than one (1) Owner, may be exercised by any one (1) of them unless an objection or protest by any other holder of an interest of the Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised as the Persons holding such interest shall determine between themselves. Should the joint Owners of a Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost.

(b) *Master Association.* Owners shall be entitled to vote in matters concerning the Master Association to the extent and in the manner set forth in the Master Declaration.

4.7 Declarant Control of the Association. Subject to provisions of Section 4.8 below, there is a “Period of Declarant Control” during which period Declarant may appoint and remove any officer of the Association or any member of the Board. The Period of Declarant Control is a length of time expiring seven (7) years after the recording of this Declaration; *provided, however*, the Period of Declarant Control in any event terminates no later than the earlier of:

(a) Sixty (60) days after conveyance of seventy-five percent (75%) of Lots That May Be Created to Owners other than Declarant; or

(b) Two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business to Owners other than Declarant; or

(c) Two (2) years after any right to add new Lots to the Declaration was last exercised.

In the event that the process of entitlement for Declarant to obtain building permits is placed on “hold” (e.g., moratorium, anti-growth legislation, etc.) for reasons beyond the control of Declarant, the time limitations set forth herein shall be extended until the impediment to entitlement is removed.

Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the Period of Declarant Control. In that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. 17

4.8 Election by Owners. Notwithstanding the Period of Declarant Control, (a) not later than sixty (60) days after the conveyance of twenty-five percent (25%) of Lots That May Be Created to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant, and (b) not later than sixty (60) days after the conveyance of fifty percent (50%) of Lots That May Be Created to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Owners other than Declarant. Not later than the termination of the Period of Declarant Control as set forth in Section 4.7 above, the Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers, with such Board members and officers to take office upon election. Within sixty (60) days after the Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in Section 38-33.3-303(9) of the Act.

4.9 Budget.

(a) *Annual Budget.* In accordance with §303 of the Act, the Board shall cause to be prepared a Budget for each calendar year. Within ninety (90) days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget within a reasonable time after delivery of the summary.

Unless at that meeting Owners to which at least a majority of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board.

(b) *Amended Budget.* If the Board deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Section 4.9(a) above, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall be a reasonable time after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least a majority of the votes in the Association are allocated reject the amended Budget, the amended Budget shall be deemed ratified whether or not a quorum is present.

18

4.10 Association Agreements. Any agreement for professional management of the Planned Community or any contract providing for services of Declarant may not exceed one (1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon not more than ninety (90)-days' written notice.

4.11 Indemnification. Each officer, director and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been an officer, director or committee member of the Association, or any settlements thereof, whether or not he or she is an officer, director or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law and as further set forth in the Bylaws.

4.12 Certain Rights and Obligations of the Association.

(a) *Attorney-in-Fact.* This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact as herein provided to deal with the Planned Community upon its damage, destruction, condemnation and/or obsolescence.

The Board is hereby irrevocably appointed attorney-in-fact for the Owners, individually and collectively, to manage, control and deal with the interest of such Owners in the Common Areas so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, and to deal with the Planned Community upon its destruction, condemnation or obsolescence, as hereinafter provided.

Acceptance of any interest in any Lot shall constitute an appointment of the Board as attorney-in-fact as provided above and hereinafter. The Board shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Planned Community and to perform all of the duties required of it.

(b) *Contracts, Easements and Other Agreements.* Subject to Section 4.10 above, the Board shall have the right to enter into, grant, perform, enforce, cancel and vacate contracts, easements, licenses, leases, agreements and/or rights-of-way, for the use by Owners, their Guests and other Persons, concerning the Common Areas (see also Section 3.4(f) above).

Any of such contracts, easements, licenses, leases, agreements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the

Board, without the necessity of the consent thereto, or joinder therein, by Owners or First Mortgagees.

(c) *Other Association Functions.* The Association may undertake any activity, function or service for the benefit of, or to further the interests of all, some or any Members on a self-supporting, Special Assessment or Common Expense Assessment basis. 19

(d) *Implied Rights.* The Board shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.13 Certain Rights and Obligations of Declarant. So long as there are unsold Lots within the Planned Community owned by Declarant or Solterra Investments, LLC, Declarant shall enjoy the same rights and assume the same duties as they relate to each individual unsold Lot, except to the extent said duties are modified by the Declarant Rights herein.

4.14 Disclaimer Regarding Security. The Association may, but shall not be obligated to, take measures or maintain or support certain activities within the Planned Community designed to make the Planned Community more secure than it otherwise might be. Neither the Association, nor Solterra Investments, LLC, nor Declarant nor any representative or agent of any of them, shall in any way be considered insurers or guarantors of safety or security within the Planned Community, nor shall any of them be held liable for any loss or damage by reason of the failure to provide adequate security or of the ineffectiveness of any such security measures taken. No representation or warranty is made that any fire protection system, burglar alarm system or security system cannot be compromised or circumvented, or that any such systems or security measures undertaken will prevent loss or provide the detection or protection for which the system is designed or intended.

4.15 Master Association. The Master Association shall have all powers set forth in the Master Declaration, the Master Association Bylaws and the Act, and shall be permitted to exercise those powers with respect to the Planned Community.

ARTICLE FIVE ASSESSMENTS

5.1 Obligation.

(a) *Association Assessments.* Each Owner, including Declarant, shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Fines, (d) Individual Assessments, and (e) Costs of Enforcement, which shall be a continuing lien upon the Lot against which each such Assessment is levied. The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due, without

notice or demand and without setoff or deduction. All Owners of each Lot shall be jointly and personally liable to the Association for the payment of all Assessments attributable to their Lot. W

Each Assessment against a Lot is the personal obligation of the Person(s) who owned the Lot at the time the Assessment became due and shall also pass to successors in title. *By acceptance of a deed for a Lot, each Lot purchaser thereby consents to assume the foregoing joint obligation for all Assessments due against the Lot.* The omission or failure of the Board to levy Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

No Owner may waive or otherwise escape liability for the Common Expense Assessment provided for herein by the non-use of the Common Areas or the abandonment of such Owner's Lot.

(b) *Master Association Assessments.* In addition to the foregoing Assessments, the Owner of a Lot shall be required to pay all fees (including, but not limited to, assessments) owing to the Master Association as further set forth in the Master Declaration. In the event required by the Master Association, the Association is authorized to collect all Master Association fees (including, but not limited to, assessments) from Owners.

5.2 Purpose of the Common Expense Assessments. The Common Expense Assessments levied by the Association shall be used exclusively for the purpose of promoting the welfare and interests of the residents of the Planned Community and the Members of the Association including (a) providing for the administration and management of the Planned Community, (b) providing for the upkeep, improvement, repair, maintenance and reconstruction of the Common Areas and the Common Area Improvements, (c) providing blanket hazard insurance for the insurable Common Area Improvements as provided in Article Nine below, (d) providing liability insurance to cover incidents occurring on the Common Areas, (e) providing certain Lot maintenance within the Planned Community in accordance with Section 11.2 below, (f) performing all other obligations of the Association hereunder, under the other Project Documents and under the Master Association documents, and (g) satisfying any other purpose reasonable, necessary or incidental to such purposes.

Such Assessments shall include the establishment and maintenance of a reserve fund for those items which the Association has an ongoing duty to repair, maintain or reconstruct on a periodic basis.

5.3 Assessment Commencement Date; Declarant's Right Of Offset. The Common Expense Assessment shall commence as to the Lots no later than sixty (60) days after the first Lot is conveyed to an Owner other than Declarant.

Until the collection of the Common Expense Assessments commences, Declarant shall pay all expenses incurred and paid for by the Association. Declarant may at any time advance operating

funds to the Association. Declarant shall be entitled to offset such amounts so paid or advanced as a credit against future Common Expense Assessments payable by Declarant.

21

5.4 Levy of Assessments and Fines.

(a) *Common Expense Assessments.* Common Expense Assessments shall be levied based upon a Budget of the Association's cash requirements. The Common Expense Assessment Liability shall be allocated among the Lots in accordance with each Lot's Common Expense Assessment Liability as set forth in Section 1.3 above and shall commence in accordance with Section 5.3 above.

To the extent that any Common Expenses, or a portion thereof, benefit fewer than all of the Owners, such expenses may be assessed exclusively against the Lots benefited as provided in §315(3)(b) of the Act, as determined by the Board.

(b) *Individual Assessments.* The Board shall have the right to individually levy upon any Owner(s) amounts as provided for by this Declaration, to include, but not be limited to, charges levied under Sections 6.17, 7.5, 7.14, 7.15, 7.16, 8.6, 9.2, 9.6, 10.2, 11.2, 11.3 and 11.5 hereof.

Individual Assessments shall be collected as part of the Costs of Enforcement.

Individual Assessments may be levied at any time as required and are exempt from any voting requirements of the membership that is required by other Assessments called for under this Declaration.

(c) *Fines.* The Board shall have the right to levy a Fine against an Owner(s) for each violation of this Declaration, the Bylaws, the Articles or the Rules. No such Fine shall be levied until the Owner(s) to be charged has been given a Notice and Hearing as provided for in the Rules.

Fines may be levied in a reasonable amount as determined from time to time by the Board in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement. Fines may be levied at any time as required and are exempt from any voting requirements of the membership required for other Assessments called for under this Declaration.

(d) *Special Assessments.* In addition to the other Assessments authorized herein, the Board, subject to the requirements set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense to include, but not be limited to, the cost of any construction, reconstruction, improvement, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Association, provided that any such Assessment shall have the approval of Owners to whom at least a

majority of the votes in the Association are allocated, who are voting in person or by proxy at a meeting duly called for this purpose.

Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Assessment Liability determined in accordance with Section 1.3 above, subject to §315(3)(b) of the Act and Section 5.3 above. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

22

5.5 Due Date. Fines and Individual Assessments shall be due and payable as established by the Board.

Special Assessments shall be due and payable as established by the Board but may be payable on an installment basis as determined by the Board.

All other Assessments shall be due and payable in monthly installments, in advance, or in such frequency as the Board determines in its discretion from time to time, provided that the initial Assessments shall be adjusted to reflect the time remaining in the Association's first fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a prorated share.

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

5.6 Remedies for Nonpayment of Assessments. If any Assessment (including Costs of Enforcement) is not fully paid within five (5) days after the same becomes due and payable, then interest shall accrue at a rate of eighteen percent (18%) per annum on any amount of the Assessment in default accruing from the due date until the date of payment, and the Board may assess a late fee in an amount determined in the Board's sole discretion. In addition, the Board may in its sole discretion:

- (a) Accelerate and declare immediately due and payable all unpaid installments of the Assessment payable for the balance of the fiscal year during which such default occurred; and
- (b) Bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and
- (c) Proceed to foreclose its lien against the Lot pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any Owner fails to

timely pay Assessments or any money or sums due to the Association, the Association may require reimbursement for any Costs of Enforcement, without the necessity of commencing a legal proceeding.

23

5.7 Assessment Lien.

The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Board and for any Costs of Enforcement levied against an Owner when such Owner fails to pay as required by this Declaration. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances on a Lot except the following:

- (a) Liens and encumbrances recorded prior to the recording of this Declaration; and
- (b) Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and
- (c) The lien of any loan evidenced by a first mortgage or deed of trust and any executory land sales contract wherein the VA is seller, whether such contract is owned by the VA or its assigns, and whether such contract is recorded or not, except to the extent the Act grants priority for Assessments to the Association.

The Act does not affect the priority of mechanic's or materialmen's liens.

Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article Five is required. However, the Board may prepare, and record in the office of the County Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Lot shall not affect the lien for said Assessments except that the sale or transfer of any Lot pursuant to foreclosure by any First Mortgagee, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Assessment Lien to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.

Any First Mortgagee holding any Mortgage of record against a Lot who obtains title to the Lot pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments which became due and payable after the date title to the Lot is acquired and an amount equal to the Common Expense Assessments for the Lot, based upon the Budget adopted pursuant to Section 4.9 above, which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding the institution by either the Association or First Mortgagee of an action defined in §316(2)(b) of the Act. The lien of the Association for unpaid Assessments shall not have priority over a First Mortgagee in an amount of more than six (6) months of regular Common Expense Assessments. 24

In any action by the Association to collect Assessments, including Costs of Enforcement, or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage.

The Assessment Lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; *provided, however*, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a notice of exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Lot for Assessments, including Costs of Enforcement, 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 a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

The Association's current address for purposes of foreclosure notification pursuant to C.R.S. §38-33.3-101 *et. seq.* is c/o MSI, LLC, 390 Interlocken Crescent #500, Broomfield, Colorado 80021-8041, Attn: John Field.

