

**Upon recording, please return to:**

Toll Brothers, Inc.

10 Inverness Drive, Suite 125

Englewood, CO 80112

Attn: R. Carvath

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**VISTA AT MONTAINE COMMUNITY ASSOCIATION, INC.**

**Indexing Note:** Please index in the grantee's index under  
"Vista at Montaine Community Association, Inc.," and in the  
Grantor's index under "Toll Southwest LLC"

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**VISTA AT MONTAINE COMMUNITY ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR VISTA AT MONTAINE COMMUNITY ASSOCIATION, INC. ("Declaration") is made this 19 day of AUGUST, 2020, by Toll Southwest LLC, a Delaware limited liability company ("Declarant"). Any reference in collateral documentation referring to "CC&Rs" for the Vista at Montaine Community shall refer to this Declaration.

This Declaration is part of a general plan to protect and enhance the value and desirability of all property now or hereafter subject hereto.

**INTRODUCTION TO THE COMMUNITY**

*Declarant has created this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of Vista at Montaine as a planned community.*

**ARTICLE I - CREATION OF THE COMMUNITY**

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A," intends by Recording this Declaration to establish a general plan of development for the planned community known as Vista at Montaine consisting of residential, recreational and other areas and uses. This Declaration provides for the Community's overall development, administration, maintenance, and preservation, and provides flexible and reasonable procedures for its future expansion. Declarant intends, without obligation, that when developed fully, Vista at Montaine may include several residential neighborhoods, recreational facilities and greenbelts, including but not limited to open spaces, walkways and other social and civil buildings and facilities.

An integral part of the development plan is the creation of the Vista at Montaine Community Association, Inc., an association comprised of all Vista at Montaine real property owners, to own, operate, and/or maintain amenities upon various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents (defined hereafter) referenced in this Declaration. Declarant desires to form the Association as a non-profit corporation to (1) own, manage and maintain the Common Areas and certain other areas in Vista at Montaine, (2) levy, collect and disburse the Assessments and other charges imposed hereunder, and (3) act as the agent and representative of the Vista at Montaine Owners and enforce the use restrictions and other provision of this Declaration.

The development plan provides for a variety of land use classifications. The land use classifications in Vista at Montaine may include (a) Single Family Residential; (b) Townhouse Residential Use; (c) Recreational Use; (d) Common Areas; (e) Open Space Use; (f) such other residential or other related areas, as may be set forth in any Supplemental Declaration; and (g) such non-residential or other related areas of use, as may be set forth in any Supplemental Declaration.

Declarant reserves the right, without obligation, to add and include additional land into the Vista at Montaine planned community, which land is defined and described under Article XI relating to annexation of property (“Annexable Property”).

As the development of Vista at Montaine proceeds, Declarant intends, without obligation, to record various subdivision plats, to dedicate portions of the Annexable Property to the public for streets, roadways, drainage, flood control and general public use, or to keep all or portions of the above private and dedicate them to the Association, and to record Supplemental Declarations causing portions of the Annexable Property to be subject to this Declaration and designating the purposes for which such portions of Vista at Montaine may be used and may set forth additional covenants, conditions and restrictions applicable to such portions of Vista at Montaine.

This document is prepared pursuant to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.* (the “Act”), and establishes a planned community as defined in the Act.

1.2. Binding Effect.

All property described in Exhibit “A,” and any additional property that is added to the Community and made subject to this Declaration in the future in accordance with Article XI shall be owned, conveyed, and used subject to this Declaration. This Declaration shall run with the title to such property and shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns whether or not it is specifically referenced in the conveyance deed. Each and every provision of this Declaration shall run with and bind the land in perpetuity. This Declaration may be terminated only in accordance with the termination procedures set forth in the Act. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The Governing Documents create a general plan of development for Vista at Montaine which may be supplemented by additional covenants, restrictions, and easements from time to time.

The Community’s Governing Documents consist of the following and shall be deemed to include all amendments thereto.

(a) Articles of Incorporation of the Association filed with the Secretary of State to establish the Association as a non-profit corporation under Colorado law.

(b) Bylaws of the Association adopted by the Board of Directors to describe the system to govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.

(c) This Declaration recorded in the County for the purpose of creating a common interest community with obligations and rights, which are binding upon the Association and all present and future owners of property in the Community.

(d) Supplemental Declaration(s) that may be recorded in the County for the purpose of adding real property to the Community and which may impose additional obligations or restrictions applicable to the specific parcel.

(e) Design Guidelines adopted by Declarant and/or the ARC to establish architectural standards, guidelines and procedures for improvements and modifications to Lots and Common Areas, including structures, landscaping and other items on the Lots.

(f) Use Restrictions governing the use of privately owned property and activities within the Community.

(g) Board Resolutions and Rules adopted by the Board to establish rules, policies, and procedures for Association operations and regulate the operation and use of Common Area, among other matters.

No Person shall Record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant's written consent, so long as Declarant owns any property described in Exhibit "A" or "B"; except that with respect to rowhomes and duplex Dwelling Units, party wall agreements may be recorded without the Declarant's written consent. Any instrument Recorded without the required consent is void and of no force and effect.

If there are conflicts between Colorado law, the Declaration, the Articles, and the Bylaws, then Colorado law, the Declaration, the Articles, and the Bylaws (in that order) shall prevail.

The Governing Documents apply to all Owners and all Occupants of their Lot, as well as their respective tenants, guests, and invitees. Declarant shall not be subject to the obligations set forth in the Declaration, unless specifically noted as Declarant obligations.

Unless otherwise specifically provided or as provided by law, any notice provided for in the Governing Documents shall be provided in accordance with the Bylaws.

If any judgment or court order should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

All diagrams, which are included in the Governing Documents, are intended only to summarize the express written terms therein. Diagrams are not intended to supplant or supplement the express written or implied terms contained in the Governing Documents.

## ARTICLE II - CONCEPTS AND DEFINITIONS

2.1. Definitions. The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as follows:

“Act”: The Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 to 319, as amended.

“Activity Card”: A card, key fob, or other identification or access devise that the Association issues in accordance with the terms and conditions set forth in Article X and which confers upon the holder rights of access to and use of recreational and the Common Area facilities subject to the applicable Board Resolutions and Rules.

“Allocated Interest”: The liability for Common Expenses and votes in the Association allocated to each Lot. The Allocated Interest for each lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time. The Allocated Interest for each Lot is subject to decrease with the annexation of additional property to this Community.

“Annexable Property”: All or any portion of the real property described in Exhibit “B” hereto that may be added to the Community and made subject to this Declaration in accordance with Article XI.

“Architectural Review Committee” or “ARC”: The committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce the Design Guidelines, as described in Article IV.

“Articles”: The Association’s Articles of Incorporation, filed with the Colorado Secretary of State, as they may be amended from time to time.

“Assessment” or “Assessments”: Any Annual Base Assessment, Special Assessment, Maintenance Charges, Special Use Fees, Security Fees, Transfer Fees or any other fees, fines or charges made or assessed hereunder by the Association against an Owner and his or her Lot in accordance with the provisions of Article IX, below.

“Assessment Lien”: A lien that is created or imposed as set forth in Section 9.8.

“Assessable Property”: Property that is either a Lot or a Parcel, excluding any Exempt Property that is identified in Section 9.12.

“Association”: Vista at Montaine Community Association, Inc., a Colorado nonprofit corporation, its successors or assigns, a unit owners association organized under Section 38-33.3-301 of the Act.

“Base Assessment”: Annual assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 9.1.

“Benefited Assessment”: Assessments charged against a particular Lot or particular Lots for Association expenses as described in Section 9.5.

“Board of Directors” or “Board”: The body responsible for the Association’s general governance and administration, selected as provided in the Bylaws.

“Builder”: Anyone who acquires one or more Lots from Declarant or a successor Declarant for the purpose of constructing homes for later sale to consumers, or who purchases land from Declarant or a successor Declarant within the Community for further subdivision, development, and/or resale in the ordinary course of its business.

“Bylaws”: The Association’s Bylaws, as they may be amended from time to time.

“Common Area” and “Common Areas”: All real and personal property, including easements and other land use rights, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including areas designated as Common Area by Declarant from time to time, areas designated as “common element” or “common area” on a Plat. Common Area includes any Limited Common Area, as defined below.

“Common Estimated Expenses”: The estimated expenses that the Association expects to incur for the general benefit of all Owners, including reserves, the Board finds necessary or appropriate.

“Common Expenses”: The actual expenses or liabilities that the Association incurs for the general benefit of all Owners, including reserves, the Board finds necessary or appropriate.

“Community” or “Vista at Montaine”: The real property described in Exhibit “A,” together with such additional property shown on Exhibit “B” or otherwise, as is added to the Community and subjected to this Declaration in accordance with Article XI, with respect to which a Person, by virtue of such Person’s ownership of a Lot is obligated to pay for real property taxes, insurance premiums, maintenance or improvement of other real property described in this Declaration.

“Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing at the Community, or the minimum standards established pursuant to the Design Guidelines, Use Restrictions, and Board resolutions, whichever is the strictest standard. Declarant may initially establish such standard, which may be more specifically defined in the Design Guidelines, the Use Restrictions, Rules and Board resolutions. The Community-Wide Standard may contain both objective and subjective elements and may or may not be in writing. The Community-Wide Standard may evolve as development progresses and as the needs, desires and demands within the Community change.

“Declarant”: Toll Southwest LLC, a Delaware limited liability company, and any other person(s) acting in concert, to whom Declarant, by recorded document, expressly assigns one or more of the Declarant’s rights under this Declaration (which shall be the extent of the Declarant’s rights to which such assignee succeeds), and who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Lot not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any Declarant right.

"Declarant Control Period": The period of time during which the Declarant may appoint a majority of the Board members. The Declarant Control Period ends when any of the following occur:

(c) When seventy-five percent (75%) of the Maximum Lots are conveyed to Lot Owners other than a Declarant or a Builder;

(d) Thirty-five (35) years after the date of initial recording of this Declaration in the real property records of Douglas County, Colorado;

(e) Two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business;

(f) Two (2) years after the right to add new Lots to the Declaration was last exercised; or

(g) When at an earlier date, in its discretion, the Declarant so determines.