5.8 Assignment of Assessments. The Board shall have the unrestricted right to assign its right to receive Common Expense Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is approved in writing by Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant.

5.9 Surplus Funds. Any surplus funds of the Association remaining at the close of the Association's fiscal year after payment of the Association's expenses and funding the reserve fund may be retained by the Association as unallocated reserves and need not be credited to the Owners to reduce their future Assessment liability.

25

5.10 Working Capital Fund.

(a) *Association*. At the closing of the initial sale of a Lot to an Owner other than Declarant, a non-refundable contribution shall be made by such Owner to the working capital fund of the Association in an amount equal to two (2) months Common Expense Assessments then in effect. Said contribution shall be collected and transferred to the Association at the time of the closing of the sale of each Lot to provide sufficient funds to cover the cost of unforeseen expenditures, to defray operating expenses, to purchase additional equipment or services, or to fund the general operations and obligations of the Association.

Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the later sale or transfer of his or her Lot, an Owner shall NOT BE ENTITLED to a credit from the Association for the aforesaid working capital fund contribution.

Declarant is prohibited from using the working capital fund to defray any of its construction costs. In the event that Declarant makes payment of any working capital on behalf of any Lot, such amount shall be reimbursable to Declarant by the Lot purchaser at the closing of the sale of the Lot by Declarant to such purchaser.

(b) *Master Association*. An Owner shall also be responsible for paying any working capital contribution due the Master Association. In the event that Declarant has paid such working capital contribution to the Master Association on behalf of a Lot, such amount shall be reimbursable to Declarant by the Lot purchaser at the closing of the sale of the Lot from Declarant to such purchaser.

5.11 Certificate of Assessment Status. The Association shall furnish to an Owner or an Owner's First Mortgagee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot.

The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding upon the Association, the Board and every Owner. If no statement is furnished to the Owner or the Owner's First Mortgagee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, then the Association shall have no right to assert a priority lien upon the Lot for unpaid Assessments which were due as of the date of the request (see §316 of the Act).

5.12 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration. Declarant is exempt from the requirements of this Section 5.12. 26

ARTICLE SIX ARCHITECTURAL APPROVAL/DESIGN REVIEW

6.1 Generally. Other than Improvements originally constructed by Declarant, each Improvement as defined in Section 1.30 above, must be constructed, and may thereafter be removed, altered or modified, in accordance with the Design Review Guidelines, if available, and approved in accordance with this Article Six.

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

6.2 Committee Approval of Improvements Required. Other than Improvements originally constructed by Declarant, approval by the Committee shall be required prior to the commencement of the construction, alteration, modification, expansion, addition, removal, demolition or destruction of any Improvements on any portion of the Planned Community, including any change of exterior appearance, finish material, color or texture. The approval of the Committee is in addition to any review and approval required (a) by the City of Lakewood , and/or (b) by any Master Association documents.

The purchase of any Lot within the Planned Community does not grant any implied guarantee of approval of the Improvement to be located thereon by the Committee.

Any basements that are finished by an Owner shall comply with standard building procedures for walls in basements so as not to endanger the structure of the building should the floors rise due to expansive soils.

No permission or approval shall be required to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Home.

6.3 Membership of the Committee. The Committee shall consist of up to three (3) members, the initial number and the members of which shall be determined by Declarant in its sole discretion. Declarant shall have the continuing right to appoint and reappoint the members of the Committee, which right shall terminate at the option of Declarant, but in any event shall terminate without further act or deed upon the completion of Improvements upon the last Lot That May Be Created within the Planned Community by Declarant, the provisions of Section 13.3 below notwithstanding. Thereafter, the Committee shall consist of three (3) members, and the Board shall

have the right to appoint the members of the Committee. Members of the Committee appointed by the Board must be Members of the Association.

27

Members of the Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the Committee appointed by the Board may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

6.4 Address of the Committee. The address of the Committee shall be that of the principal office of the Association.

6.5 Submission of Plans/Design Review Fee. Prior to the commencement of work to accomplish any proposed Improvement (except satellite dishes pursuant to Section 7.18 below), the Person proposing to make such Improvement (“Applicant”) shall submit to the Committee, at its offices, or at such other place as the Committee may designate, such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Committee shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement.

The Committee may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed Improvement. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvements or that the fee shall be determined in any other manner, such as the estimated cost of the proposed Improvement. Said fee may be used to compensate any consultant as the Committee deems necessary to assist the Committee in the performance of its duties. Members of the Committee may be reimbursed for services rendered and for directly related out-of-pocket expenses.

The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving any proposed Improvement. Until all required materials in connection with the proposed Improvement are received by the Committee, the Committee may postpone review of any materials submitted for approval by a particular Applicant.

Except as provided in Section 6.2 and Section 7.18 hereof, no Improvement of any kind shall be erected, altered, placed, or maintained within the Planned Community unless and until the final plans, elevations, and specifications therefor have received written approval from the Committee as herein provided.

6.6 Delegation/Waiver. The Committee may, at its discretion, delegate to the Board any of the powers granted to it by this Article Six by written notice to the Board, indicating what powers and authority are granted to the Board. Such delegation shall be effective from the date such notice is given.

The approval or consent of the Committee, any representative thereof, or the Board, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or the Board, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

28

The Committee may waive or grant reasonable variances or adjustments to any provision of this Article Six in the event there is a practical difficulty or unnecessary hardship.

6.7 Criteria for Approval. The question of reasonableness and good faith is the standard applicable in reviewing plans for approval by the Committee. The Committee shall have the right to disapprove any proposed Improvements which are not in accordance with the Design Review Guidelines, or are not suitable or desirable in the Committee's opinion for aesthetic or other reasons.

In passing upon an Improvement, the Committee shall have the right to take into consideration the suitability of the proposed Improvement and the materials of which it is to be built, the color scheme, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, the topography of the land and the effect of the Improvement as planned on the outlook from the adjacent or neighboring Lots, and if it is in accordance with all of the provisions of the Project Documents.

The Committee may disapprove the proposed Improvement if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials submitted to be contrary to the spirit or intent of this Declaration. The Committee may condition its approval of any proposed Improvement upon the making of such changes thereon as the Committee may deem appropriate.

6.8 Decision of the Committee. The decision of the Committee shall be made within thirty (30) days after receipt by the Committee of all materials required by the Committee unless such time period is extended by mutual agreement. The Committee's decision shall be in writing and, if the decision is not to approve a proposed Improvement, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee.

A majority vote of the Committee shall constitute the action of the Committee.

The Committee shall report in writing to the Board all final actions of the Committee if requested by the Board.

The Committee shall not be required to keep the materials submitted beyond one (1) year from date of approval or two (2) years from the date of the completion of the Improvement to be constructed, whichever shall be the last to occur.

6.9 Appeal to the Board. If the Committee disapproves or imposes conditions on the approval of a proposed Improvement, the Applicant (after the period in which Declarant has the right to appoint the Committee has terminated) may appeal to the Board by giving written notice of such appeal to the Board and the Committee within ten (10) days after notice of such disapproval or conditional approval is given to the Applicant. 29

The Board shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant and the Committee and shall decide, with reasonable promptness, whether or not the proposed Improvement or the conditions imposed by the Committee shall be approved, disapproved or modified.

If the Committee approves a proposed Improvement, any Impacted Owner created by the Committee's decision may appeal the approval to the Board by giving written notice of such appeal to the Board, the Committee and the Applicant within ten (10) days after such approval.

The Board shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant, the Impacted Owner and the Committee. The Board shall decide with reasonable promptness, whether or not the proposed Improvement's approval shall be upheld. The decision of the Board shall be final and binding on the parties concerned.

These appeal rights to the Board shall only be available after the period in which Declarant has the right to appoint the Committee has terminated.

6.10 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Committee within thirty (30) days after the date of receipt by the Committee of all necessary materials, as determined by the Committee.

6.11 Prosecution of Work after Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and as diligently as possible and in complete conformity with the description of the proposed Improvement, any materials submitted to the Committee in connection with the proposed Improvement and any conditions imposed by the Committee. Failure to complete any proposed Improvement within eight (8) months from the date of the commencement of construction (commencement of excavation) shall constitute a violation of this Article Six unless extended by the Committee.

6.12 Notice of Completion. Upon completion of the Improvement, the Applicant shall give a written "Notice of Completion" to the Committee. Until the date of receipt of a Notice of Completion, the Committee shall not be deemed to have notice of completion of any Improvement.

6.13 Inspection of Work. The Committee, or its duly authorized representative, shall have the right to inspect any Improvement prior to, or after completion; *provided, however,* the right of

inspection shall terminate thirty (30) days after the Committee receives a Notice of Completion from the Applicant.

30

6.14 Notice of Noncompliance. If, as a result of inspections or otherwise, the Committee or Board finds that any Improvement has been done without obtaining the approval of the Committee or Board, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Committee or Board, or was not completed within eight (8) months from the date of the commencement of construction (commencement of excavation), the Committee or Board shall notify the Applicant in writing of the noncompliance ("Notice of Noncompliance"); which notice shall be given, in any event within thirty (30) days after the Committee or Board has inspected the Improvement, but in no event no later than thirty (30) days after the Committee's or Board's receipt of such Applicant's Notice of Completion. The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

6.15 Failure of Committee to Act after Completion. If, for any reason other than the Applicant's act or neglect, the Committee fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the Committee of a written Notice of Completion from the Applicant, the Improvement shall be deemed to be in compliance if the Improvement was, in fact, completed as of the date of the Notice of Completion.

6.16 Appeal to the Board of a Finding of Noncompliance. If the Committee gives any Notice of Noncompliance, the Applicant may appeal to the Board by giving written notice of such appeal to the Board and the Committee within ten (10) days after receipt by the Applicant of the Notice of Noncompliance.

If, after a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Committee shall request a finding of noncompliance by the Board by giving written notice of such request to the Board and the Applicant within thirty (30) days after delivery to the Applicant of a Notice of Noncompliance. In either event, the Board after Notice and Hearing shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof.

These appeal rights to the Board shall only be available after the period in which Declarant has the right to appoint the Committee has terminated.

6.17 Correction of Noncompliance. If the Committee or the Board determines that a noncompliance exists, the Applicant shall remedy or remove the noncompliance within a period of not more than thirty (30) days from the date of receipt by the Applicant of the ruling of the Committee and/or Board. If the Applicant does not comply with the Board's ruling within such period, the Committee or Board may, at its option, record a "Notice of Noncompliance" against the Lot on which the noncompliance exists, or may remove the non-complying Improvement or may otherwise remedy the noncompliance.

The Board may levy an Individual Assessment in accordance with Section 5.4(b) above against the Owner of such Lot for such costs and expenses incurred in enforcing this Section 6.17. The right of Declarant (during the period in which Declarant has the right to appoint the Committee) or the Board to remedy or remove any noncompliance shall be in addition to all other rights and remedies that Declarant or the Board may have at law, in equity, or under this Declaration. 31

6.18 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder.

6.19 No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board shall constitute a waiver or estoppel with respect to future action by the Committee or the Board. Specifically, the approval by the Committee of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement or similar proposals, plans, specifications or other materials submitted with respect to any other Improvement.

6.20 Estoppel Certificates. The Board shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

6.21 Architectural Standards/Design Guidelines. The Committee may promulgate rules and regulations to interpret and implement the provisions of this Article Six. These rules and regulations shall be known as the "Design Review Guidelines" and shall contain, among other things, guidelines which will clarify the types of designs and materials that will be considered in design approval. The Applicant shall be responsible to apply for all permits and approvals required by the City of Lakewood and/or by the Master Association documents. The Committee may review and revise the said Design Review Guidelines from time to time in its sole discretion so long as said guidelines are not discriminatory and are uniformly applied.

6.22 No Liability for Committee Action. There shall be no liability imposed on the Committee, any member of said Committee, any authorized representative of said Committee, the Association, any member of the Board or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee, if such party acted in good faith and without malice.

In reviewing any matter, the Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters.

**ARTICLE SEVEN
USE RESTRICTIONS**

7.1 Limitations and Restrictions. All Lots and Common Areas shall be used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions for Declarant as set forth in this Declaration. 32

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

7.2 Land Use and Occupancy. Each Owner shall be entitled to the exclusive ownership and possession of their Lot. Subject to Declarant Rights reserved or described herein and the exemptions for Declarant set forth in Section 7.24 below, no Home within the Planned Community shall be used for any purpose other than for single-family residential purposes as generally defined; *provided, however*, Owners may conduct business activities within their Home provided that all of the following conditions are satisfied, in the sole discretion of the Board:

(a) The business conducted is clearly secondary to the residential use of the Home and is conducted entirely within the Home; and

(b) The existence or operation of the business is not detectable from the outside of the Home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted; and

(c) The business does not result in an undue volume of traffic or parking within the Planned Community, which determination shall be made by the Board in its sole discretion from time to time; and

(d) The business conforms to all zoning requirements and is lawful in nature; and

(e) The business conforms to any rules and regulations that may be imposed by the Board from time to time on a uniform basis; and

(f) The business conforms to applicable restrictions in the Master Association documents.

Uses described as “day care” or “child care” facilities (licensed or unlicensed) are expressly prohibited except with the prior written permission of the Board.

7.3 Building Locations, Height Restrictions and Lot Coverage. The Committee shall approve the location, height and square footage of any Improvement placed on any Lot (except satellite dishes and antennas installed pursuant to Section 7.18 below). No Improvement shall

exceed the height limitations set forth in the City of Lakewood's building code or approved development plan, if any.

Such approval must be obtained before commencement of any construction or alteration in accordance with Article Six hereof.

33

7.4 Temporary Structures. No house trailer, tent, detached garage, shed or other outbuilding shall be placed or erected upon any part of the Planned Community except with the prior written approval of the Committee obtained in each instance.

No Home located upon the Planned Community shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans, nor shall any Home when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth.

7.5 Restrictions on Garbage and Trash. Each Owner shall keep all of his or her trash, garbage, or other refuse in a container in his or her garage. The Association shall provide for trash and garbage removal services.

No trash, litter, garbage, grass, shrub or tree trimmings, scrap, refuse or debris of any kind shall be permitted to remain exposed upon any Lot so it is visible from any neighboring Lot, Common Area or from the street, except that any container containing such material may be placed outside at proper times for garbage or trash pickup. No trash, garbage or other refuse shall be burned in outside containers, barbecue pits or the like.

The Board shall have the right and duty, through its agents and employees, after a Notice and Hearing, to enter upon any Lot and remove such unsightly objects and materials. The cost of such removal shall be chargeable to such Owner by Individual Assessment in accordance with Section 5.4(b) above.

7.6 Nuisances. No noxious or offensive activity shall be carried on upon the Planned Community or any part thereof, nor shall anything be done or maintained thereon which (a) may be or may become an annoyance or nuisance to the neighborhood, (b) may cause an unreasonable embarrassment, disturbance or annoyance to others, or (c) may detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

7.7 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Planned Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Planned Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Planned Community except with the prior written approval of the Committee and except as permitted by the Master Association documents.

7.8 No Hazardous Activities. No activity shall be conducted on any portion of the Planned Community which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Planned Community and no open fires shall be lighted or permitted on any portion of the Planned Community except within a gas operated fire pit.

34

7.9 No Unsightliness. All equipment shall be stored within the Home or garage, including all bicycles, tractors, snow removal equipment and maintenance equipment, except when actually in use.

No types of exterior refrigerating, cooling or heating apparatus shall be permitted unless approved by the Committee and permitted by the Master Association documents.

No laundry or other articles may be hung on or from decks, patios, railings or any other portions of an Owner's Lot.

7.10 Utilities. Except as provided in Section 8.2 below all pipes for water, gas, sewer, drainage or other purposes, electric, television, radio and telephone line installations and connections from the Owner's property line to the Home shall be placed underground and have the prior approval of the Committee. All solar collector installations must be approved by the Committee prior to installation. All utility installations shall comply with all state laws, City of Lakewood ordinances and the Master Association documents.

7.11 Restrictions on Signs and Advertising Devices. Except to the extent in conflict with applicable law, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Planned Community except such signs as may be approved in writing by the Committee, which may include signs indicating protection by security systems and/or neighborhood watch programs. One (1) sign advertising a Lot for sale or for lease may be placed on such Lot or in such Home; *provided, however,* that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Committee and shall comply with the local sign codes and with all other applicable statutes, ordinances and regulations.

Notwithstanding the foregoing, reasonable signs and advertising used by Declarant in connection with development of, or construction on, a Lot shall be permissible.

7.12 Compliance with Insurance Requirements. Except as may be approved in writing by the Board, nothing shall be done or kept on the Planned Community which may result in an increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

7.13 Compliance with Laws. No unlawful use shall be permitted or conducted on any Lot or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Lots or any portions thereof shall be observed.

7.14 Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Planned Community except that dogs, cats or other customary household pets may be kept thereon if they are not raised, bred or maintained for any commercial purpose, and are not kept in such number or in such manner as to create a nuisance or inconvenience to any Owner or Guest.

35

The Board shall have the right and authority to determine, in its sole discretion, that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such numbers or in such a manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of the Rules or this Section 7.14. The Board shall take such action or actions as it deems reasonably necessary to correct the violation including, after a Notice and Hearing, directing permanent removal of the pet(s) from the Planned Community.

Household pets shall not be allowed to run at large within the Planned Community, but shall at all times be under the control of such pet's owner and such pets shall not be allowed to litter any Common Areas. Pets shall be on a leash or held while in any Common Areas.

Each Owner and their Guests is responsible for cleaning up his or her pet's waste from any Lot or Common Areas within the Planned Community.

No animals shall be tied or chained to or on any patio, deck or other portion of an Owner's Home.

The Board is granted the authority to enforce the provisions of this Section 7.14 by the levy of Fines against an Owner in accordance with Section 5.4(c) above.

Reimbursement for damages and costs incurred by the Association as a result of an Owner's pet (or such Owner's Guest's pet), to include attorneys' fees and costs, in the removal of a pet(s) from the Planned Community or incurred by the Association in cleanup after such pet(s) may be levied against the responsible Owner as an Individual Assessment in accordance with Section 5.4(b) above.

No dog runs or animal pens of any kind shall be permitted on any Lot except with the prior written approval of the Committee and except as permitted by the Master Association documents. The Committee may adopt a pre-approved design for dog runs for Lots, and Owners shall be limited to such design, but must still obtain Committee approval before constructing the dog run.

The Board may adopt additional rules regarding pets from time to time, so long as such rules are not in direct conflict with the terms of this Section 7.14.

7.15 Vehicular Parking, Storage and Maintenance. No house trailer, camping trailer, horse trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than three-quarter (3/4) ton, recreational vehicle or equipment, mobile home or similar vehicle may

be parked or stored anywhere within the Planned Community unless it is parked in a garage, it is approved by the Board or it is being actively loaded or unloaded. This restriction applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles". No emergency or temporary parking shall continue for more than seventy-two (72) hours.

36

Parking is not allowed on landscaped areas, lawn areas or fire lanes.

No abandoned, unlicensed, wrecked or inoperative vehicles of any kind shall be stored or parked within the Planned Community except in garages. Any "wrecked" vehicle shall be as determined by the Board, in its sole discretion. Any "abandoned or inoperative" vehicle shall be defined pursuant to the Rules.

The Board shall have the right to remove and store a vehicle in violation of this Section 7.15 after a Notice and Hearing, the expenses of which shall be levied against the Owner whose vehicle (or whose Owner's Guest's vehicle) is in violation of this Section 7.15, as an Individual Assessment in accordance with Section 5.4(b) above.

Subject to any Rules adopted by the Board, vehicle maintenance is allowed only in the garage or in the driveway on a Lot provided, in the latter case, it shall not last more than twenty-four (24) hours. Car washing is not considered vehicle maintenance.

Owners must keep their garage doors closed except when in use.

Any use of a garage that does not allow a vehicle to be parked within the garage is expressly prohibited. The Board is granted the authority to enforce the provisions of this Section 7.15 by the levy of Fines against the Owner in accordance with Section 5.4(c) above.

7.16 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any Person or property within the Common Areas, such Owner shall be liable and responsible for the payment of such loss or damage.

The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board, from such Owner as an Individual Assessment in accordance with Section 5.4(b) above.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Section 7.16 shall be made by the Committee and shall be final.

7.17 Exterior Equipment Prohibition. No exterior equipment or fixtures, including, but not limited to, ventilating equipment and any type or kind of wiring, ducts or pipes (excluding holiday wiring) shall be permitted without the written consent of the Committee.

37

7.18 Antennas and Satellite Dishes. No conventional television antennae of any kind may be installed on the exterior of any Home in the Planned Community. No satellite dishes, antennas or similar devices for the transmission or reception of television, radio, satellite or other signals of any kind shall be permitted, except that:

- (a) Satellite dishes designed to receive direct broadcast satellite service which are one (1) meter or less in diameter; or
- (b) Satellite dishes designed to receive video programming services via multi-point distribution services which are one (1) meter or less in diameter or diagonal measurement; or
- (c) Antennas designed to receive television broadcast signals (collectively a "Permitted Device")

shall be permitted, provided that any such Permitted Device for a Home is (i) placed in the least conspicuous location on the Lot at which an acceptable quality signal can be received and is not visible from the street, Common Areas or neighboring Homes, or is screened from the view from adjacent Homes in a manner approved by the Committee, (ii) as small and unobtrusive as possible and, in the case of an antenna, may be installed on the exterior of a Home only if installation in the attic portion of the Home is not physically possible or would impair reception, and (iii) is in compliance with the Master Association documents.

This Section 7.18 is intended to comply with the Telecommunications Act of 1996 ("Telecommunications Act") and the rules and regulations promulgated by the Federal Communications Commission ("FCC"). Specifically, this Section 7.18 is not intended to unreasonably delay or prevent installation, maintenance or use of a Permitted Device, unreasonably increase the cost of installation, maintenance or use of a Permitted Device, or preclude reception of an acceptable quality signal.

In the event that any portion of this Section 7.18 is found to violate the Telecommunications Act or any rule or regulation of the FCC, the portion of this Section 7.18 that is found to be in violation shall be stricken and the remaining provisions of this Section 7.18 shall remain in full force and effect.

7.19 Lease of a Home. With the exception of a First Mortgagee who has acquired title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure, an Owner shall have the right to lease his or her Home upon such terms and conditions as the Owner may deem advisable, subject to the following:

- (a) Any such lease or rental agreement must be in compliance with applicable local, state and federal laws; and

(b) No Owner may lease or rent: (i) less than his or her entire Lot; (ii) for transient or hotel purposes; or (iii) for a term of less than six (6) months in duration; and

38

(c) Any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of the Project Documents and the Master Association documents (including, but not limited to, the Master Association's Articles of Incorporation, Bylaws, Rules and Declaration); and

(d) Such lease or rental agreement shall state that the failure of the lessee or renter to comply with the Project Documents or the Master Association documents shall constitute a default and such default shall be enforceable by either the Board or the lessor, or by both of them to include, but not be limited to, eviction of the lessee from the Home; and

(e) The Board shall be furnished with a copy of the lease or rental agreement upon its request.

7.20 Fences and Other Exterior Improvements. Only privacy fences enclosing rear patios, dog run fences in the rear yards and playground equipment that adhere to the Design Review Guidelines, are approved by the Committee and are in compliance with the Master Association documents will be allowed. No basketball hoops (except a temporary/portable hoop located on a Lot that is stored after each use), poles or backboards, other playground equipment, clotheslines, wood piles or storage areas or containers may be installed on any Lot or in the Common Areas. No mailboxes, porch and area lighting, property identification, landscaping or other exterior Improvements shall be constructed, installed, erected or maintained on any Lot unless approved by the Committee, and except as were installed or permitted to be installed by Declarant in its construction of Homes on the Lots.

7.21 Window Coverings. Window coverings on all exterior windows of a Home must be installed by the Owner of the Home (at the Owner's cost) within sixty (60) days following the conveyance of title to the Home to the Owner thereof (whether by Declarant or a subsequent Owner).

Such window coverings, as seen from the outside, must be a neutral color that blends with the exterior color of the Home (i.e., white, off-white, light beige or wood tones). Tinting of exterior windows shall be subject to the prior approval of the Committee pursuant to the provisions of Article Six above. No reflective glazing, silver foil or other similar sun screening material shall be allowed on any exterior windows of a Home.

7.22 Rules. Every Owner and their Guests shall adhere strictly to the Rules as promulgated by the Board, as amended from time to time.

7.23 Exemptions for Declarant. So long as Declarant or Solterra Investments, LLC owns a Lot That May Be Created within the Planned Community, Declarant shall be exempt from the

provisions of this Article Seven to the extent that it impedes, in Declarant's sole discretion, Declarant's development, construction, marketing, sales or leasing activities.

39

7.24 Enforcement. The Association, acting through its Board, shall have the standing and power to enforce all of the above land use and other restrictions.