"Declarant's Affiliate": Any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

"Declaration": This Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

"Design Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV.

"Development Agreement": The Development Agreement(s) with the local jurisdiction having jurisdiction over the Community, providing for charges to be imposed and other obligations affecting development of the Community, which may be amended from time to time.

"Dwelling Unit": A single building or structure or portion of a building or structure situated upon a Lot, which is intended for use and occupancy as a separate attached or detached Dwelling Unit for one or more persons. Notwithstanding the above, an ancillary "guest house" or "in-law suite" on a Lot shall not be a separate Dwelling Unit but, instead, shall be deemed a part of the structure serving primarily as the Dwelling Unit on the Lot.

"Governing Documents": The documents referred to in Section 1.3 of the Declaration.

“Guest House”: An ancillary “guest house” or “in-law suite” or “casita” on a Lot shall not be a separate Dwelling Unit as that term is defined but, instead, shall be deemed a part of the structure serving primarily as the Dwelling Unit on the Lot.

“Improvement”: Any (a) Dwelling Unit, building, fence or wall; (b) any swimming pool, tennis court, basketball court, road, driveway, parking area or satellite dish; (c) any trees, plants, shrubs, grass or other landscaping improvements of every type and kind; and (d) any other approved structure of any kind or nature.

“Limited Common Area”: A portion of the Common Area allocated for the exclusive use of one or more, but less than all of the Lots, as more particularly described in Article XIV or as allocated by operation of the Act.

“Lot”: A portion of Vista at Montaine included within the real property described on Exhibit “A” or which has been added to the Community and made subject to this Declaration in accordance with Article XI, whether improved or unimproved, which may be independently owned and conveyed, and upon which a Dwelling Unit is intended for development, use, and occupancy. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling Unit, on the Lot. The boundaries of each Lot shall be shown on a Plat or other recorded map; provided, in the case of a building containing multiple Dwelling Units for individual sale, each Dwelling Unit capable of being sold individually shall be a separate Lot. The term shall not include Common Area, common property of any other association, or property dedicated to the public or land owned by Declarant within the Master Plan not yet added to and included in the Community. A Lot constitutes a “unit” for the purposes of the Act. A parcel shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the parcel. Thereafter, the subdivided portion shall contain the number of Lots shown on the Plat. Any portion not subdivided shall continue to be a single Lot.

“Managing Agent”: A Person acting as a independent contractor engaged by the Association to manage the business affairs and operations of the Association, as determined from time to time by the Board.

“Master Plan” or “Master Development Plan”: The land use plan for the development of Vista at Montaine approved by the Town, as it may be amended from time to time, which includes all of the property described in Exhibit “A” and all or a portion of the property described in Exhibit “B.” Inclusion of property on the Master Plan or a Plat shall not, under any circumstances, obligate Declarant to subject such property to this Declaration or limit the Declarant’s ability to subject it to a different Declaration, nor shall the omission of property described in Exhibit “B” from the Master Plan bar its later submission to this Declaration.

“Maximum Lots”: The maximum number of Lots approved for development within the Community under the Master Plan, as amended from time to time; provided, nothing in this Declaration shall be construed to require Declarant to develop the maximum number of Lots approved. The Maximum Lots as of the date of this Declaration is 636. This number shall increase if the Town approves additional Lots for development under the Master Plan or the number shall decrease if there is an approved amendment to the Master Plan.

“Member”: Each Owner of a Lot, subject to Section 6.2, holding Membership in the Association pursuant to the Declaration.

“Membership”: A Membership in the Association and the rights granted to the Owners of Lots pursuant to Section 6.2 to participate in the Association.

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term “Mortgagee” shall refer to a beneficiary or holder of a Mortgage.

“Occupant”: Any individual other than an Owner who Occupies a Dwelling Unit or is in possession of a Lot or Parcel, or any portion thereof or building or structure thereon, whether as a Lessee or otherwise, other than on a merely transient basis (and shall include, without limitation, a Resident).

“Occupy,” “Occupied,” “Occupies,” or “Occupancy”: Unless otherwise specified in the Governing Documents, staying overnight in a particular Dwelling Unit for at least ninety (90) total days in the subject calendar year.

“Owner”: The Record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (*e.g.*, a Mortgagee). An Owner is any Person or Persons who individually or collectively own fee title to a Lot or Parcel, provided that the Declarant (and not the fee title holder) shall be deemed to be the “Owner” of each Lot or Parcel with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of the Declarant or a Declarant Affiliate. Where reference is made in this Declaration to Lots or Parcels “owned by” a Person, such phrase shall be deemed to refer to Lots or Parcels of which that Person is the Owner as determined pursuant to this definition.

“Parcel”: Each area of real property in the Community, and all Improvements situated thereon, shown as a separate parcel of land on the Master Plan, provided, however, that in the event a Parcel is split in any manner into portions under separate ownership (other than by subdivision of the Parcel by Recordation of a subdivision plat into Lots, each of which constitutes or may have constructed thereon only one Dwelling Unit) each portion under separate ownership shall thereafter constitute a separate Parcel. If the same Person owns two or more contiguous parcels of land, they shall be considered one Parcel for purposes of this Declaration. A Parcel shall cease to be a Parcel when it has been fully subdivided into Lots (together with any type of Common Area, if any). If a portion of a Parcel is subdivided into Lots (and any type of Common Area, if any), the subdivided portion shall cease to be a Parcel, but each remaining unsubdivided portion shall be a Parcel if it otherwise meets the requirements of the definition set forth in this definition.

“Party Structure”: Each wall, fence, driveway, or similar structure built on the Lots which serves and/or separates any two adjoining Lots or a Lot and Common Area shall constitute a party structure.

“Person”: An individual, a corporation, a partnership, business trust, estate, a trustee, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

“Plat”: Any Recorded subdivision plat for all or any portion of the Community, as it may be amended and supplemented from time to time.

“Property”: The real property described in Exhibit “A”, together with such additional property that is added to the Community and subjected to this Declaration pursuant to annexation provisions set forth in Article IX. The Property is also referred to herein as the “Community” or “Vista at Montaine”

“Record,” “Recording,” or “Recorded”: To record, the recording of or recorded of record a legal instrument in the real property records of the Douglas County, Colorado.

“Resident”: Each individual who resides in any Dwelling Unit.

“Residential Areas”: Includes attached and detached single family residential developments, all common recreational areas and facilities associated with any of the foregoing Residential Areas and facilities and other non-commercial, non-industrial and non-utility areas.

“Reserve” “Reserves”: means funds that are set aside by an association to pay for the repair or replacement of Community assets for which the Association is responsible.

“Special Assessment”: Any assessment levied and assessed against all Owners or some Owners in accordance with Section 9.4.

“Supplemental Declaration”: A recorded instrument under which the Declarant subjects additional property to this Declaration, identifies Common Area and Limited Common Area, and/or imposes expressly or by reference additional restrictions and obligations on the land described in such instrument, including the establishment of a Subassociation.

“Tenant”: A Person who has an agreement with an Owner or a Tenant if approved in writing by the Board to lease the Dwelling Unit for a minimum of six (6) months, provided that a copy of the lease has been provided to the Association and this lease is subject to this Declaration.

“Town”: The Town of Castle Rock, Colorado.

“Use Restrictions”: The use restrictions, rules, and regulations governing the use of and activities on the Lots set forth in Exhibit “C,” in accordance with Article III.

“Visible from Neighboring Property”: With respect to any given object, that such object is or would be visible to a person six feet tall standing at ground level on any part of the neighboring property at an elevation no greater than the elevation of the base of the structure or building being viewed, except where the object is visible solely through a view fence and would not be visible if the view fence were a solid fence.

## CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

*The standards for use and conduct, maintenance, and design at Vista at Montaine are what give the community its identity and make it a place that people want to call "home." This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for community standards to evolve as the Community changes and grows. The Community is subject to the recorded easements, licenses and other matters listed on Exhibit "D" attached hereto and incorporated herein by this reference. In addition, the Declarant declares that all of the Lots that have been included within and added to the Community and made subject to this Declaration shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned and hypothecated subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained in elsewhere in this Declaration.*

### ARTICLE III - RESTRICTIONS AFFECTING LOTS

#### 3.1. Restrictions Affecting Occupancy and Alienation.

(a) Residential and Related Uses. The Community shall be used only for residential, recreational, and related purposes. Related purposes may include, without limitation, offices for the Association or its management agent(s), Association owned or operated businesses offering services and goods, facilities for meetings, conferences and banquets owned or operated by the Association, Declarant's business or sales office(s), sales and construction offices and trailers used in connection with the development of the Property and home construction, businesses offering services, goods or facilities contracted for by the Association, and any business use which meets the conditions of Section 3.1(i) below. Supplemental Declarations or any other Recorded covenants may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

(b) Business Use. Unless permitted under the preceding subsection (a) above, no business shall be conducted in or from any Lot, except that an Owner or a resident of the Lot may conduct home occupation business activities within the Dwelling Unit so long as:

(i) the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit;

(ii) the business activity complies with applicable zoning requirements;

(iii) the business activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation within the Community; and

(iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Community, as determined in the Board's sole discretion.

“Business” shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (A) such activity is engaged in full or part time, (B) such activity is intended to or does generate a profit, or (C) a license is required.

This Section shall not apply to restrict Declarant’s activities in the Community, nor shall it restrict the activities of Persons approved by Declarant and Builders involved with the development and sale of property in the Community. Additionally, this Section shall not apply to any Association activity relating to operating and maintaining the Community, including the Community’s Common Areas, recreational and other amenities.

Leasing a Dwelling Unit for a period of at least six (6) months is not a “business” within the meaning of this subsection.

Neither the Association, the Board of Directors, nor the Managing Agent shall be held responsible for any loss of wages, income or computer connectivity if telephone, computer or internet service is interrupted by the Association, an Association vendor, or utility, or the Managing Agent.

(c) Leasing. For purposes of this Declaration, “leasing” is defined as regular, exclusive occupancy of a Dwelling Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or compensation. A Lot may be leased only in its entirety (e.g., separate rooms within the same Dwelling Unit may not be separately leased). No fraction or portion may be leased.