ARTICLE EIGHT EASEMENTS

8.1 Generally. The Planned Community shall be subject to all easements as shown or created on the Plat, those provided in the Master Declaration, those of record, those provided in the Act and those set forth in this Article Eight and in other provisions of this Declaration.

8.2 Utility Easements. There is hereby created and granted a blanket easement on, over, in, under and through the Planned Community for the installation, replacement, repair, operation and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, satellite and cable systems. Said blanket easement includes future utility services not presently available to the Planned Community that may be reasonably required in the future.

Should any utility company furnishing a service covered by the easement herein created request a specific easement by separate recordable document, Declarant shall have, and hereby reserves, the right and authority to grant such easement upon, across, over or under any part or all of the Planned Community without conflicting with the terms hereof; *provided, however*, that such power shall cease upon termination of the Declarant Rights as provided in Section 13.3 below, at which time such reserved right shall vest in the Association.

The easements granted in this Section 8.2 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) within the Planned Community.

8.3 Easements for the Association and Owners. The Board (its agents, employees and contractors) is hereby granted an easement on, over, in, under and through each Lot to perform its obligations pursuant to this Declaration. Each Owner, and such Owner's Guests, is hereby granted a perpetual, non-exclusive right of ingress and egress from the Owner's Lot, over and across the Common Areas, if any, which right shall be appurtenant to the Owner's Lot, and which right shall be subject to limited and reasonable restrictions on the use of Common Areas set forth in writing by the Association, such as for closure for repairs or maintenance.

8.4 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or Persons, now or hereafter servicing the Planned Community, to enter upon any part of the Planned Community in the performance of their duties.

8.5 Recording Data Regarding Easements. Pursuant to §205(m) of the Act, the recording data for certain recorded easements and licenses to which the Planned Community is or may become subject to are identified on the attached Exhibit C.

2/0

8.6 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Lot owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights-of-way as provided herein, as though set forth in full in said document, even though no specific reference to such easements or rights-of-way appear.

8.7 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Areas, if any, for the best interest of all Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Lot over and across the Common Areas and Limited Common Areas, if any, appurtenant to that Owner's Lot, which right shall be appurtenant to the Owner's Lot, and which right shall be subject to limited and reasonable restrictions on the use of the Common Areas, as set forth in writing by the Association, such as for closure for repairs and maintenance.

ARTICLE NINE INSURANCE/CONDEMNATION

9.1 Authority to Purchase/General Requirements. All insurance policies relating to the Association, the Common Areas and the Common Area Improvements shall be purchased by the Board. The Board shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, renewals of or termination of insurance coverages obtained on behalf of the Association.

The Board shall not obtain any policy where under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the Association, an Owner or an Owner's First Mortgagee, or by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or the policy includes any limiting clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

Each such policy shall provide that:

(a) The insurer, to the extent possible, waives any right to claim by way of subrogation against Declarant, the Association, the Board, the Managing Agent, Owners, Guests or their respective agents and employees; and

(b) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner, their Guest or of any member, officer or employee of the Board or the Managing Agent without a prior demand in writing that the Board or the Managing Agent

cure the defect and neither shall have so cured such defect within forty-five (45) days after such demand; and

(c) Such policy, including any fidelity insurance of the Association referred to in Section 9.4 below, may not be canceled, or substantially modified by any party (including cancellation for the nonpayment of a premium) without at least thirty (30) days' prior written notice to the Board, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy; and

(d) Such policy must provide that no assessment may be made against a First Mortgagee, its successors or assigns, and that any assessment made against others shall not become a lien on a Lot superior to the lien of a First Mortgagee; and

(e) The Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner, if such coverage is available.

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "A" or better if reasonably available, or, if not reasonably available, the most nearly equivalent rating.

All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) in which it appropriately names the First Mortgagee, its successor and assigns, as beneficiary.

9.2 Hazard Insurance. The Board shall obtain and maintain a blanket, "all-risk" form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring any of the insurable Common Area Improvements, if any.

Such insurance shall at all times represent one hundred percent (100%) of the current replacement cost based on the most recent appraisal of all insurable improvements in the Common Areas. The current replacement cost shall not include values for land, foundation, excavation and other items normally excluded therefrom and shall be without deduction for depreciation and with no provision for co-insurance. If available, the policy shall be endorsed with a "Guaranteed Replacement Cost Endorsement".

The Board shall review, at least annually, all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board shall, consistent with good business practices, and at reasonable intervals, obtain a written appraisal for insurance purposes, showing that the insurance represents one hundred percent (100%) of the current replacement cost as defined above for all insurable Common Area Improvements, together with any personal property owned by the Association.

Such policies shall also provide:

(a) The following endorsements or their equivalent: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Cost of Demolition Endorsement, Increased Cost of Construction Endorsement, Agreed Amount Endorsement and Inflation Guard Endorsement, if available. 42

(b) That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the property insurance policy purchased by the Board shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board hereunder provide for, or be brought into contribution with, insurance purchased by individual Owners or their First Mortgagees, unless otherwise required by law.

A certificate, together with proof of payment of premiums, shall be delivered by the insurer to any Owner and First Mortgagee requesting the same, at least thirty (30) days prior to expiration of the then current policy.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the Association. Any loss covered by the policies carried under this Article Nine shall be adjusted exclusively by the Board and provide that all claims are to be settled on a replacement cost basis.

The Association shall hold any insurance proceeds received in trust for the Owners and their First Mortgagees as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Areas. Owners and First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Areas have been repaired or restored. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the insurance proceeds.

The deductible, if any, on such insurance policy shall be as the Board determines to be consistent with good business practice and which shall be consistent with the requirements of First Mortgagees, not to exceed however, Ten Thousand and No/Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy, whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's reserve funds and be so designated.

The Board shall have the authority to levy, after a Notice and Hearing, against Owners causing such loss for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with Section 5.4(b) above.

9.3 Liability Insurance. The Board shall obtain and maintain comprehensive general liability (including eviction, libel, slander, false arrest and invasion of privacy) and property damage insurance covering all of the Common Areas, if any, insuring each officer, director, the Managing Agent and the Association.

Such coverage under this policy shall include, without limitation, the legal liability of the insureds for property damage, bodily injuries and deaths of Persons that result from the operation, maintenance or use of the Common Areas and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

43

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to planned communities similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Workmen's Compensation Insurance, Employer's Liability Insurance, Comprehensive Automobile Liability Insurance and Severability of Interest Endorsement.

The Board shall review such limits once each year, but in no event shall such insurance be less than One Million and No/100 Dollars (\$1,000,000.00), covering all claims for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

Absolute liability is not imposed on Owners for damage to the Common Areas or Lots within the Planned Community.

9.4 Fidelity Insurance. The Association shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The insurance shall name the Association as an insured, and shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including reserve funds) that will be in the custody of the Association or its Managing Agent at any time while the policy is in force; *provided, however*, in any event, the aggregate amount of such insurance shall not be less than a sum equal to three (3) months' aggregate Assessments on all Lots, plus reserve funds.

The policy must include a provision that calls for thirty (30) days written notice to the Association before the policy can be canceled or substantially modified for any reason. The same notice must also be given to each servicer that services a Fannie Mae-owned or securitized mortgage in the Planned Community.

A Managing Agent that handles funds for the Association should be covered by its own fidelity insurance policy which must provide the same coverage required of the Association.

9.5 Additional Insurance. If the Common Areas within the Planned Community are identified by the Secretary of HUD or the Director of the Federal Emergency Management Agency

("FEMA") as a Special Flood Hazard Area, flood insurance for the Common Areas, if any, shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of the then current replacement cost of the Common Areas and the Common Area Improvements located thereon as shown on the current FEMA map.

44

If the Common Areas at the time of the recording of this Declaration are not identified as a Special Flood Hazard Area but become reclassified at a later date as such, the Board shall obtain flood insurance for the Common Areas in accordance with the above. Conversely, flood insurance may be discontinued when the Common Areas are reclassified out of the Special Flood Hazard Area.

The Association may also maintain coverage for:

- (a) Adequate directors and officers liability insurance, if reasonably available, and if deemed consistent with good business practices, for errors and omissions of all directors and officers to be written in an amount which the Board deems adequate; and/or
- (b) Worker's Compensation Insurance and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter acquired by law; and/or
- (c) Such other insurance of a similar or dissimilar nature, as the Board shall deem appropriate with respect to the Planned Community.

9.6 Payment of Insurance Premiums. The cost of the insurance obtained by the Association in accordance with this Article Nine shall be paid from Association funds and shall be collected from the Owners as part of the Common Expense Assessments as provided for in Section 5.4(a) above.

In the event there are not sufficient funds generated from the Common Expense Assessments to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Section 5.4(b) above and such Assessment shall be exempt from any special voting requirements of the membership. Such Assessment shall be prorated among Owners in accordance with the Owners' Common Expense Assessment Liability set forth in Section 1.3(a) above.

9.7 Separate Insurance. No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Section 9.7.

9.8 Damage to Property. Any portion of the Common Areas, if any, and the Common Area Improvements, if any, that is damaged or destroyed and for which insurance is carried by the Association, shall be repaired or reconstructed by the Board in accordance with Article Ten below.

45

9.9 Condemnation. If a part of the Common Areas is acquired by condemnation, that portion of any award attributable to the Common Areas taken must be paid to the Association as attorney-in-fact to be held in trust for the use and benefit of the Association, the Owners and the holders of their Security Interests, as their interests may appear. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the condemnation award.

ARTICLE TEN RESTORATION UPON DAMAGE OR DESTRUCTION

10.1 Duty to Restore Common Areas. In the event of damage or destruction to any portion of the Common Areas, if any, and/or the Common Area Improvements, if any, that is covered by insurance carried by the Association, the insurance proceeds shall be applied by the Board to such reconstruction and repair.

The Common Areas must be repaired and restored in accordance with either the original plans and specifications, or other plans and specifications which have been approved by the Board.

10.2 Use of Insurance Proceeds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage to the Common Areas, the Board shall levy an Individual Assessment in the aggregate amount of such insufficiency pursuant to Section 5.4(b) above, and shall proceed to make such repairs or reconstruction. The amount of each Owner's Individual Assessment shall be such Owner's Common Expense Assessment Liability and shall be determined in accordance with Section 1.3(a) above, subject to Sections 5.4 and 11.1 hereof.

If all of the damage to the Common Areas covered by the Association's insurance is not repaired or reconstructed, the insurance proceeds attributable to the damage shall be used to restore the damaged portion of the Common Areas to a condition compatible with the remainder of the Planned Community and the remainder of the proceeds shall be distributed to the Association.

ARTICLE ELEVEN MAINTENANCE

11.1 Maintenance of the Common Areas and the Common Area Improvements, If Any. Upon completion of construction or installation of each Common Area Improvement by Declarant, if any, the Association's maintenance responsibilities as to such Common Area Improvement shall commence. Declarant may deliver a notice of completion and commencement of the Association's maintenance responsibilities with respect to such Common Area Improvement to the Managing

Agent, but failure to deliver such notice shall not in any way limit the Association's maintenance responsibilities.

The Association shall keep and maintain the Common Areas and the Common Area Improvements, if any, in an attractive, clean and functional condition and in good repair and may make necessary or desirable alterations or improvements thereon. All maintenance shall be conducted in accordance with any requirements set forth on the Plat or in the Master Association documents. 46

In the event any repair, maintenance and/or replacement of a Common Area or Common Area Improvement results from the willful act, neglect or destruction by an Owner or such Owner's Guest, the Board shall have the right, after a Notice and Hearing, to charge the costs of such repair and/or replacement to such Owner through an Individual Assessment in accordance with Section 5.4(b) above. Determination with respect to whether or not a particular activity by occurrence shall constitute a violation of this Section 11.1 shall be made by the Board and shall be final.

11.2 Maintenance of the Lots and Homes. To provide and maintain the exterior harmony of the Lots and Homes located within the Planned Community, the Association shall maintain and repair the landscaping located within that portion of the Lot lying outside of the foundation of a Home; *provided, however*, if a fence is erected on a Lot in conformance with the provisions of this Declaration and the Master Association documents, the maintenance and repair of such fence and the landscaping within the fence shall be the responsibility of the Owner of the Lot.