No structure on a Lot other than the primary Dwelling Unit shall be leased or otherwise occupied for residential purposes, except that structures used for ancillary purposes, such as an “in-law suite” or detached “Guest House,” may be occupied, but not independently leased. **There shall be no subleasing of a Dwelling Unit or assignment of leases except with the Board’s prior written approval.**

**All leases shall require that tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents. The restrictions on lease terms set forth in this paragraph shall not apply to Lots owned by Declarant.**

Notice of any lease, together with such additional information as the Board may require, shall be given to the Board or its designee by the Owner within ten (10) days of execution of the lease. The Owner must make available to the Tenant copies of the Governing Documents. The Board may adopt reasonable Use Restrictions and rules regulating leasing and subleasing and the activities of tenants and subtenants.

**No transient tenants may be accommodated in a Dwelling Unit. All leases, including sub-leases, shall be in writing and shall be for an initial term of at least six (6) months, except: (a) with the Board’s prior written consent, or (b) as Declarant initially authorizes in a Supplemental Declaration.**

Unless otherwise permitted by the Use Restrictions or other rule or regulation adopted by the Board, no “for rent” signs shall be erected or displayed on a Dwelling Unit or a Lot.

(d) Occupants Bound. The Governing Documents apply to all Occupants of and visitors to any Lot. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents/Use Restrictions and shall be responsible for all violations and losses to the Common Area caused by such Persons, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

(e) Subdivision of a Lot and Time-Sharing. Lots may not be subdivided or their boundary lines changed except with the Board’s prior written approval; provided, Declarant and Persons who have received the Declarant’s approval may subdivide, change the boundary line of, and replat any Lot(s) it owns, and, for so long as Declarant owns any portion of the Community, convert Lots into Common Area or Common Area to Lots at any time prior to the transfer of title to the Association. Neither Board or Declarant approval constitutes approval of or waiver of approvals or reviews required by any municipality or other governmental entity having jurisdiction over the subdivision of land.

Timesharing, fraction-sharing, or similar programs whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years is prohibited.

(f) Disease and Insects. No Person shall permit any thing or condition to exist upon any Lot, Parcel or other property which shall induce, breed or harbor infectious diseases or noxious insects.

(g) Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals shall be erected, placed or maintained anywhere in or upon any Lot, Parcel or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings or structures approved by the Architectural Review Committee or the installation of satellite television dishes. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body.

(h) Model Homes. Any provisions of this Declaration, Supplemental Declarations or any other Declarations which prohibit non-residential use of Lots and certain Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes or other model Dwelling Units of any kind (including, without limitation, any used in whole or in part as sales offices or design center displays)(collectively “Models”) by Declarant or other Persons engaged in the construction of Dwelling Units in the Community, or parking incidental to the visiting of such Models, so long as the construction, operation and maintenance of such Models and parking otherwise comply with all of the provisions of this Declaration. The

Declarant and the Architectural Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of Models.

(i) Incidental Uses. The Architectural Review Committee may approve uses of property within a land use classification which are incidental to the full enjoyment of the Owners and Occupants of the Community within the land use classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Architectural Committee may wish to impose, in its sole discretion, for the benefit of the Community as a whole.

### 3.2. Framework for Regulation.

In addition to the foregoing restrictions affecting Lots, the Governing Documents establish, as part of the general plan of development, a framework of affirmative and negative covenants, easements, and restrictions which govern the Community, including the Use Restrictions set forth in Exhibit "C." Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes affecting the Community. This Article establishes procedures for modifying and expanding the Use Restrictions to respond to such changes.

The procedures set forth in this Article shall not apply to the Board's enactment and enforcement of rules and regulations relating to use and operation of the Common Area or other administrative rules, which the Board may adopt by resolution.

### 3.3. Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Lots and the Common Area is limited by the Use Restrictions as amended, expanded, and otherwise modified from time to time. **Each Owner, by accepting a deed, and each Tenant, by accepting a Lease, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot can be affected by the Use Restrictions and Board rules, which may change from time to time. All Lot purchasers are on notice that the Association may have adopted changes to the Use Restrictions and that such changes may not be set forth in a Recorded document.** Copies of the current Use Restrictions and Board rules may be obtained from the Association.

### 3.4. Rule Making Authority.

(a) The Board may change (*i.e.*, modify, cancel, limit, create exceptions to, add to or expand) the Use Restrictions. The exercise of this authority shall be subject to the Board's duty to use business judgment and reasonableness to meet its objectives and fulfill the reasonable expectations of the Members. The Board shall provide notice to all Owners of any proposed change before the Board meeting to consider the change in accordance with Section 6.10. Members shall have a reasonable opportunity to be heard on the proposed change at such Board meeting. During the Declarant Control Period, any such change shall require approval of the Declarant, if any.

(b) Before any Use Restriction change becomes effective, the Board shall provide at no cost a copy of the new or changed Use Restriction to each Owner. The change

does not become effective until at least thirty (30) days following the date of such mailing to Owners. Each Owner shall be bound regardless of whether the mailing is received. The Association shall provide, without cost, a copy of the Use Restrictions then in effect to any requesting Member, Tenant or Mortgagee.

(c) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

(d) Notice or copies required to be provided under this Section may be sent to each Owner by any manner permitted under the Association's current Bylaws, communication policy, the Act or other applicable Colorado law, including, if so permitted: U.S. Mail, electronic communication (*i.e.*, "fax" or "e-mail") with confirmation of receipt, or publication in the community newsletter delivered or mailed to each Owner or posted on a Community web page, provided such action is clearly identified under a separate newsletter headline.

### 3.5. Protection of Members and Residents.

Except as may be set forth in this Declaration (either initially or by amendment) or in the Use Restrictions the Association's actions with respect to Use Restrictions and rules must comply with the following:

(a) Displays. Displays of religious, patriotic and holiday signs, symbols, and decorations by Members and Residents on their Lots are subject to the Use Restrictions and regulation by the Association consistent with applicable law.

(b) Signs. The Association shall not regulate the content of political or other signs; however, the Association may adopt reasonable time, place, and manner restrictions to posting such signs, as established in the Design Guidelines and consistent with applicable law.

(c) Household Composition. The Association shall not interfere with the freedom of Members and Residents to determine the number of Occupants within a household, except that it may limit the total number of Persons entitled to occupy a Dwelling Unit to the number permitted under current zoning ordinances.

(d) Activities Within Dwellings. The Association shall not interfere with activities carried on within a Dwelling Unit, except it may prohibit activities not normally associated with residential property, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to other Owners and other Property, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling Unit, or that create an unreasonable source of annoyance.

(e) Alienation. The Association shall not prohibit leasing or transfer of any Lot, subject to the Governing Documents. The Association may require that Owners include specific lease terms and may impose a reasonable review or administrative fee on the lease or transfer of any Lot. Section 3.1(j) imposes a minimum lease term.

(f) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(g) Reasonable Rights to Develop. The Association may not unreasonably impede Declarant's right to develop the Community or require the Declarant to develop any portion thereof, with all future developments being in Declarant's sole discretion.

(h) Solar Equipment. Notwithstanding any provision in the Governing Documents to the contrary, neither the Association, the ARC or the Review may not effectively prohibit renewable energy generation devices or the installation or use of any energy efficient measures, provided that the Association may adopt reasonable aesthetic rules and regulations concerning dimensions, placement or external appearance of such devices or measures to the extent such rules and regulations do not conflict with or violate applicable laws.

The limitations in subsections (a) through (g) of this Section shall only limit rule making authority exercised under Section 3.4; they shall not apply to amendments to this Declaration adopted in accordance with Article XXI.

#### ARTICLE IV - ARCHITECTURE AND LANDSCAPING

##### 4.1. General.

No structure or thing shall be placed, erected, or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations, or planting or removal of landscaping) shall take place within on a Lot, except in compliance with this Article and the Design Guidelines. Each Dwelling Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Architectural Review Committee or its designee, in its sole discretion, otherwise approves.

No approval shall be required to repaint the exterior of a structure in accordance with its most recently approved color scheme or to rebuild in accordance with previously approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of structures (including the Dwelling Unit) on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and any other portions of a Lot visible from outside a structure shall be subject to approval as set forth in the Design Guidelines.

This Article shall not apply to Declarant's activities, or to the Association's activities, or to Builder's architectural plans and specifications which have received Declarant's prior written approval.

##### 4.2. Architectural Review.

(a) By Declarant; New Construction. Declarant shall have exclusive authority to administer architectural controls and to review and act upon all applications for original construction within the Community. This right shall continue until one hundred percent (100%)

of the Lots have been conveyed to Members and contain a finished Dwelling Unit, unless Declarant earlier terminates its rights in a Recorded instrument. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may, in its discretion, designate one or more Persons or an outside management company, from time to time to act on its behalf in reviewing applications.

Declarant may from time to time, but shall not be obligated to, delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Architectural Review Committee. Any such delegation shall be in writing, specifying the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Committee; Modifications. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for modifications to improvements constructed within the Community. Declarant is to maintain records of all approvals and denials and turn them over to the Association. Prior to termination of Declarant's rights under Section 4.2(a) or to further a delegation if requested by Declarant, the Board shall establish the ARC, which shall consist of at least three Persons. Members of the ARC shall be appointed and shall serve at the discretion of the Board; provided, as long as Declarant owns any property described in Exhibit "A" or "B," at all times, it may appoint one member of the ARC.

When appointed, the ARC shall have exclusive jurisdiction over modifications to all Lots and/or structures and any additional improvements within the Community. Subject to Declarant's rights under subsection (a) above, the ARC also may be assigned by Declarant jurisdiction over original construction and landscaping within the Community.

(c) Reviewer. The entity having jurisdiction in a particular case (whether Declarant or its designees or the ARC) shall be referred to as the "Reviewer." On behalf of the Association, the Reviewer may retain architects, engineers, or other Persons as deemed necessary to perform the review. The cost will be the responsibility of the Applicant.

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board shall include the estimated compensation of such Persons in the Association's annual operating budget.

#### 4.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare Design Guidelines applicable to the Lots. The Design Guidelines are intended to provide guidance to Owners and Builders

regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions and compliance with the Design Guidelines does not guarantee approval of any application.