No planting or gardening shall be allowed, and no fences, hedges or walls shall be erected upon a Lot to benefit a Home, except those that are allowed or installed in accordance with the initial construction or the approved initial construction plans of the Home, or as approved by the Committee. If such Improvements are made to a Lot, then such Improvements must be maintained by the Owner of the Lot benefited in a manner acceptable to the Board. In the event the Owner shall fail to maintain such Improvements in a manner acceptable to the Board, the Board shall have the right and duty to remove the Improvement and restore the Lot to a condition compatible with the remainder of the Planned Community. The cost of such removal and restoration shall be charged to the benefited Owner as an Individual Assessment in accordance with Section 5.4(b) above.

In the event an Owner constructs a Committee-approved exterior modification to his or her Lot, the expense of repair, maintenance and reconstruction of such exterior modification shall be the responsibility of the Owner unless such responsibility is specifically assumed in writing by the Board. As part of the design review process, an agreement shall be entered into between the Owner and the Board to reflect this responsibility and may be recorded.

In the event such repair, maintenance and/or replacement results from the willful act, omission, neglect or destruction by an Owner or such Owner's Guests, the Board shall have the right

to charge the costs of such repair, maintenance and/or replacement to such Owner by an Individual Assessment in accordance with Section 5.4(b) above.

Determination of whether repair or maintenance is the obligation of the Association, or if the repair or maintenance is necessary, shall rest solely with the Board, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance. 47

All other Lot maintenance and repair shall be the sole responsibility of, and at the sole expense of, the Owner.

In the event an Owner has a dog run located on such Owner's Lot, or in any Common Area adjacent to such Owner's Lot if permitted by the Board or the Committee, the repair, maintenance and reconstruction of the interior of such dog run together with the fence enclosing such dog run shall be the sole responsibility of the Owner.

11.3 Owner's Failure to Maintain and/or Repair. In the event that a Lot is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Lot lies with the Owner of the Lot, then the Board, after a Notice and Hearing to the Owner (and after a determination by the Board that the condition of such Lot negatively impacts other Owners or the value of other Lots within the Planned Community), shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot to a condition of good order and repair and charge the cost thereof to such Owner as an Individual Assessment in accordance with Section 5.4(b) above.

11.4 Maintenance of the Drainage Pattern. There shall be no interference with the established drainage pattern initially established over any portion of the Planned Community, except as approved in writing by the Committee. Approval shall not be granted unless a provision is made for adequate alternate drainage.

The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property is completed and shall include any established drainage pattern shown on the plans approved by the Committee. The established drainage pattern may include the drainage pattern from the Common Areas over any Lots within the Planned Community and from any Lot within the Planned Community over the Common Areas or from any Lot over another Lot. Any proposed alterations to the drainage pattern must be prepared, signed and stamped by a qualified professional engineer registered in the State of Colorado.

11.5 Association Responsibility. The maintenance obligation on the part of the Association shall apply to such maintenance required by ordinary wear and tear and shall not apply to maintenance, repair and/or reconstruction resulting from willful neglect or destruction. In the event such repair, maintenance and/or reconstruction is resulting from the willful neglect or destruction by an Owner or such Owner's Guests, the Board shall have the right, to charge the costs

of such repair, maintenance and/or replacement, to such Owner by an Individual Assessment in accordance with Section 5.4(b) above.

Determination of whether such repair, maintenance and/or reconstruction is the obligation of the Association and the determination of when the repair, maintenance and/or reconstruction, the magnitude of the repair, maintenance and/or reconstruction and the manner of repair, maintenance and/or reconstruction shall rest solely with the Board and shall be final. The Board will also have the sole responsibility for determining the kind and type of materials used in such repair, maintenance and/or reconstruction.

48

11.6 Board Access. Access to all of the Lots within the Planned Community to perform the said repair, maintenance and/or reconstruction by the Board, its agents and employees shall be made pursuant to the maintenance easement granted in accordance with Section 8.3 above.

ARTICLE TWELVE EXPANSION

12.1 Reservation of Right to Expand. Declarant reserves the right (without in any way being bound) to enlarge the Planned Community in Phases without the necessity or the consent thereto, or joinder therein, of the Owners, the Association, any mortgagee or any other Persons, by submitting to the Planned Community from time to time a Supplemental Declaration adding any of the real property described on the attached Exhibit B.

12.2 Supplemental Declarations. Such expansion must be accomplished by the filing for record by Declarant in the office of the County Clerk and Recorder, a supplement or supplements to this Declaration containing the legal description of the new real property to be included in such expansion. The expansion may be accomplished in stages by successive supplements or in one (1) supplemental expansion.

12.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded. For example, "Lot", "Common Areas", "Property" and "Planned Community" shall mean the Lots, Common Areas, Property and the Planned Community described herein plus any additional Lots and Common Areas added by a Supplemental Declaration or Supplemental Declarations, and reference to this Declaration shall mean this Declaration, as supplemented. All conveyances of Lots shall be effective to transfer rights in the Planned Community as expanded with additional references to the Supplemental Declaration or Supplemental Declarations.

12.4 Declaration Operative on New Properties. The new real property shall be subject to all of the terms, covenants, conditions and restrictions of this Declaration as amended or supplemented, by the recording by Declarant in the office of the County Clerk and Recorder of a Supplemental Declaration.

12.5 Interests on Enlargement. An Owner at the time of his or her purchase of a Lot which has been brought into the Planned Community by a Supplemental Declaration shall be a Member of the Association. Such Owner shall be entitled to the same non-exclusive use of the Common Areas and the same voting privileges as the Owners of the initial property brought into the Planned Community through this original Declaration and shall be subject to the same Assessments. The Assessments for that Phase shall commence for Owners within that Phase, including Declarant, upon the recording of the Supplemental Declaration for that Phase, subject to Section 5.3 above.

49

Whenever any additional property is brought into the Planned Community, the Common Expense Assessment Liability of each Owner after such addition will change and shall be reallocated by Declarant in accordance with Section 1.3(a) above.

12.6 Taxes, Assessments, and Other Liens. All taxes and other assessments then due and owing relating to the real property described on Exhibit B covering any period of time prior to the addition of such property or any portion thereof to the Planned Community must be paid.

Liens arising out of the construction of Improvements in later Phases shall not extend into prior Phases and shall not adversely affect the rights of Owners or the priority of first mortgages and deeds of trust on any Lot in a prior Phase.

12.7 Project Treated as a Whole. For all purposes hereof, each of the Phases of the Planned Community after the recording of the Supplemental Declaration submitting each Phase to the Planned Community, shall be treated as a part of the Planned Community developed as a whole from the beginning, except to the extent expressly otherwise provided herein.

It is the express purpose hereof to provide that from and after the date of the submission of a Phase of the Planned Community in accordance with the above, that such Phase shall be treated as though such Phase had been developed, owned, occupied and used by the Owners thereof as a single undivided Planned Community.

12.8 Termination of the Right of Expansion. The right of expansion set forth herein shall terminate at the option of Declarant, but in any event such right of expansion shall terminate without further act or deed in accordance with the limitations set forth in Section 13.3 below.

ARTICLE THIRTEEN DECLARANT RIGHTS

13.1 Reservation. Notwithstanding any provision herein to the contrary, Declarant reserves on behalf of itself the following Declarant Rights which may be exercised, where applicable, anywhere within the Planned Community and as otherwise described herein:

- (a) To complete the Improvements as shown on the Plat; and
- (b) To exercise any Declarant Rights reserved or described herein; and

(c) To maintain business/sales offices, parking spaces, management offices, storage areas, nurseries, construction yards, signs, advertising and model Homes; and

(d) To maintain signs and advertising on the Common Areas, if any, Lots and Homes to advertise and market the Planned Community; and

50

(e) To have and use, and to permit others to have and use, easements through the Common Areas, if any, as may be reasonably necessary for construction within the Planned Community and for the purpose of discharging Declarant's obligations under the Act and this Declaration; and

(f) To amend the Declaration and/or the Plat in connection with the exercise of any Declarant Rights; and

(g) To expand, without in any way being bound, the Planned Community in Phases from time to time, by adding to the Planned Community any of the real property described on the attached **Exhibit B**, in accordance with Article Twelve above; and

(h) To expand, without in any way being bound, the Planned Community in Phases from time to time, by adding to the Planned Community additional real property from such locations as Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Planned Community pursuant to this Section 13.1(h), and not described on the attached **Exhibit B**, does not exceed ten percent (10%) of the total area described on the attached **Exhibit A** and **Exhibit B**; and

(i) To merge or consolidate the Planned Community with a common interest community of the same form of ownership; and

(j) To appoint or remove any officer of the Association or member of the Board during the Period of Declarant Control subject to the provisions of Section 4.7 above;

(k) To designate certain Common Areas as Limited Common Areas by amendment to this Declaration; and

(l) To exercise any other Declarant Rights created or implied by any other provisions of this Declaration; and

(m) To appoint the members of the Committee pursuant to Article Six above; and

13.2 **Rights Transferable.** The Declarant Rights created or reserved under this Article Thirteen for the benefit of Declarant may be transferred to any Person by an instrument describing the Declarant Rights transferred and recorded in the office of the County Clerk and Recorder. Such instrument shall be executed by the transferor Declarant and the transferee.

13.3 Limitations. The Declarant Rights shall terminate at the option of Declarant, but in any event such Declarant Rights shall terminate without further act or deed seven (7) years after the date of the recording of this Declaration except as provided for in Section 6.3 hereof regarding the Declarant Right to appoint and remove members of the Committee. 51

13.4 Interference with the Declarant Rights. Neither the Association, the Board nor any Owner may take any action or adopt any rule that will interfere with or diminish the Declarant Rights without the prior written consent of Declarant.

13.5 Use by Declarant. The exercise of the Declarant Rights by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Lot by any Owner nor the access, enjoyment or use of the Common Areas, if any, nor shall any activity be conducted which might be unsafe, unhealthy or hazardous to any Person.

13.6 Models, Sales Offices and Management Offices. Declarant and its duly authorized agents, representatives and employees may maintain any Home(s) owned by Declarant as a model Home or as a sales, leasing and/or management office (or may locate a sales trailer within the Planned Community for any of such purposes).

13.7 Declarant's Easements. Declarant reserves the right to perform warranty work, repair work and construction work on Lots, Homes, Common Areas, if any, and Common Area Improvements, if any, to store materials in secure areas, and to control and have the right of access to work and repair until completion. All work shall be performed by Declarant without the consent or approval of the Board, Owners or First Mortgagees.

Declarant has an easement through the Common Areas, if any, as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising the Declarant Rights, whether arising under the Act or reserved in this Article Thirteen.

Notwithstanding any other provision of this Declaration, the easements reserved herein shall remain in effect for the benefit of Declarant until the termination of all applicable warranty periods with respect to any particular Lot, Home, Common Areas, if any, or Common Area Improvements, if any.

13.8 Signs and Marketing. Declarant reserves the right for Declarant to post signs on the Common Areas, if any, in order to promote sales of Lots and Homes. Declarant also reserves the right for Declarant to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

13.9 Other Reserved Rights. The rights reserved in this Article Thirteen are in addition to all other rights reserved by or granted to Declarant in this Declaration or by the Act.

13.10 Exercise of Declarant Rights. The exercise of any or all of the Declarant Rights shall be at the sole option and discretion of Declarant. The Declarant Rights may be exercised with

respect to different Phases of the Planned Community at different times. No assurances are made with respect to the boundaries of the Phases of the Planned Community or the parcels of real property that may be subject to the Declarant Rights nor the order in which the Declarant Rights may be exercised. If Declarant exercises any of the Declarant Rights, such rights may, but need not, be exercised as to all or any other portion of the Planned Community. 52

Notwithstanding anything in this Declaration to the contrary, no consent or agreement of, or notice to, the Owners, the Association, any mortgagee or any other Persons shall be required in order to allow Declarant to exercise any of its Declarant Rights, provided such exercise otherwise complies with the applicable provisions of this Declaration.

**ARTICLE FOURTEEN
ELIGIBLE MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers or guarantors of holders of a First Security Interest recorded against Lots within the Planned Community who qualify as an Eligible Mortgagee as defined by Section 1.23 above.

14.1 Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

- (a) Any material condemnation loss or any casualty loss which affects a material portion of the Planned Community or any Lot in which there is a First Security Interest held, insured or guaranteed by such Eligible Mortgagee; and
- (b) Any sixty (60)-day delinquency in the payment of Assessments or charges owed by an Owner of any Lot on which an Eligible Mortgagee holds a Security Interest; and
- (c) Any lapse, cancellation or material modification of any mandatory insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees; and
- (e) Any material judgment rendered against the Association.