All Dwelling Units and landscaping must comply with The Lanterns, Castle Rock, Colorado Water Efficiency Plan dated May 9, 2014 ("Water Plan") as approved by the City of Castle Rock ("City"), as may be amended or restated from time to time, so long as the Water Plan remains in effect and is required by the City as part of the development plans for the Community. The Association shall maintain a copy of the Water Plan then in effect, if any, as a part of the Association's records and shall make copies of the Water Plan available to the Members in a reasonable manner as determined by the Board.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of or has a right to annex property pursuant to Article XI. Declarant's right to amend shall continue notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates the power to amend to the ARC. Upon termination or delegation of Declarant's right to amend, the ARC may amend the Design Guidelines with the written consent of the Board.

Amendments to the Design Guidelines shall be prospective only. The Design Guidelines shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. Subject to the Community-Wide Standard, there shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Community.

(b) Custom Lot Guidelines. The Declarant may prepare Custom Lot Guidelines, if the Declarant elects to sell custom lots within the Community. It may follow the same procedures as the Design Guidelines, or it may establish new procedures.

(c) Procedures. Except as otherwise specifically provided in the Design Guidelines, no construction activities or other activities described in Section 4.1 shall commence on any Lot until an application has been submitted to and approved by the Reviewer. The application shall be in the form Reviewer requires and shall include plans and specifications and other information required under the Design Guidelines. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction. The Design Guidelines and the Reviewer may require additional information as reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and opinions may vary as to the

desirability and/or attractiveness of particular improvements. Subject to Declarant's veto right, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall only be subject to review or appeal to the Board on the issue of good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within forty-five (45) days after a complete application in compliance with the requirements of this Article and the Design Guidelines is received by the Reviewer. The 45-day period may be extended by mutual agreement of the Owner and the Reviewer. If the Reviewer requires additional information to make its decision, then the 45-day period may also be extended by the Reviewer for the period of time equal to the number of days between the date the request for additional information was made to the Owner and the date the additional information was received by the Reviewer. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application with or without conditions.

The Reviewer shall notify the applicant in writing of a final determination on any application within seven (7) days after such determination is made. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond in a timely manner, the application shall be deemed denied. No approval shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5. The decision of the Reviewer is final, conclusive and binding upon all Owners. No Owner shall commence work or make a commitment for work requiring approval under this Article unless and until the Owner receives written confirmation of approval under this Article and receives all necessary approvals and/or permits from the municipality or governmental agency or entity having jurisdiction over building construction in the Community.

Notice shall be deemed given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery and delivery by electronic mail of such written notice shall, however, be sufficient and shall be deemed given at the time of delivery or transmission to the applicant.

As part of any approval, the Reviewer may require that construction commence in accordance with approved plans within a specified time period. If construction does not commence within the required period, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer grants an extension in writing, which it is not obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

(d) Exemptions. The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. For example, Builders may submit and receive pre-approval of landscaping, architectural house plans or other plans for general application. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

Reviewer approval shall not constitute approval of or waiver of approvals or reviews by any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

#### 4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved. The Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### 4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require or when legally required for compliance with the Americans with Disabilities Act, but only in accordance with rules and regulations established by the Declarant or ARC. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### 4.6. Limitation of Liability.

(a) The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, or for ensuring that every Dwelling Unit is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners, provided the Community-Wide Standards shall serve as a guide in the review process.

(b) Declarant, its officers, directors and affiliates, the Association, its officers, the Board, the ARC, the Association's management agent, any committee, or any member of any of the foregoing shall not be held liable for matters related to its decisions including, but not limited to, soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the ARC, and the members of each, and the Association officers, shall be defended and indemnified by the Association as provided in Section 7.7.

4.7. Certificate of Compliance.

Declarant, or any Owner may request in writing that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines as to the Owner's Lot. The Association shall either grant or deny such written request within thirty (30) days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall estop the Association from taking enforcement action against an Owner for any condition known to the Association on the date of the certificate.

**ARTICLE V - LANDSCAPING, HOME MAINTENANCE AND REPAIR**

5.1. Landscaping Requirements.

Landscaping shall be installed, as approved, in the front, side and rear yards of a Lot within two-hundred ten (210) days from the date of the initial closing of the sale of a Dwelling Unit on the Lot or the issuance of a certificate of occupancy on the Lot, whichever is later, or within any extension of that time period set forth in the Design Guidelines or granted by the Reviewer. All landscaping shall comply with Water Plan (as defined in Section 4.3).

5.2. Maintenance of Lots.

Each Owner shall maintain his or her Lot, including the Dwelling Unit, fences, retaining walls, sidewalks and all other Improvements comprising the Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard, and any other applicable covenants, unless such maintenance responsibility is the obligation of the Association in accordance with the terms of this Declaration or is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or additional covenants applicable to such Lot.

Each Owner shall also be responsible for maintaining the sidewalk and landscaping located in the public right-of-way adjacent to his or her Lot unless the Association or a subassociation, pursuant to a Supplemental Declaration or any additional covenants, assumes all or part of such maintenance.

5.3. [Reserved].

5.4. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless the Association carries such insurance (which they may, but are not obligated to do). If the Association assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Benefited Assessment against the benefited Lot and the Owner.

In the event of damage to or destruction of Improvements on a Lot, the Owner shall promptly repair or reconstruct such structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

## **COMMUNITY GOVERNANCE AND ADMINISTRATION**

*This Declaration establishes the Association as the mechanism by which each Owner is able to participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Association's Board of Directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership -- the Lot Owners.*

### **ARTICLE VI - The Association and its Members**

#### **6.1. Function of Association.**

The Association is the entity responsible for management, maintenance, operation, and control of the Common Area. The Association also has primary responsibility for enforcing the Governing Documents.

#### **6.2. Membership.**

Every Owner shall be a Member of the Association, and the membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Community, of all former Owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separated from ownership of any Lot. There shall be only one membership per Lot. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is not an individual may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

#### **6.3. One Class of Membership.**

The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Lot owned in accordance with the Allocated Interest attributable to each Lot. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association. The right to vote for a Lot commences at such time as the Lot is made part of the Community and subject to the Declaration; provided, no vote shall be exercised for any Lot which is exempt from assessment under Section 9.12, and no votes allocated to a Lot owned by the Association may be cast. Except as otherwise provided in this Article VI of this Declaration, during the Declarant Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and members of the Board of Directors, and may remove all officers and members of the Board of Directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Declarant Control Period; but, in that event, the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.4. Exercise of Voting Rights.

The Lot Owner shall exercise the vote for a Lot. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the multiple Owners casts the vote without protest being made promptly to the Person presiding over the meeting by any of the other Owners of the Unit. In the event that more than one such co-Owner casts a vote, the Lot's vote shall be suspended and excluded from the final vote tally on the matter on which a vote is being taken.

6.5. Election of Part of Board of Directors During Declarant Control Period.

No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Maximum Lots that may be included within the Community to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Maximum Lots that may be included to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant.

6.6. Authority of Declarant During Declarant Control Period.

Except as otherwise provided in this Article, during the Declarant Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and directors and may remove all officers and directors of the Board of Directors appointed by it.

6.7. Termination of Declarant Control Period.

Not later than the termination of the Declarant Control Period, the Owners shall elect a Board of Directors (with the exact number of members of the Board of Directors to be set forth in the Bylaws of the Association), at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers. Such Board of Directors members and officers shall take office upon election.

6.8. Delivery of Documents by Declarant.

After the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by the Declarant, if and to the extent required by the Act.

6.9. [Reserved].

6.10. Notice and Comment.

Whenever the provisions of this Declaration or of the other Governing Documents of the Association or the Act require that an action be taken after "Notice and Comment" or "Notice and Hearing," and at any other time the Board determines, the affected Owner(s) have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice shall be given to each affected Owner(s) at such address as appears in the records of the Association, by U.S. Mail, electronic communication (*i.e.*, "fax" or "e-mail") with confirmation of receipt (except e-mail notice will not be effective notice to Declarant), or publication in the community newsletter delivered or mailed to each Owner, provided such action is clearly identified under a separate newsletter headline. The notice shall be given not less than three (3) business days before proposed action is to be taken. The notice shall invite comment (orally or in writing) to the Board before or at the scheduled time of any meeting or hearing. These notice provisions may be supplemented in the Bylaws or by the adoption of a communications policy adopted by the Board.

## **ARTICLE VII - ASSOCIATION POWERS AND RESPONSIBILITIES**

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as Lessor or Tenant), operate, and dispose of tangible and intangible personal property and real property, subject to the provisions of Section 18.5. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for payment or no payment as the Board deems appropriate, to permit use of portions of the Common Area by community organizations and by other third parties.

(b) Declarant and its designees may transfer to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibit "A" or "B." Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved portions of the Common Area originally conveyed to the Association for no consideration, to the extent

conveyed by Declarant in error or needed by Declarant to correct or make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance of Common Area.

The Association shall maintain, in accordance with the Community-Wide Standard, the Common Area, which shall include, but need not be limited to:

(a) all portions of the Common Area, including landscaping, structures, and other improvements;

(b) landscaping within public rights-of-way or other publicly-owned property abutting public streets within the Community, and any drainage structure or facilities, to the extent such maintenance is required by the local governmental entity as a condition of the development of the Community or any part thereof, or as otherwise agreed by the Association and the local governmental entity, and is not the obligation of the Owner of a Lot under Section 5.2 of this Declaration;

(c) such portions of any additional property as may be required by this Declaration, any Supplemental Declaration, any Plat, development plan or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Association; and

(d) all ponds, streams, and/or wetlands located within Vista at Montaine which serve as part of the Community's stormwater drainage system, including associated improvements and equipment unless the same have been dedicated to and/or accepted by a local governmental entity, special district, or another common interest community association for the purpose of maintenance, repair and replacement.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if required by the local governmental entity as a condition of development of the Community or any part thereof or if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Common Area in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing sixty-seven percent (67%) of the Member votes in the Association, and the Declarant, if any, agree in writing to discontinue such operation.

Except as provided above, the Common Area shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in Exhibit "A" or "B" of this Declaration.

The costs associated with maintenance, repair, and replacement of the Common Area shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Area pursuant to this Declaration, a Supplemental Declaration, or other Recorded covenants or agreements. Maintenance, repair, and replacement of Limited Common Areas shall be an expense assessed against the Lots to which the Limited Common Area has been allocated for exclusive use.

By acceptance of a deed to a Lot, each Owner acknowledges that the water levels of lakes, ponds and other water bodies may vary. There is no guarantee by Declarant of the Association that water levels will be constant or aesthetically pleasing at any particular time and water levels may be non-existent at times.

### 7.3. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance on the Common Area and all improvements thereon for broad form covered causes of loss to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership; except that the total amount of insurance must not be less than the full insurance replacement costs of all the insured property less applicable deductibles at the time the insurance is purchased and at such renewal date, exclusive of land, foundation, excavations and other items normally excluded from property policies;

(ii) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Areas, insuring the Association with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$1,000,000.00 general aggregate limit, insuring the Board of Directors, the Association, any Managing Agent and their respective employees, agents and all Persons acting as agents; the Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board of Directors; the Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Areas;

(iii) With respect to any contractors working on the premises or any third parties holding events on the premises, all such individuals shall be required to carry sufficient similar commercial general liability insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$1,000,000.00 general aggregate limit; the commercial general liability policy shall also be endorsed to include Declarant, Declarant's subsidiaries and affiliates and their respective directors, officers, employees, and agents as additional insureds

with respect to any claims, losses, expenses or other costs arising out of any work performed for Declarant;

(iv) Certificates of insurance evidencing the minimum coverage required herein by any parties described above (other than the Association) shall be filed with the Association at the time of execution of any Agreement for services or events conducted on the premises and shall be maintained in a current status throughout the term of any such Agreement. Such third parties shall maintain all of their insurance and at the requested levels described above for not less than five (5) years following the expiration or termination of any Agreement with the Association.

(v) Statutory workers' compensation and employer's liability insurance to the extent required by law to cover all employees engaged in the services.

(vi) If any Common Areas are located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of: (a) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or (b) one hundred percent (100%) of current replacement costs of all buildings and other insurable property located within a designated flood hazard area.

(vii) Automobile liability insurance for all owned, non-owned and hired vehicles with a minimum limit of \$500,000.00 combined single limit per accident; and

(viii) Directors and officers liability coverage; and

(ix) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any Managing Agent or independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a Managing Agent, the Association may require the Managing Agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subsection.

(x) All of the coverage required herein shall be maintained with insurers rated B+ or better in the most current edition of Best's Insurance Reports.

(xi) The Board, in the exercise of its business judgment, may obtain additional insurance coverages, and may obtain different limits of coverage than specified above for commercial general liability insurance and automobile liability insurance.

Premiums for insurance on the Common Area shall be Common Expenses, except that premiums for insurance on Limited Common Areas may be allocated to the Lots having the exclusive use of such Limited Common Areas or the Board may determine that other treatment of the premiums is more appropriate.

(b) Policy Requirements. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder. All insurance coverage obtained by the Board shall contain an inflation guard endorsement. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

(c) Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment.

(i) To the extent the Association settles a claim for damages, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Lot is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

(ii) Any loss to any Lot or to any Common Areas that the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the Person who is responsible for the repair and maintenance of the property that is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the Persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, his tenants, family members, guest or invitees. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

(d) Payment of Insurance Proceeds. Any loss covered by an insurance policy described in subsection (a) of this Article must be adjusted with the Association, but the

insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Mortgagee. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 7.3(j) of this Article, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

(e) Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

(f) Acceptable Insurance Companies. Each insurance policy purchased by the Association must be written by a hazard insurance carrier that is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee; (b) under the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgages or any Owner from collecting insurance proceeds.

(g) Insurance to be Maintained by Owners. Insurance obtained for the Association is not meant to replace any individual's personal liability or property insurance and an insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot and the Improvements thereon, including but not limited to flood insurance, and the furnishing and other items of personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot. It is strongly suggested that each Member of the Association carry their own personal coverage.

(h) Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board of Directors or the Managing Agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any Mortgagee shall be furnished with a copy of such appraisal upon request.

(i) Notice of Cancellation. If the insurance described in Section 7.3 of this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall

cause notice of that fact to be hand delivered, or sent prepaid by United States Mail, to all Owners. If the insurance described in Section 7.3 of the Article is not reasonably available, the Association may carry any other insurance it considers appropriate.

(j) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any portion of the Community which is covered by a policy of insurance which is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (i) The Community is terminated;
- (ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (iii) Sixty-seven percent (67%) of the Owners, including every Owner of a Lot that will not be rebuilt, vote not to rebuild; or
- (iv) Prior to the conveyance of any Lot to a Person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed upon settlement, for the benefit of the Members and place in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the applicable insurance coverage premiums.

During the Declarant Control Period the Declarant reserves the right to include the insurance obligation of the Association within a master insurance program controlled by the Declarant and upon doing so, the insurance obligations so included shall be deemed satisfied.

#### 7.4. Compliance and Enforcement.

(a) The Board may impose sanctions for Governing Documents violations, which sanctions include those listed below and any others specifically described in the Governing Documents and may establish a range of penalties for different violations, with violations.

The following sanctions require prior notice and an opportunity for a hearing in accordance with Section 6.10 and the Bylaws (provided only a single notice and hearing is required for continuing violations):

(i) imposing reasonable monetary fines, not to exceed \$500.00 per violation (or per day in the case of a continuing violation), which shall constitute a lien upon the violator's Lot. The \$500.00 fine amount may be increased annually on January 1 of the year after the year in which this Declaration is recorded, and on January 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. Fines may be imposed within a graduated range. There is no limit on the aggregate amount of any fine for a continuing violation;

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use Common Area amenities.; provided, nothing shall authorize the Board to impair an Owner's or occupant's access to his or her Lot;

(iv) suspending any services the Association furnishes to the Owner's Lot;

(v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot in a non-emergency situation; and

(vi) levying Benefited Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

(b) In addition, the Board or its designees may take the following enforcement actions to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the Bylaws:

(i) taking action to abate a violation on the Common Area or a violation on a Lot in an emergency situation; or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such required maintenance and assess all costs incurred against the Lot and the Owner as a Benefited Assessment.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees, court costs and management expenses, reasonably incurred in such action.

(c) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time or preclude the Association from enforcing any other covenant, restriction, or rule.

(d) In computing the number of days for purposes of any provision of this Declaration or any of the other Recorded documents, all days shall be counted including Saturdays, Sundays, and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

#### 7.5. Enforcement of Design Guidelines

(a) Any construction, alteration, or other work performed in violation of the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Association or Declarant, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure the nonconformance to the satisfaction of the requester or restore the Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association, Declarant, or their designees shall have the right, in addition to any other available right or remedy set forth herein, to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration.

(b) All Design approvals shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, Declarant or the Association may, after notifying the Owner of the Lot and giving an opportunity to be heard in accordance with the Bylaws, enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment.

(c) All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Design Guidelines may be excluded from the Community, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither Declarant nor the Association, or their officers and directors, shall be held liable to any Person for exercising the rights granted by this Paragraph.

(d) Except as provided in Section 4.2 in regard to Declarant's authorization to review and act upon applications for original construction and modifications to improvements constructed within the Community, the Association shall be primarily responsible for enforcement of the Design Guidelines. If, however, in the discretion of Declarant, the Association fails to take appropriate enforcement action, as authorized herein, within a reasonable time period, Declarant, for so long as it owns any property described in Exhibit "A" or "B" to this Declaration, may, but shall not be obligated to, exercise enforcement rights in the same manner as set forth above. In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of the Design Guidelines and the Reviewer's decisions. If the Association or Declarant prevails, they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

7.6. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly, or by reasonable implication, by the Governing Documents, or take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise the Association's rights and powers without a vote of the membership.

Subject to any limitations set forth in the Governing Documents, the Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Area and the enforcement of the Governing Documents. However, the Governing Documents shall not be construed as creating any independent legal duty to institute any legal or other action or proceeding on behalf of or in the name of the Association or the Members.

7.7. Indemnification of Officers, Directors, and Others.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). This provision shall not eliminate the liability of a director or officer, to the Association or its Members, for monetary damages for any breach, act, omission or transaction as to which the Colorado Revised Nonprofit Corporation Act (as in effect from time to time) expressly prohibits the elimination of liability.

Subject to and to the fullest extent permitted by Colorado law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which the indemnitee's personal liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

#### 7.8. Safety and Security.

**Each Owner and occupant of a Lot, and their respective guests and invitees, is responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself and his property, but such activities shall not create any duty of the Association respecting safety or security. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or adequate lighting or the ineffectiveness of security measures undertaken.**

**No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.**

#### 7.9. [Reserved].

#### 7.10. Provision of Services.

The Association may provide, or provide for, services and facilities for all or any of the Members and their Lots, and may enter into and terminate contracts or agreements with other entities, including Declarant and special districts, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Association's budget as a Common Expense and assess it as part of the Base Assessment, if provided to all Lots. If provided to less than all Lots, the Association may assess such costs as a Benefited Assessment, as applicable. Such services and facilities to the extent not covered by the Base Assessment might include landscape maintenance, snow removal, pest control service, cable television and/or telecommunications service, security, caretaker, transportation, fire protection, utilities, trash collection and recycling, and similar services and facilities.

The Board of Directors shall have the right to regulate the number of trash collection service providers permitted to operate within the Community and to require trash and recycled materials to be collected from all or portions of the Community by such companies on the same day of each week. The Association, acting through its Board of Directors, is authorized to contract for trash and/or recycling service for all or portions of the Community and determine that the cost of such trash collection shall be charged as a use or service fees for such services, or paid by the Association as part of the Common Expenses, or that the cost of trash collection shall be paid by each Owner directly to the trash collection company in which case the Association shall not have any duty to pay the costs of trash collection or to assess the costs thereof to the Owners as assessments.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

#### 7.11. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring properties or other community associations to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance, and to permit the use of Common Areas and amenities owned by the Association upon terms acceptable to and approved by the Board.

#### 7.12. Facilities and Services Open to the Public.

Certain facilities and areas within the Community may be opened for public use and enjoyment in the discretion of the facility owner. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, areas conducive to gathering and interaction, roads, sidewalks, and medians.