14.2 Amendment to Documents/Special Approvals.

(a) Except to the extent that Declarant is granted rights in this Declaration or pursuant to the Act, the consent of Owners to which at least a majority of the votes in the Association are allocated and the consent of a majority of the Eligible Mortgagees shall be required to add to or amend any material provisions of this Declaration. A change to any of the following would be considered material:

- (i) Voting rights; and

(ii) Increase the Common Expense Assessments annually by more than twenty-five percent (25%) over the previously levied Common Expense Assessments, change the manner of the Assessment Liens, or the priority of the Assessment Liens; and

53

(iii) Reduction in the reserves for maintenance, repair and replacement of the Common Areas; and

(iv) Responsibility for maintenance and repairs; and

(v) Right to use the Common Areas; and

(vi) Convertibility of Lots into Common Areas or vice versa; and

(vii) Hazard or fidelity insurance requirements; and

(viii) Imposition of any restrictions on the leasing of Lots; and

(ix) Imposition of any restrictions on an Owner's right to sell or transfer his or her Lot; and

(x) Restoration or repair of the Planned Community (after damage or partial condemnation) in a manner other than that specified in the Project Documents; and

(xi) Any provision that expressly benefits mortgage holders, insurers or guarantors; and

(xii) The reallocation of interests in the Common Areas or rights to their use; and

(xiii) A decision by the Board to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgagee.

(b) The Association may not take any of the following actions without the consent of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of at least fifty-one percent (51%) of Eligible Mortgagees:

(i) Reconstruct or repair the Common Areas after damage due to an insurable hazard or a partial condemnation in a manner other than specified in the Project Documents.

(ii) Merge or consolidate the Planned Community with any other planned community.

(iii) Not repair or reconstruct, in the event of substantial destruction, any part of the Common Areas, if any.

(c) Any action to terminate the legal status of the Planned Community after substantial destruction or condemnation occurs must be agreed to by Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and by fifty-one percent (51%) of Eligible Mortgagees. 54

(d) Any action to terminate the legal status of the Planned Community for reasons other than substantial destruction or condemnation must be agreed to by Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and by sixty-seven percent (67%) of Eligible Mortgagees.

14.3 Implied Approval. If this Declaration or any Project Documents require the approval of any Agencies or Eligible Mortgagee then, the Association shall send a dated, written notice and a copy of any proposed amendment by certified mail with return receipt requested to such Agencies and/or Eligible Mortgagee at its most recent address as specified in the written notice provided to the Association in accordance with Section 1.23 above, or as otherwise delivered by the Eligible Mortgagee to the Association. The Association shall also cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice, on separate occasions at least one (1) week apart, in a newspaper of general circulation in Jefferson County, Colorado. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after the date of the notice provided above.

14.4 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Bylaws.

ARTICLE FIFTEEN MANDATORY DISPUTE RESOLUTION

15.1 Statement of Clarification. Without modifying or restricting the scope of this Article Fifteen and as a statement of clarification only, nothing contained in this Article Fifteen is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a Claim (as defined below), that the mandatory dispute resolution provisions contained in this Article Fifteen are activated.

15.2 Alternative Method for Resolving Disputes. Declarant, the Association, its officers and directors; all Owners; design professionals; builders, including any of their subcontractors and suppliers; and any Person not otherwise subject to this Declaration, but who agrees to submit to this Article Fifteen (each of the foregoing entities being referred to as a "Party"), agree to encourage the

amicable resolution of disputes involving the Planned Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims each may have to the procedures set forth in this Article Fifteen and not to a court of law.

55

15.3 Claims. Except as specifically excluded in Section 15.4 below, all claims, disputes and other controversies arising out of or relating to:

- (a) Any Home purchase agreement between Declarant and any Owner (except as may be expressly provided otherwise therein); or
- (b) The Property (as defined in any such Home purchase agreement) or the Lot or Home; or
- (c) The purchase of the Home or Lot; or
- (d) The interpretation, application or enforcement of this Declaration; or
- (e) The soils of any property that lies within the Planned Community; or
- (f) Land development, design, construction and/or alteration of a Home or other Improvement within the Planned Community and/or any alleged defect therein; or
- (g) Any rights, obligations and duties of any party under this Declaration; or
- (h) Any personal injury or property damage that any Owner alleges to have sustained on the Property; or
- (i) Except as provided in Section 15.4 below, any limited warranty agreement between Declarant and any Owner and/or the Association; or
- (j) Any breach of any of the foregoing;

all of which are hereinafter referred to as a "Claim", shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by mandatory binding arbitration all in accordance with this Article Fifteen and not in a court of law. Notwithstanding the foregoing, no Claim may be asserted or brought unless there is either (i) actual physical damage to, or actual loss of use of, tangible real or personal property, or (ii) bodily injury or wrongful death.

15.4 Claims Subject to Approval. Unless Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this Article Fifteen:

(a) Any suit by the Association against any Party to enforce the provisions of Article Five (Assessments); and

(b) Any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of Article Six (Architectural Approval/Design Review) or Article Seven (Use Restrictions); and

(c) Any suit by an Owner to challenge the actions of Declarant, the Association, Declarant acting as the Committee, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of Article Six (Architectural Approval/Design Review); and

(d) Any suit between or among Owners that does not include Declarant or the Association; and

(e) Where any limited warranty agreement provided to an Owner in connection with the purchase of a Home provides for any other method for resolving disputes relating to the limited warranty.

15.5 Notice of Claim. Any Party alleging a Claim (“Claimant”) against any other Party (“Respondent”) shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

(a) The nature of the Claim, including a list of any alleged construction defects, if any, the Persons involved and Respondent’s role in the Claim; and

(b) The legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

(c) The date on which the Claim first arose; and

(d) The name and address of every Person, including, without limitation, any current or former employees of Respondent, whom Claimant believes does or may have information relating to the Claim; and

(e) The specific relief and/or proposed remedy sought.

15.6 Timely Initiation. All Claims shall be initiated by Claimant within a reasonable time after the Claim has arisen, and in any event, regardless of the nature of the Claim, within the time specified in the applicable limited warranty agreement described in Section 15.3(i) above for warranty Claims and no later than two (2) years after the Claim arises for all other Claims.

15.7 Right to be Heard. Upon receipt of a Claim and prior to the Association or any Owner asserting the Claim commencing any mediation or arbitration, Respondent shall have the

right to make a written response and be heard by Claimant, affected Owners and the Association in an effort to resolve the Claim.

15.8 Right to Inspect and Repair. If the Claim is based on the land development, design, construction and/or alteration of any Home or other Improvement within the Planned Community, then upon reasonable notice to any affected Owners (or the Association if the affected area is owned by the Association), Respondent shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of including, but not be limited to, any investigative or destructive testing. 57

The Association shall have the same right to inspect for any Claims by an Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the Party causing the inspection to be made ("Inspecting Party") shall:

- (a) Be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other Party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any Improvements on the property being inspected ("Affected Property"); and
- (b) Minimize any disruption or inconvenience to any Person who occupies the Affected Property; and
- (c) Remove daily all debris caused by the inspection and located on the Affected Property; and
- (d) In a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and materials from the Affected Property and repair and replace all damage, and restore the Affected Property to the condition of the Affected Property as of the date of the inspection, unless the Affected Property is to be immediately repaired.

The repair, replacement and restoration work shall include, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Affected Property that were damaged, removed or destroyed by the Inspecting Party.

In the event the Inspecting Party wishes to make repairs to resolve the subject matter of the Claim, the Inspecting Party shall have the right, at its option, to do so and to enter the Affected Property at a reasonable time(s) and upon reasonable notice for such purpose.

The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect and/or repair to accrue against or attach to the Affected

Property. The Inspecting Party shall indemnify, defend and hold harmless the affected Owners, or the Association if the Affected Property is owned by the Association, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and reasonable attorneys' fees, resulting from any breach of this Section 15.8 by the Inspecting Party.

58

15.9 Good Faith Negotiations. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any Party may be represented by attorneys and independent consultants (at such Party's cost) to assist such Party in negotiations and to attend meetings.

15.10 Mediation.

(a) If the Parties do not resolve the Claim through negotiations within thirty (30) days after the date of submission of the Claim to Respondent, as such time frame may be extended upon agreement of all affected Parties, Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent mediation service reasonably acceptable to all Parties. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

(b) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties.

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

(d) Within ten (10) days after issuance of a Termination of Mediation, Claimant shall make a final written settlement demand to Respondent, and Respondent shall make a final written settlement offer to Claimant. If Claimant fails to make a settlement demand, Claimant's original Claim shall constitute the settlement demand. If Respondent fails to make a settlement offer, Respondent shall be deemed to have made a "zero" or "take nothing" settlement offer.

(e) Each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.

(f) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Article Fifteen and any Party thereafter fails to abide by

the terms of such agreement, then any other affected Party may file suit to enforce such agreement without the need to again comply with the procedures set forth in this Article Fifteen. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including, without limitation, reasonable attorneys' fees and court costs.

59

15.11 Arbitration.

(a) If the Parties do not reach a settlement of the Claim within fifteen (15) days after issuance of any Termination of Mediation and reduce the same to writing, Claimant shall have fifteen (15) additional days to submit the Claim to binding arbitration in accordance with the arbitration procedures contained in the attached Exhibit D and deliver an arbitration notice to Respondent.

(b) The Parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Party may have liability with respect thereto, all Parties, including any third Parties, agree that the third Parties may be joined as additional Parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all arbitrations. It is the intent of the Parties to resolve all rights and obligations of all interested Parties at one (1) time in one (1) forum rather than in multiple proceedings.

(c) Within sixty (60) days after submission of the Claim, Claimant shall file with the arbitrator and deliver to Respondent, if applicable, a certified list of construction defects that are the subject of the Claim, which list shall be signed by the attorney for Claimant, or if Claimant does not have an attorney, by Claimant, and shall include:

(i) A statement that (1) the attorney for Claimant, or Claimant if Claimant does not have an attorney, has consulted with a Person not a Party to the Claim with expertise in the area of each construction defect that is the subject of the Claim ("Construction Consultant"), and (2) the Construction Consultant has inspected the improvements for which the construction defects are claimed, has reviewed the known facts, including such records, documents and other materials the Construction Consultant has found to be relevant to the construction defects, and has concluded that the Claim has substantial justification based on the Construction Consultant's inspection and review of the known facts; and

(ii) A certification that the Construction Consultant can demonstrate by competent evidence that, as a result of training, education, knowledge and experience, the Construction Consultant is competent to testify as an expert and render an opinion as to the alleged construction defects; and

(iii) A certification signed by the Construction Consultant stating (1) such Person's name, address, qualifications and credentials that render him or her competent to express an expert opinion as to the alleged construction defect, (2) that he or she has inspected each improvement and reviewed the known facts, including such records, documents and other materials which he or she has found to be relevant to the construction defects at issue, and (3) as to each improvement for which a construction defect Claim is asserted, an identification of the owner of the improvement, the location and date of construction of the improvement, and an identification of each claimed construction defect and its specific location; and

60

(iv) A computation of the damages alleged for each construction defect; and

(v) An identification, with respect to each improvement and construction defect, of each Party alleged to be responsible for such defect; and

(vi) A certification that each Party alleged to be responsible for the alleged construction defect has been given written notice of the defect and an opportunity to remedy the defect under the foregoing provisions of this Article Fifteen and that the defect has not been remedied; and

(vii) A copy of the notice of Claim served by Claimant on each Person that is named as a Party to the Claim.

(d) If the Claim is not timely submitted to arbitration, if Claimant fails to appear for the arbitration proceeding, or if Claimant fails to file and deliver the certified list of construction defects as provided in Section 15.11(c) above, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claims.

(e) The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in the County in accordance with applicable law and judgment obtained thereon, and execution may issue. The arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such Party's costs and expenses, including reasonable attorneys' fees.

(f) Claimant shall notify Respondent prior to retaining any Person or entity as an expert witness for purposes of any arbitration or authorized litigation.

15.12 Consensus for Association Action. The Association shall not commence any action, mediation or arbitration against Declarant or other Party for a Claim unless the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated agree to such proceedings. However, such Owner consent must be obtained by the Association only after the

Board delivers written notice to all Members in accordance with the procedures set forth in the Bylaws with respect to meetings of Members. Such delivery shall include:

- (a) A description of the nature of the Claim and the relief sought; and
- (b) A copy of any written response thereto, including any settlement proposal; and
- (c) A statement advising Owners of their duties to disclose to prospective purchasers and lenders the Claim that the Association proposes to assert; and
- (d) A statement that any recovery from the action may not result in receipt of funds to pay all costs of remedying the Claim as estimated by experts retained by the Association; and
- (e) An estimate of the expenses and fees to the Association that the Board anticipates will be incurred in prosecuting the claim; and
- (f) A description of the agreement with the attorneys whom the Board proposes to retain to prosecute the cause of action.

15.13 Liability for Failure to Maintain an Action against Declarant. No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was acting in good faith; and (c) the act or omission was not willful, wanton or grossly negligent.

15.14 Utilization of Funds Resulting from the Cause of Action. In the event the Association receives funds as a result of any settlement, mediation, arbitration or judgment based upon a cause of action, after payment of fees and costs incurred in connection with prosecution of such action, the Association shall: (a) deposit the proceeds in a special, interest-bearing account; and (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the Claim or otherwise for purposes of remedying the Claim.

15.15 Exclusive Remedy. The provisions contained in this Article Fifteen shall be the sole and exclusive remedy that the Association and any other Party shall have against Declarant and other Parties for any Claim. Declarant, the Association and each Owner expressly waives any right it may have to seek resolution of any Claim contemplated by this Article Fifteen in any court of law or equity and any right to trial by jury.

Should any Party commence litigation or any other action against any other Party, in violation of the terms of this Article Fifteen, such Party shall reimburse the costs and expenses, including attorneys' fees, incurred by the other Party seeking dismissal of such litigation or action. If the Claim involves Declarant or the Association, no Party shall record a memorandum or notice of *lis*

pendens or similar instrument that would encumber or create a lien on real property owned by either Declarant or the Association, and any recording of the same shall be null and void and of no force or effect.

62

15.16 Binding Effect. This Article Fifteen and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction in the County to the fullest extent permitted under the laws of the State of Colorado.

15.17 Amendment. Neither this Article Fifteen nor **Exhibit D** may be amended unless such amendment is approved by a majority of the Board and Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated. Any amendment made without the requisite Board and Owners' vote shall be null and void and shall have no effect, and the last paragraph of Section 16.2 hereof shall not apply.

15.18 Limited Warranty. Declarant may but shall not have any obligation whatsoever to extend an express, written limited warranty ("Limited Warranty") to original purchasers from Declarant of a Home. Every such original purchaser, and successive Owners of such original purchaser's Home, shall be bound by the Limited Warranty (to the extent such a Limited Warranty is actually issued and in effect at the time of the particular claim and with respect to the particular Home at issue). THE LIMITED WARRANTY SHALL BE THE ONLY WARRANTY, EXPRESS OR IMPLIED, PROVIDED TO OWNERS WITH REGARD TO THE HOMES.

ALL LIABILITIES, OBLIGATIONS, RIGHTS AND REMEDIES OF EACH OWNER (AND THE ASSOCIATION ON BEHALF OF THE OWNERS) ARISING OUT OF THE CONSTRUCTION AND CONDITION OF A HOME SHALL BE LIMITED TO THE EXPRESS PROVISIONS OF THE LIMITED WARRANTY. EACH OWNER AND THE ASSOCIATION ACKNOWLEDGE AND AGREE THAT OTHER THAN AS EXPRESSLY PROVIDED IN THE LIMITED WARRANTY, DECLARANT DISCLAIMS, AND EACH OWNER AND THE ASSOCIATION WAIVE, ALL EXPRESSED OR IMPLIED WARRANTIES RELATING TO THE HOMES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES THAT THE HOMES WILL BE FREE FROM DEFECTS AND WILL BE FIT FOR THEIR INTENDED PURPOSES, THE IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION, CONFORMANCE WITH LOCAL BUILDING CODES, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY RIGHTS OR REMEDIES AS TO ANY PERSONAL PROPERTY OR "CONSUMER PRODUCT" (AS THAT TERM MAY BE DEFINED UNDER APPLICABLE FEDERAL, STATE OR LOCAL LAWS OR THEIR IMPLEMENTING REGULATIONS) THAT MAY BE A PART OF OR LOCATED IN THE HOMES (INCLUDING, WITHOUT LIMITATION, ANY PERSONAL PROPERTY OR FIXTURES WITHIN THE HOME). EXCEPT AS SET FORTH IN THE LIMITED WARRANTY, EACH SALE OF A HOME FROM DECLARANT TO AN ORIGINAL PURCHASER IS "AS IS" AND "WHERE IS".

TO THE EXTENT THAT THE LIMITED WARRANTY ASSIGNS CERTAIN MAINTENANCE OBLIGATIONS TO OWNERS AS TO THE HOMES, OWNERS AGREE TO ASSUME SUCH OBLIGATIONS AND RELEASE DECLARANT, ITS CONTRACTORS AND DESIGN PROFESSIONALS FROM ANY CLAIMS AND DAMAGES THAT ARISE AS A RESULT OF THE OWNERS' FAILURE TO COMPLY WITH THE TERMS OF SUCH MAINTENANCE OBLIGATIONS.

63

IN THE EVENT THAT ANY PROVISIONS IN THIS SECTION 15.18 CONFLICT WITH ANY APPLICABLE FEDERAL OR COLORADO STATUTES WHICH PROVIDE NON-WAIVABLE LEGAL RIGHTS, INCLUDING, WITHOUT LIMITATION, THE COLORADO CONSTRUCTION DEFECT ACTION REFORM ACT OF THE COLORADO CONSUMER PROTECTION ACT, THEN THE NON-WAIVABLE TERMS OF SUCH STATUTE SHALL CONTROL.

**ARTICLE SIXTEEN
DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION**

16.1 Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Section 16.7 below.

16.2 Amendments by Owners. Except in the case of amendments that may be executed by the Board and by Declarant pursuant to Article Twelve, Article Thirteen and Section 16.3 hereof, and except as restricted by Section 14.2, Section 14.3 and Section 15.17 hereof, this Declaration may be amended by the written agreement of Owners to which at least a majority of the votes in the Association are allocated; *provided, however*, except as provided in Article Twelve, Article Thirteen and Section 16.3 hereof, an amendment may not (a) create or increase the Declarant Rights, or (b) change the Allocated Interests of a Lot without the written agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant.

Any such amendment shall be effective upon the recording of the amendment together with a notarized certificate of an officer of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. Such officer shall further certify that originals of such written consents by Owners and Eligible Mortgagees, if required, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in the office of the County Clerk and Recorder.

Signatures of the Owners on an amendment need not be notarized.

All signatures shall be irrevocable even upon the death of an Owner or the conveyance of the Lot, except that if an amendment is not recorded within three (3) years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the secretary of the Association.

64

Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the secretary of the Association that all counterparts, as executed, are part of the whole.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of this Declaration, the Articles or the Bylaws unless it is commenced within one (1) year from the effective date of said amendment, unless fraud or willful negligence is asserted and proven and except as otherwise provided in Section 15.17 above.

16.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners, the Association or Eligible Mortgagees, this Declaration, the Articles and the Bylaws, at any time within the limitations set forth in Section 13.3 above, as follows:

- (a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
- (b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee first mortgages.
- (c) To comply with any requirements of the Act or governmental agencies.

16.4 Amendment Terminology. As used in this Declaration or any of the Project Documents, the word "amend" or "amendment" shall be deemed to also mean alter, vary, change, waiver, delete, abandon, terminate, supplement, add to or otherwise modify in any manner the language of this Declaration or the Project Documents.

16.5 Consent of Declarant Required. As long as Declarant has any rights or obligations under or pursuant to this Declaration or any of the other Project Documents, any proposed amendment of any provision of this Declaration shall require Declarant's written consent to such amendment. Any amendment made without Declarant's written consent as required herein shall be null and void and shall have no effect and the last paragraph of Section 16.2 above shall not apply.

The foregoing requirement for the consent of Declarant to any amendment shall terminate at the option of the Declarant but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Section 13.3 above.

16.6 Consent of Eligible Mortgagees Required. Amendments may be subject to the consent requirements of Eligible Mortgagees as more fully set forth in Article Fourteen above.

16.7 Termination. The Planned Community may be terminated only in accordance with Section 14.2(c) and Section 14.2(d) above.

The proceeds of any sale of real estate together with the assets of the Association shall be held by the Association as the trustee for Owners and holders of liens upon the Lots as their interests may appear, as more fully set forth in §218 of the Act.

65

**ARTICLE SEVENTEEN
GENERAL PROVISIONS**

17.1 Right of Action. Subject to the provisions of Article Fifteen, the Association and any aggrieved Owner shall have an appropriate right of action against an Owner for such Owner's failure to comply with this Declaration or the Articles, Bylaws or the Rules or with decisions of the Board which are made pursuant thereto. Owners shall have a similar right of action against the Association.

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

17.3 Severability. If any part of any provision of this Declaration shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Declaration.

17.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

17.5 Registration by Owner of Mailing Address; Notices. Each Owner shall register his or her mailing address with the Association. Except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all notices intended to be served upon an Owner pursuant to this Declaration, shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or at the address of such Owner's Lot if there is no registered mailing address for such Owner on file at the Association.

Except as set forth in Section 5.7 above, all notices, demands or other notices intended to be served upon the Board or the Association shall be sent by certified mail, postage prepaid, to the registered agent for the Association on file in the office of the Secretary of State, State of Colorado.

17.6 Conflicting Provisions. The Project Documents are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act (collectively, "Governing Acts"). If there is any conflict between any provision of the Project Documents and any

mandatory provision of either of the Governing Acts, the mandatory provision of the applicable Governing Act shall control and neither Declarant nor the Association shall have any liability for actions taken in conformity with such Governing Act. If there is any conflict between any provision of the Project Documents and any permissive or non-mandatory provision of either of the Governing Acts, the provision of the Project Documents shall control. In the event of any conflict between this Declaration and any other Project Documents, this Declaration shall control. In the event either the Articles or Bylaws conflict with this Declaration, this Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control. 66

17.7 Captions. The captions and headings in this Declaration are for convenience only, and shall not be considered in construing any provision of this Declaration.

17.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

17.9 Mergers. The Planned Community may be merged or consolidated with another planned community of the same form of ownership by complying with §221 of the Act.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 8th day of July, 2009. 67

REMINGTON HOMES OF COLORADO, INC.,
a Colorado corporation

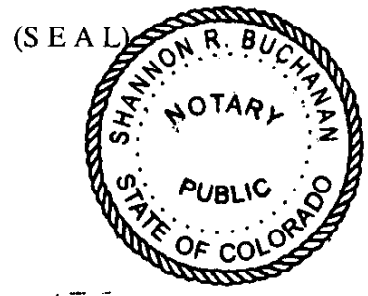
By: [Signature]
Printed Name: Regan Hauptman
Title: President

STATE OF COLORADO)
) SS.
COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 13 day of July, 2009, by Regan Hauptman as President of Remington Homes of Colorado, Inc., a Colorado corporation, on its behalf.

WITNESS my hand and official seal.

My commission expires: 9-23-09.



Shannon Buchanan
Notary Public

The undersigned owner of the Property hereby consents to this Declaration and to the Planned Community formed thereby.

68

SOLTERRA INVESTMENTS, LLC,
a Colorado limited liability company

By: [Signature]
Printed Name: Regan Hauptman
Its: Managing Member

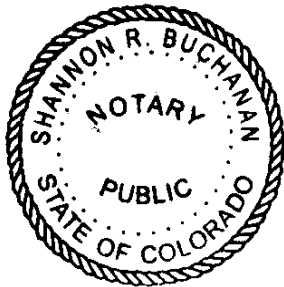
STATE OF COLORADO)
) SS.
COUNTY OF Jefferson)

The foregoing instrument was acknowledged before me this 13 day of July, 2009, by Regan Hauptman as Managing Member of Solterra Investments, LLC, a Colorado limited liability company, on its behalf.

WITNESS my hand and official seal.

My commission expires: 9-23-09

Shannon R Buchanan
Notary Public



MASTER DECLARANT CONSENT

69

Pursuant to the requirements set forth in Section 7.4 of the Master Declaration, the undersigned master declarant under the Master Declaration hereby consents to and approves this Declaration and agrees that no further consent of the undersigned is required when Declarant exercises its rights to expand the Planned Community as set forth in Article Twelve hereof, so long as Declarant exercises such rights in conformance with applicable law and the terms of this Declaration.

CARMA LAKEWOOD LLC,
a Colorado limited liability company

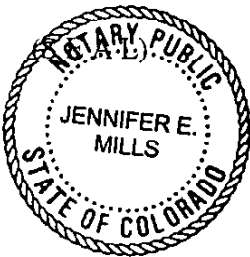
By: [Signature]
Name: Tom Morton
Its: SR. VICE PRESIDENT

STATE OF Colorado)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 23rd day of March, 2009, by Thomas P. Morton as Sr. Vice President of Carma Lakewood LLC, a Colorado limited liability company, on its behalf.