#### 7.13. View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, any Common Area, or any open space within the Community will be preserved without impairment, and neither shall be obligated to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association and the Declarant (with respect to the Common Area) have the right to add trees, walls, fences, berms, homes or other structures, signs, lighting, water features and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Notwithstanding the above, the Design Guidelines or Association rules may impose requirements restricting the location of modifications to existing Improvements designed to preserve views.

#### 7.14. Relationship with Governmental and Tax-Exempt Organizations.

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, special districts, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Members. The Association may contribute or receive money, real property (including Common Area), personal property, or services to or from any such entity. Any such contribution shall be included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

#### 7.15. Cooperation with Other Associations.

(a) The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other community association(s) (including, without limitation, the Regency at Montaine Community Association, Inc.) and/or any special district(s), to share facilities, to permit the use of facilities, to share the costs and/or responsibility for any operation, maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers or others who may perform services for the Association, any other community association(s) and/or any district(s), or to otherwise cooperate with any other community association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, may be shared or apportioned between the Association and/or any other community associations and/or any districts, as the Board of Directors may determine in its discretion from time to time, or may be collected through use fees or other charges that the Board of Directors may adopt from time to time for the use of the Association's facilities and amenities by other community associations, its members or other members of the public. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other

community associations and/or any districts to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

(b) Vista at Montaine adjoins the community known as the Regency at Montaine Community Association which has been established pursuant to the Declaration of Covenants, Conditions and Restrictions for Regency at Montaine Community Association, Inc. ("Regency at Montaine"). These two residential communities have been and are being developed contemporaneously. The development intent of these communities is to share or provide for the use of certain facilities and amenities for the benefit of the residents of both communities. Vista at Montaine will be developed to include a clubhouse with a swimming pool (the "Pool Amenity") located on Tract N, Lanterns Filing 4 Subdivision, Douglas County, Colorado. The Pool Amenity will be a Common Area to be owned, operated and maintained by the Association. Regency at Montaine will be developed to include an amphitheater and event area (the "Event Amenity") on Lot 1 Block 5, Lanterns Filing 3 Subdivision, Douglas County, Colorado. The Event Amenity will be a common area of Regency at Montaine to be owned, operated and maintained by the Regency at Montaine Community Association Inc. In furtherance of this purpose, the Association is authorized to permit the members of the Regency at Montaine Community Association, Inc. ("Regency at Montaine HOA") and their family members and guests to use the Pool Amenity on a daily fee basis or through the purchase of other periodic use passes or memberships on terms and conditions and the payments of such fees and charges as determined by the Board in its discretion from time to time. Board shall also be authorized to enter into agreements ("Agreement") with the Regency at Montaine HOA with regard to the use, maintenance, repair and other matters relating to the Event Amenity and the Pool Amenity. Any costs incurred by the Association under any Agreement with the Regency at Montaine HOA pertaining to the Event Amenity shall be Common Expenses. Any Agreement may be amended by the approval of the Board of Directors of each association, without the consent or approval of any other person. This Section may not be amended during the Period of Declarant Control without the consent of the Declarant. A reciprocal provision to this Section has been or will be included in the Declaration of Covenants, Conditions and Restrictions for Regency at Montaine Community Association, Inc.

#### 7.16. Management Contracts.

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

### ARTICLE VIII - TELECOMMUNITY

*In order to perpetuate a sense of community life and spirit within Vista at Montaine, the Association may, but shall not be obligated to, provide technology, activities, services, educational opportunities, entertainment, social events, healthcare information, and other programs for the Community.*

*In order to encourage awareness of, and participation in, the activities, programs, opportunities, events, and services provided by, or through, the Association, a telecommunity system may be developed to provide a communication resource that connects all members of the Community, provided however, that the Association shall not be obligated to provide a telecommunity system.*

#### 8.1. Community Intranet System.

Declarant may establish on the Association's behalf, or the Association may establish, and the Association may maintain a community intranet system. The Board shall have discretion and authority in determining and selecting an appropriate system, and may change, modify, or terminate the system from time to time. There is no guarantee or representation that any particular type of community intranet system or systems will be utilized.

#### 8.2. Provider of Broadband Service.

Declarant and the Association shall have authority to select the provider or providers of the components (including, but not limited to, hardware, software, programming, infrastructure, services, management, and administration) constituting the community intranet broadband system. The Association shall have no obligation to utilize any particular provider or providers.

The Association may enter into contracts with providers for different components of the community intranet broadband system and with other Persons for the maintenance, management, administration, upgrading, modification, and operation of the system. The terms of the applicable contract may obligate individual Owners or occupants to execute contracts or agreements directly with the Persons providing broadband components prior to gaining access to the system. Such contracts or agreements may contain terms and conditions relating to use and access to the community broadband system in addition to those contained in this Article.

#### 8.3. Governmental Regulation.

Any community broadband system and its providers, managers, and operators may be subject to federal, state, or municipal regulations, laws, and ordinances. Such regulations, laws, and ordinances may have a significant impact on certain aspects of the system including, but not limited to, the fees charged, the method of delivery, the rights of the system users, as well as the rights of the system providers or operators. These regulations and their impact are beyond the Association's control.

#### 8.4. Use of Technology.

In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, and in addition to the community broadband system provided for above, the Association may, as a Common Expense, provide for or offer services that make use of computers and other technological opportunities. For example, to the extent applicable law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means; send and collect assessment and other invoices over the computer; sponsor a community cable television channel; create and maintain a community intranet or Internet home page and related applications offering

interactive participation opportunities for users; maintain an “online” newsletter or bulletin board; and provide funding to the Association for any of the above purposes.

#### 8.5. Central Telecommunication, Receiving, and Distribution System.

Declarant reserves for itself, its affiliates, successors, and assignees, including the Association, the perpetual right and easement to operate within the Community, and to service the buildings and the structures within any Lot, a central telecommunication (including cable television and security monitoring) receiving and distribution system, including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (the “Community Systems”) as Declarant, in its discretion, deems appropriate. Such perpetual right shall include, without limitation, Declarant’s right to select and contract with companies licensed to provide telecommunications and cable and wireless television service in the Community area, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Declarant may require that the Association enter into a bulk rate service agreement for the provision of Community Systems to all Lots as a Common Expense. If particular services or benefits are provided to particular Owners or Lots at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the costs as a Benefited Assessment, as appropriate.

#### 8.6. Notices and Disclaimers as to Community Systems.

In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, neither Declarant nor any of Declarant’s successors or assigns shall in any manner be liable for, and no Community System user shall be entitled to refund, rebate, discount, or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not such interruption is caused by reasons within the service provider’s control.

#### 8.7. Disclaimer and Limitation of Liability.

The Association shall not be liable for any loss, damage or injury resulting from (a) any virus or contamination of any data, computer, or computer system arising from access to the Community Systems; (b) any delays, interruptions, or inconveniences in accessing or using any functions of the Community Systems, or inability to access or download information, software or other materials through the Community Systems; (c) the quality, validity, completeness of, or any inaccuracies, errors or omissions in, any information, software or other materials accessible through the Community Systems. The Association does not endorse and makes no representations or warranties regarding the quality, safety, suitability, or usefulness of any software or other materials accessible through the Community Systems. All users assume the entire risk associated with use of and access to the Community Systems and any information, software or other materials available through the Community Systems. **The Community Systems and all information and materials accessible to users of the Community Systems are made available “as is” without warranties of any kind, either express or implied,**

**including, without limitation, warranties of title or implied warranties of merchantability or fitness for a particular purpose.** The security of any web site is not guaranteed. Therefore, users acknowledge the potential security risks involved and acknowledge that the Declarant and Association are not responsible for any unauthorized misuse by Residents, Owners or others outside of this Community.

Declarant may disclose any content, record, or electronic communication of any kind including personal information of the user for any purpose whatsoever including, but not limited to:

- (a) Satisfy any law, regulation or authorized governmental request;
- (b) If such disclosure is necessary in Declarant’s sole discretion to operate the Community Systems;
- (c) Protect the rights or property of Declarant, any affiliate of Declarant or users of the Community Systems; and
- (d) Any affiliate of Declarant for any purpose whatsoever, including, but not limited to, the purpose of sending e-mails or solicitations.

8.8. Community Web Portal.

The Association is authorized to operate and maintain an Association internet website and related applications. The Association shall have the power and authority, without limitation, to enter into, and take assignment of, agreements providing for internet-based community portals, web hosting and related services for the Association.

8.9. No Representation.

This Article VIII is intended solely to establish the right and authorization of the Declarant and the Association to provide a telecommunity system in accordance with the terms and provisions of this Article, and shall not be construed as an obligation on the part of the Declarant or the Association to install, provide, operate, manage or contract for such a system. No representation or warranty is made or given that the Declarant or the Association will provide a telecommunity system of any kind whatsoever.

**ARTICLE IX - ASSOCIATION FINANCES**

9.1. Budgeting and Allocating Common Expenses.

Base Assessments shall be sufficient to meet the expected needs of the Association for the Fiscal Year, and shall be set against each Lot, other than the Unbuilt Lots, in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the Base Assessment against the Unbuilt Lots shall be set at a lower rate than the rate of Base Assessments against other Lots, because the Unbuilt Lots receive and benefit from fewer services funded by such Association assessments than do the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that, to the extent required by the Declaration, “Any common

expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited.” Based on the two preceding sentences, the Unbuilt Lots shall pay Base Assessments at the rate of fifty percent (50%) of the Base Assessments charged to Lots that are not Unbuilt Lots. As used herein, the term “Unbuilt Lots” means those Lots that do not contain a Dwelling Unit on which a Certificate of Occupancy, or its equivalent, has been issued by the applicable governmental authority. “Unbuilt Lots” includes, without limitation, those Lots on which the residence on such Lot has been destroyed (for example, by fire or other casualty). However, the “Unbuilt Lots” that are referenced in the preceding sentence shall become “Lots” (rather than “Unbuilt Lots”) when such Lot (again) contains a Dwelling Unit on which a Certificate of Occupancy, or its equivalent, has been issued by the applicable governmental authority.