Witness my hand and official seal.

My commission expires: 6-14-2011.



[Signature]
Notary Public

MORTGAGEE CONSENT

70

Consent is hereby given to this Declaration of the Planned Community recorded in conjunction herewith. The undersigned agrees and acknowledges that any foreclosure or enforcement of any other remedy available to the undersigned under the Deed of Trust recorded on December 8, 2008 at Reception No. 2008110484 in the records of the Clerk and Recorder of Jefferson County, Colorado will not render void or otherwise impair the validity of the Declaration and the undersigned subordinates the lien and interests of the undersigned under said Deed of Trust as above referenced to the covenants, terms and conditions of the Declaration; provided, however, that the lien of the Deed of Trust, as a lien recorded prior to the recordation of this Declaration, and pursuant to C.R.S. § 38-33.3-316(2)(a)(I), has and shall continue to have priority over the lien for Assessments (including, without limitation, the lien for Assessments described in C.R.S. § 38-33.3-316(2)(b)(I)), including, without limitation, rights of foreclosure associated therewith, established in favor of the Association under this Declaration. Initially capitalized terms used but not defined in this Mortgagee Consent shall have the meanings therefor set forth in the other terms of the Declaration of Covenants, Conditions and Restrictions of Solterra Patio Homes (A Residential Planned Community).

CARMA LAKEWOOD, LLC a Colorado limited liability company

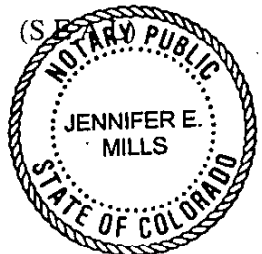
By: [Signature]
Printed Name: Tom Morton
Its: Sr. Vice President

STATE OF Colorado)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 23rd day of March, 2009, by Thomas P. Morton as Sr. Vice President of Carma Lakewood, LLC, a Colorado limited liability company, on its behalf.

Witness my hand and official seal.

My commission expires: 6-14-2011



[Signature]
Notary Public

My Commission Expires 06-14-2011
550665.4

71

EXHIBIT A
**TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
SOLTERRA PATIO HOMES**

LEGAL DESCRIPTION OF THE REAL PROPERTY
SUBMITTED TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
SOLTERRA PATIO HOMES
(FIRST PHASE)

Lot 1, Block 2, according to Solterra Subdivision Filing No. 3, recorded on September 18, 2008, at Reception No. 2008087634 in the real estate records of the County of Jefferson, State of Colorado, as may be amended from time to time.

72

EXHIBIT B
**TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
SOLTERRA PATIO HOMES**

LEGAL DESCRIPTION OF THE EXPANSION PROPERTY
THAT MAY BE SUBMITTED TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
SOLTERRA PATIO HOMES
IN LATER PHASES

Lots 1 through 37, inclusive, Block 1,

AND

Lots 2 through 34, inclusive, Block 2

AND

Lot 1, Block 3

all according to Solterra Subdivision Filing No. 3, recorded on September 18, 2008, at Reception No. 2008087634 in the real estate records of the County of Jefferson, State of Colorado, as may be amended from time to time.

EXHIBIT C
**TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
SOLTERRA PATIO HOMES**

73

THE RECORDING DATA FOR RECORDED EASEMENTS,
LICENSES AND OTHER MATTERS OF RECORD
WHICH THE PLANNED COMMUNITY
IS OR MAY BECOME SUBJECT TO

1. MINERALS RESERVATIONS AND INTERESTS AS CONTAINED IN THE FOLLOWING INSTRUMENTS: DEED RECORDED DECEMBER 1, 1977 IN BOOK 3109 AT PAGE 596; DEED RECORDED FEBRUARY 9, 1982 UNDER RECEPTION NO. 82008817; DEED RECORDED FEBRUARY 9, 1982 UNDER RECEPTION NO. 82008818; DEED RECORDED MAY 17, 1983 UNDER RECEPTION NO. 83044138; DEED RECORDED MAY 17, 1983 UNDER RECEPTION NO. 83044346; DEED RECORDED MAY 17, 1983 UNDER RECEPTION NO. 83044347; DEED RECORDED SEPTEMBER 19, 1983 UNDER RECEPTION NO. 83089301.

2. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE MOUNT CARBON WATER & SANITATION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED MARCH 21, 1979, UNDER RECEPTION NO. 79024914.

ORDER OF EXCLUSION RECORDED AUGUST 28, 2006 UNDER RECEPTION NO. 2006105233 AND RE-RECORDED SEPTEMBER 25, 2006 UNDER RECEPTION NO. 2006115969 AND RE-RECORDED OCTOBER 10, 2006 UNDER RECEPTION NO. 2006122643 BUT SUBJECTING SUBJECT PROPERTY TO ITS SHARE OF BOND INDEBTEDNESS AND OTHER TERMS OF THE ORDER.

3. THE EFFECT OF ORDINANCE #0-82-77, REGARDING ZONING, RECORDED DECEMBER 20, 1982 UNDER RECEPTION NO. 82089239.

4. THE EFFECT OF OFFICIAL DEVELOPMENT PLAN OF SPRINGFIELD GREEN RECORDED DECEMBER 20, 1982 UNDER RECEPTION NO. 82089240.

SPRINGFIELD GREEN OFFICIAL DEVELOPMENT PLAN MODIFICATION NO. 1 RECORDED FEBRUARY 1, 2007 UNDER RECEPTION NO. 2007012727.

SPRINGFIELD GREEN OFFICIAL DEVELOPMENT PLAN MODIFICATION NO. 2 RECORDED SEPTEMBER 21, 2007 UNDER RECEPTION NO. 2007108878, MODIFICATION #3 RECORDED NOVEMBER 14, 2008 UNDER RECEPTION NO. 2008104880, LETTERS OF CONSENT FROM PROPERTY OWNERS RECORDED NOVEMBER 14, 2008 UNDER RECEPTION NO. 2008104879. 74

5. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DEVELOPMENT AGREEMENT FOR SPRINGFIELD GREEN OFFICIAL DEVELOPMENT PLAN MODIFICATION NO. 1 RECORDED FEBRUARY 01, 2007 UNDER RECEPTION NO. 2007012726, FIRST AMENDMENT RECORDED SEPTEMBER 28, 2007 UNDER RECEPTION NO. 2007111128, SECOND AMENDMENT RECORDED AUGUST 1, 2008 UNDER RECEPTION NO. 2008074382.

6. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN JOINT AGREEMENT TO PROVIDED WATER AND SEWER SERVICES RECORDED OCTOBER 03, 1984 UNDER RECEPTION NO. 84093264.

7. TERMS, CONDITIONS AND PROVISIONS OF UTILITY CONNECTIONS PURCHASE AGREEMENT RECORDED JULY 29, 1986 AT RECEPTION NO. 86085622.

NOTE: ASSIGNMENT TO CDN DEVELOPMENT INC., A COLORADO CORPORATION THEREOF RECORDED DECEMBER 5, 1996 UNDER RECEPTION NO. F0339547.

8. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE FOSSIL RIDGE METROPOLITAN DISTRICT #3, AS EVIDENCED BY INSTRUMENT RECORDED OCTOBER 10, 2006, UNDER RECEPTION NO. 2006122656.

9. ONE-FOURTH OF ALL COAL AND COAL RIGHTS AS CONVEYED TO NORA E. PIKE IN DEED RECORDED JANUARY 20, 1955 IN BOOK 900 AT PAGE 201.

10. MEMORANDUM OF RULES AND REGULATIONS OF FOSSIL RIDGE METROPOLITAN DISTRICT 1, FOSSIL RIDGE METROPOLITAN DISTRICT 2 AND FOSSIL RIDGE METROPOLITAN DISTRICT 3 RECORDED JUNE 28, 2007 UNDER RECEPTION NO. 2007075782.

11. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE WEST METRO FIRE PROTECTION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED NOVEMBER 28, 1994, UNDER RECEPTION NO. 94184863.

12. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ORDINANCE #O-2007-26, ESTABLISHING VESTED RIGHTS BY APPROVING A

SITE SPECIFIC DEVELOPMENT PLAN RECORDED OCTOBER 12, 2007 UNDER RECEPTION NO. 2007116252.

13. TERMS, CONDITIONS AND PROVISIONS AS CONTAINED IN INTERGOVERNMENTAL AGREEMENT REGARDING EXTRA-TERRITORIAL SEWER SERVICE RECORDED FEBRUARY 8, 2008 UNDER RECEPTION NO. 2008012085.

14. TERMS, CONDITIONS AND PROVISIONS AS CONTAINED IN CARMA LAKEWOOD AND GREEN MOUNTAIN RANCH WATER AND SANITATION DISTRICT LICENSE AGREEMENT RECORDED FEBRUARY 8, 2008 UNDER RECEPTION NO. 2008012086.

15. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE FOSSIL RIDGE METROPOLITAN DISTRICT NO. 3, AS EVIDENCED BY INSTRUMENT RECORDED JUNE 26, 2008, UNDER RECEPTION NO. 2008062382.

16. TERMS, CONDITIONS AND PROVISIONS AS CONTAINED IN MEMORANDUM OF JOINT RESOLUTION CONCERNING THE IMPOSITION OF DISTRICT FEES RECORDED JULY 8, 2008 UNDER RECEPTION NO. 2008066254.

17. TERMS, CONDITIONS AND PROVISIONS AS CONTAINED IN MEMORANDUM OF JOINT RESOLUTION REGARDING WAIVER OF RECREATIONAL FACILITY FEES RECORDED JULY 8, 2008 UNDER RECEPTION NO. 2008066255.

18. TERMS, CONDITIONS AND PROVISIONS AS CONTAINED IN MEMORANDUM OF JOINT RESOLUTION CONCERNING THE IMPOSITION OF DISTRICT FEES RECORDED JULY 8, 2008 UNDER RECEPTION NO. 2008066256.

19. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT RECORDED FEBRUARY 19, 2008 UNDER RECEPTION NO. 2008015176.

20. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN CONSTRUCTION AGREEMENT RECORDED MARCH 25, 2008 UNDER RECEPTION NO. 2008028047.

21. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF SOLTERRA SUBDIVISION FILING NO. 3 RECORDED SEPTEMBER 18, 2008 UNDER RECEPTION NO. 2008087634.

22. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY,

75

OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED NOVEMBER 26, 2007, UNDER RECEPTION NO. 2007129904. 76

FIRST SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SOLTERRA, A PLANNED COMMUNITY RECORDED OCTOBER 16, 2008 UNDER RECEPTION NO. 2008096106.

23. RESTRICTIONS AS SET FORTH IN SPECIAL WARRANTY DEED RECORDED DECEMBER 8, 2008 UNDER RECEPTION NO. 2008110483.

24. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN CONSTRUCTION AGREEMENT RECORDED AUGUST 13, 2007 UNDER RECEPTION NO. 2007093809.

25. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DEVELOPMENT AGREEMENT FOR SPRINGFIELD GREEN (SOLTERRA SUBDIVISION FILING NO. 2) RECORDED OCTOBER 12, 2007 UNDER RECEPTION NO. 2007116253.

26. EASEMENT AS GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO BY INSTRUMENT RECORDED OCTOBER 21, 2008 UNDER RECEPTION NO. 2008097309.

EXHIBIT D
**TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
SOLTERRA PATIO HOMES**

77

ARBITRATION PROCEDURES

1. All Claims subject to arbitration shall be decided by a single private party arbitrator to be appointed by the Parties.

2. If the Parties are unable to agree upon an arbitrator within thirty (30) days from the date of the arbitration notice, the presiding judge of the District Court in which the Planned Community is located shall appoint a qualified arbitrator upon application of a Party.

3. No Person shall serve as the arbitrator where that Person has any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other Party to the arbitration. Any Person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator within fourteen (14) days after receipt of an Arbitrator Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.

4. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in Jefferson County unless otherwise agreed to by the Parties.

5. Except as modified herein, the arbitration shall be conducted pursuant to the then current Construction Industry Rules of Arbitration of the American Arbitration Association to the extent applicable, but shall not be conducted or administered by the American Arbitration Association.

6. No formal discovery shall be conducted in the absence of an order of the arbitrator or express written agreement among all of the Parties.

7. Unless directed by the arbitrator, there will be no post-hearing briefs.

8. The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than fourteen (14) days from the close of the hearing, unless otherwise agreed by the Parties. The award shall be in writing and shall be signed by the arbitrator.

9. The arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing Party such Party's costs and expenses, including reasonable attorneys' fees.