In determining the Base Assessment, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, including posting the proposed budget on the Association’s website, a summary of the Association budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget within a reasonable time after mailing or other delivery of the summary. The proposed budget does not require approval from Owners and is deemed approved by the Owners in the absence of a veto at the meeting by the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Owners.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to Section 9.11 and the notice requirements set forth above.

9.2. [Reserved].

9.3. Budgeting for Reserves.

The Board within six (6) months following initial conveyance of the Common Areas shall obtain a Reserve Study. Reserve budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. Thereafter, the Board shall review the Reserve Budget annually. Amounts to be funded as reserves shall be reflected in the Common Expense Budget.

The Board may adopt a policy restricting the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes, Common Areas and Limited Common Areas. During the Declarant Control Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant’s prior written consent.

The Board may enter into agreements with Declarant regarding the timing and extent of Declarant contributions, on negotiated terms, under which Declarant may provide financial assurances in lieu of cash.

#### 9.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the specific Lots if such Special Assessment constitutes a Benefited Assessment. Within thirty (30) days after adoption of any proposed Special Assessment, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Special Assessment to all the Owners subject to the Special Assessment and shall set a date for a meeting of the Owners to consider the Special Assessment within a reasonable time after mailing or other delivery of the summary. The special assessment proposed by the Board does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by sixty-seven percent (67%) of the votes allocated to Owners of Lots that are subject to the Special Assessment voting in person or by proxy, whether or not a quorum of such Owners is present. Special Assessments levied during the Declarant Control Period may not be used for the purpose of constructing capital Improvements. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

#### 9.5. Benefited Assessments.

The Association shall have the power to levy Benefited Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.10) or to cover costs which the Association may otherwise incur for the exclusive benefit of one or more of Lots but to less than all of the Lots under the Declaration or any Supplemental Declaration, which may include expenses relating to Limited Common Areas. Benefited Assessments may be levied in advance of the provision of the requested service and in advance of incurring such costs; and

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any Benefited Assessment under this subsection (b).

#### 9.6. Commencement of Assessment Obligation; Time of Payment.

The obligation to pay assessments as to each Lot that is described on Exhibit "A" on the date that this Declaration is recorded in the Douglas County real property records shall commence on the first day of the month following the date that this Declaration is recorded in such records, and shall commence as to each Lot that is thereafter included and annexed into the Community in accordance with Article XI on the first day of the month following the date that such Lot has been included and annexed into the Community as evidenced by the recording of a Supplemental Declaration as provided in Article XI. The first annual Base Assessment levied on each Lot shall be pro-rated for the time remaining in the Fiscal Year.

Advance payment of Assessments shall be required for the applicable payment period at closing of the transfer of title to a Lot. The Board may impose special requirements for Owners with a history of delinquent payment. The Board shall establish if assessments are to be paid annually, semi-annually or in quarterly or monthly installments. Until the Board otherwise provides, the Annual Base Assessment shall be due and payable in advance on the first day of each fiscal quarter. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

9.7. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed whether or not it shall be so expressed in such deed, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of eighteen percent (18%) per annum or such other lawful rate as the Board may establish, from time to time), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

The Board's failure to establish or obtain Member approval, if required, of assessment amounts or rates or failure to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last Fiscal Year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant for which each Owner is jointly and severally liable. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(b) Certificate of Status of Assessments. Upon written request to the Association's registered agent from an Owner, Mortgagee or other person designated by the

Owner, the Association shall furnish to any Owner, Mortgagee or other person designated by the Owner liable for any type of assessment a certificate in writing setting forth the amount of any unpaid assessment against such Owner's Lot. Certificates shall be requested and issued in accordance with the provisions of the Act. Such certificate shall be conclusive evidence of payment. The Association may require the payment of a reasonable processing fee for the issuance of such certificate.

9.8. Lien for Assessments.

(a) The Association has a statutory lien on a Lot for any assessment levied against that Lot or fines imposed against its Owner. Fees, charges, late charges, attorneys' fees, fines and interest charged pursuant to this Declaration or the Act are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

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

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments becomes due.

(d) If two (2) or more associations have liens for assessments created at any time on the same property, those liens shall have equal priority.

9.9. Priority of Association Lien.

(a) A lien under this Article IX is prior to all other liens and encumbrances on a Lot except:

(i) Liens and encumbrances recorded before the recordation of the Declaration;

(ii) A first Mortgage on the Lot, which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent; and

(iii) Liens for real estate taxes and other governmental assessments or charges against the Lot.

(b) A lien under this Section is also prior to the first Mortgage described in the preceding subsection (a)(ii) to the extent, if any, provided in the Act.

(c) This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S. 1973, as amended, or to the provisions of §15-11-201, C.R.S. 1973, as amended.

9.10. Receiver.

In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of 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 assessments.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien.

Notwithstanding the above, if a Lot is owned by the Association: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association.

9.11. [Reserved]

9.12. Exempt Property.

The following property shall be exempt from payment of Base Assessments and Special Assessments:

(a) All Common Area and other portions of the Community which are not Lots; and

(b) Any property dedicated to and accepted by any governmental authority or public utility.

In addition, both Declarant and the Association shall have the right, but not the obligation, to grant exemptions to Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

9.13. Capitalization of Association.

Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-half (1/2) of the annual Base Assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and

shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

#### 9.14. New Member Fee.

(a) Authority. As an additional funding source, the Association shall collect a New Member Fee upon each transfer of title to a Lot, other than exempt transfers as set forth herein. The New Member Fee shall be charged to the grantor of the property, shall be payable by grantor or grantee as their contract provides to the Association at the closing of the transfer, and shall be secured by the Association's lien for assessments. Each Owner transferring a Lot shall notify the Association's secretary or designee at least seven (7) days prior to the scheduled closing. Such notice shall include the name of the buyer, the date of title transfer, and other information the Association may reasonably require.

(b) Fee Limit. The New Member Fee to the Association is initially established to be an amount equal to one-fourth of one percent (0.25%) of the Gross Selling Price of the Lot with all improvements, upgrades and premiums included, and shall be due upon the closing of the Sale of the Lot. The Gross Selling Price shall be the total cost to the purchaser of the Lot, excluding transfer taxes and title fees. By duly adopted resolution, the Board of Directors may change the fee from time to time provided that the fee shall not exceed an amount equal to one-half of one percent (0.50%) of the Gross Selling Price of the Lot.

(c) Purpose. New Member Fees shall be used for purposes which the Association Board deems beneficial to meet the general operating needs of the Association. By way of example and not limitation, New Member Fees may be used to assist the Association or one or more tax-exempt entities in funding operating and maintenance costs for recreational facilities, common areas, open space preservation and all other funding needs for operating the Association.

(d) Exempt Transfers. Notwithstanding the above, no New Member Fee shall be levied upon transfer of title to property:

- (i) by or to the Declarant;
- (ii) by a Builder or developer holding title solely for purposes of development and resale;
- (iii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;
- (iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at

law; provided, upon any subsequent transfer of an ownership interest in such entity, the New Member Fee shall become due; or

(vi) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage.

## **COMMUNITY DEVELOPMENT**

*The Declaration reserves various rights to the Declarant in order to facilitate the smooth and orderly development of the Community and to accommodate changes in the master plan which inevitably occur as a community the size of the Community grows and matures.*

## **ARTICLE X - ACTIVITY CARDS**

### **10.1. Issuance by the Board.**

The Association shall be authorized to issue Activity Cards to Owners and Occupants. The Board shall determine entitlement to Activity Cards on a periodic basis and establish reasonable rules and regulations relating to the issuance and renewal of such Activity Cards as well as policies, limits, and charges with regard to the issuance of additional, renewal or replacement cards and guest privilege cards. The Board may, at its sole discretion, issue temporary Activity Cards to persons who have signed binding contracts to purchase a Lot, subject to such policies as the Board may determine from time to time. If provided, such Temporary Activity Card(s), if provided, shall expire at closing of the Lot purchase.

### **10.2. Assignment of Rights.**

The right to an Activity Card is based upon Occupancy of a Lot. Any Owner who leases or otherwise transfers Occupancy of his or her Lot shall be deemed to have assigned his or her rights to an Activity Card to the Tenant of such Lot. Any Owner who leases or otherwise transfers Occupancy of his or her Lot shall provide the Association with immediate written notice thereof and shall surrender to the Association his or her previously issued Activity Card. Activity Cards shall be surrendered by any holder who ceases to Occupy a Lot, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

### **10.3. Issuance to Declarant.**

As long as Declarant owns any portion of the Community or has the right to annex property pursuant to Section 11.2, the Association shall provide Declarant, free of charge, with as many Activity Cards as Declarant, in its sole discretion, deems necessary for the purpose of marketing the Community or any property described in Exhibit "B." Declarant may transfer the Activity Cards to prospective purchasers of Lots subject to such terms and conditions as it, in its sole discretion, may determine. Activity Cards provided to Declarant shall entitle the bearer to use all Common Area and recreational facilities, (subject to the availability, payment of admission fees or other use fees charged to Occupants holding Activity Cards).

## **ARTICLE XI - EXPANSION OF THE COMMUNITY**

### 11.1. Annexation by the Association.

The Association may add real property to the Community and to this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of more than fifty percent (50%) of the Members in person or by proxy at a meeting duly called for such purpose, and the consent of the property owner.

### 11.2. Annexation by the Declarant.

(a) Notwithstanding Section 11.1, the Declarant may add and annex to this Declaration additional property within the Annexable Property described on Exhibit "B" attached hereto and incorporated herein by this reference, until that date which is thirty (30) years after the date of recording of this Declaration in the county in which the Community is located without the consent or approval of any other Owners, Mortgagee or any other Person. However, such annexation is subject to HUD or VA approval, if required by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed). Each such annexation shall be effected, if at all, by recording of a plat or map of the property to be annexed (unless such plat or map has previously been recorded), and by recording in the office of the Clerk and Recorder of the county in which the Community is located a Supplemental Declaration known as an Annexation of Additional Land. An Annexation of Additional Land (a) shall be executed and acknowledged by Declarant, and by the owner of the annexed property described therein, if other than Declarant; (b) shall contain an adequate legal description of the annexed property, including legal descriptions of Lots and Common Areas; (c) shall contain a reference to this Declaration which shall state its date of recordation and reception number of the records of the county clerk and recorder's office where this Declaration is recorded; (d) shall contain a statement that the annexed property is declared to be part of the Community under this Declaration, that the annexed property shall be subject to this Declaration and the effective date of the annexation if a date other than the date of recordation; (e) shall identify Common Areas within the annexed property, if any; (f) shall state whether the Sites therein may be subject to the jurisdiction of a "Subassociation" as defined in Section 17.1; and (g) and may include such other provisions as Declarant deems necessary or appropriate. A deed by which Declarant conveys a parcel of property to another Person may constitute an Annexation of Additional Land if it meets the foregoing requirements. The Declarant may at any time from time to time record a supplement to this Declaration for the purpose of confirming any annexations of property hereto that have occurred by deed from Declarant to another Person. An Annexation of Additional Land may provide for phased annexation so that annexed property may be made subject to this Declaration at different times. An Annexation of Additional Land may impose on the annexed property described therein covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions in addition to those set forth in this Declaration, taking into account the unique and particular aspects of the proposed development of the annexed property covered thereby. All provisions of this Declaration, including, but not limited to, those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon recording a deed, as aforesaid, or shall apply to the annexed property, as provided for in the recorded Annexation of Additional Land with respect thereto. Such Annexation shall be deemed an amendment to the Declaration for purposes of the Act. In

addition to the foregoing, the Declarant may amend this Declaration at any time during the thirty (30) year period noted hereinabove, in order to add additional real estate to the Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Community pursuant to this sentence, and not described in the attached Exhibit "B," does not exceed ten percent (10%) of the total area described in the attached Exhibits "A" and "B."

(b) Each portion of the Community which is annexed to this Declaration, as provided in the preceding subsection (a), or which is described in Exhibit "A", shall be subject to a right of withdrawal by the Declarant as provided in Section 12.1. Such withdrawal may be accomplished, if at all, in accordance with the Act.

(c) The Declarant may exercise its development rights to annex additional property or any other development right in all or any portion of the property described in the attached Exhibits "A" and "B" over which such rights have not already been exercised, and no assurances are made as to the boundaries or order of exercise of any such development rights.

#### 11.3. Additional Covenants and Easements.

By Supplemental Declaration, Declarant or other Person, with the consent of Declarant, may impose additional covenants and easements on portions of the Community, including covenants obligating the Association to maintain and insure specific property and authorizing the Association to recover its costs through Benefited Assessments and the creation of Subassociations. If someone other than Declarant owns the property, then the Owner's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

#### 11.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording, unless otherwise specified. The Lots are thereby subjected to the Declaration and the jurisdiction of the Association and shall have equal voting rights in the Association and equal pro rata liability for Base Assessments with all other Lots.

### **ARTICLE XII - ADDITIONAL RIGHTS RESERVED TO DECLARANT**

#### 12.1. Deannexation of Property.

Declarant reserves the right to amend this Declaration by recording an Amended Supplemental Declaration, so long as it has a right to annex property pursuant to Section 11.2, to withdraw any unimproved portion of the Community including any Lot or other parcel of property therein, from the coverage of this Declaration, provided such portion has not been conveyed to a purchaser. "Unimproved" means that no permanent structure or other permanent improvements have yet been built on the property. Such amendment shall not require the consent of any Person other than the Declarant. If the property is Common Area, the Association shall consent to such withdrawal and shall reconvey to Declarant any withdrawn property owned

by the Association.

12.2. Marketing and Sales Activities.

Notwithstanding any provision in this Declaration, including Exhibit "C," to the contrary, Declarant and Builders may construct and maintain upon portions of the Common Area and other property owned by Declarant or the Builder such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model Lots, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. Declarant and Builders shall have easements for access to and use of such facilities at no charge. Builder's rights under this Section 12.2 are subject to Declarant's approval.

12.3. Right to Develop.

Declarant and Declarant's Affiliates and their employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area, and to the Exhibit "B" property, as it deems appropriate in its sole discretion. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Area without conflicting with the terms hereof.

Declarant for itself or its Successors specifically reserves the right to develop land adjacent to or in the vicinity of the Community for commercial uses.

Nothing contained in this Declaration or in any Supplemental Declaration shall be construed to prevent the construction, installation or maintenance by the Declarant, any Declarant affiliate or any agents or contractors thereof, during the period of development, construction and sales on the Property, of Improvements, landscaping or signs deemed necessary or convenient by the Declarant, in its sole discretion, to the development or sale of property within the Property.

12.4. Right to Designate Sites for Governmental and Public Interests.

Declarant may designate sites within the Community which are owned by Declarant for government, education, or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, commercial and other public facilities subject to receiving all necessary approvals.

12.5. Right to Approve Additional Covenants.

During the Declarant Control Period, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant's review and written consent. Any instrument Recorded without such consent shall be void and of no force and effect unless subsequently approved by written consent, signed by Declarant, and recorded.

12.6. Right to Approve Changes in the Community Standards.

No amendment to or modification of any Use Restrictions, rules, or the Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 11.2.

12.7. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a Recorded instrument signed by Declarant and the transferee.

12.8. Exclusive Rights To Use Name of Development.

No Person shall use the name "Vista at Montaine" or any derivative of such name in any printed or promotional material, or in logo or depiction, without Declarant's prior written consent. However, Owners may use the name "Vista at Montaine" where such term is used solely to specify that particular property is located within Vista at Montaine and the Declarant hereby grants the Association a license to use the words "Vista at Montaine" in its corporate name.

12.9. Right to Operate Guest House.

The Declarant reserves the right to retain one or more Dwelling Units in the Community as a guest house, to be used and enjoyed by the Declarant, its affiliates, employees, invitees, and licensees for any lawful purpose.

12.10. Equal Treatment.

Neither the Association nor any other entity shall, without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

(a) limits the access of Declarant, its successors, assigns, and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;

(b) limits or prevents Declarant, its successors, assigns, and/or affiliates or their personnel from advertising, marketing, or using the Association or its Common Areas or any property owned by any of them in promotional materials;

(c) limits or prevents purchasers of new residential housing constructed by Declarant, its successors, assigns, and/or affiliates in the Community from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the Bylaws;

(d) discriminates against or singles out any group of Members or prospective Members or Declarant [this provision shall expressly prohibit the establishment of a fee structure (*i.e.*, assessments, Special Assessments and other mandatory fees or charges other than Benefited Assessments, chartered club dues, and use fees) that discriminates against or singles out any group of Members or Declarant, but shall not prohibit the establishment of Benefited Assessments];

(e) impacts the ability of Declarant, its successors, assigns, and/or affiliates, to carry out to completion its development plans and related construction activities for the Community, as such plans are expressed in the Master Plan, as such may be amended and updated from time to time. Policies, rules, or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Community shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction, and landscaping activities and utilities; or

(f) impacts the ability of Declarant, its successors, assigns, and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

Neither the Association nor any other entity shall exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Community or the Exhibit "B" property) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Community or the Exhibit "B" property over the streets and other Common Areas within the Community. The Association shall not condone, encourage its members or participate in public assembly for the purpose of interfering with Declarant's business within the Community or engage in any activity that presents a public health or safety risk.

#### 12.11. Right To Use Common Area for Special Events.

Declarant shall have the right to use all Common Area, including recreational facilities, to sponsor special events for charitable, philanthropic, and social purposes and for events for the promotion of the Community and the sale of Dwelling Units therein as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions:

(a) the availability of the facilities for the period of time requested of the Association by the Declarant, provided that the request is not submitted more than six (6) months prior the actual special event.

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event (as per the insurance

requirements for such events set forth herein) other than customary use charges that shall be waived; and

(c) Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign its rights contained in this Section 12.11 to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

#### 12.12. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Community, including Lots, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a Dwelling Unit or other structure on a Lot shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, and pay for, any resulting damage.

#### 12.13. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation against Declarant or a Builder involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing ten (10) days prior to the inspection and given an opportunity to meet with the property Owner and conduct an independent inspection.

#### 12.14. Termination of Rights.

The rights contained in this Article and in Article XI shall terminate as expressly provided with regard to any particular right, and if not provided, then upon the earlier of (a) thirty (30) years from the date this Declaration is Recorded, or (b) the Declarant's recording of a written statement that Declarant has surrendered any such Declarant right. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. This Article 12 shall not be amended without Declarant's written consent so long as Declarant owns any property described in Exhibit "A" or "B."

### **PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions*

*to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the Community.*

### ARTICLE XIII - EASEMENTS

#### 13.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
  - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
  - (ii) suspend the right of an Owner to use any Common Area amenity (A) for any period during which any assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period up to one hundred eighty (180) days for a single violation or multiple violations, or for a longer period in the case of any continuing violation, of the Governing Documents;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
  - (iv) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
  - (v) permit use by people from outside of the Community, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;
  - (vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred subject to the approval requirements set forth in Section 19.5 and the approval of Members to the extent required by the Act;
- (d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XIV;
- (e) The requirement that access to and use of recreational facilities within the Community may be subject to the presentation of an Activity Card that the Association issues for such purpose and as provided in this Declaration; and
- (f) The Association's right to close or limit the use of the Common Areas, or portions thereof, while maintaining and repairing the same.

Any Owner may obtain guest passes, if available, to provide use and enjoyment of the community facilities to the members of his or her family, Tenants, and social invitees, as applicable, subject to reasonable regulation and use fees by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the Tenant of such Lot for the period of the lease.

13.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement, or settling, or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, for thirty (30) years from the date this Declaration is Recorded, a perpetual non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Community, cable and other systems for sending and receiving data and/or other electronic signals, drainage systems, and security and similar systems;

(ii) installing walkways, pathways and trails, street lights, and signage on property which Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a Plat;

(iii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described above; and

(iv) access to read utility meters.

Notwithstanding the above, Declarant reserves the right to grant or deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Utility Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such utility easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any property described in Exhibits "A" and "B." The location of the easement on any Lot shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

#### 13.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns, respectively, shall be responsible for any damage caused to the Common Area as a result of their actions. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

#### 13.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Lots and Common Area as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents to abate a Governing Document violation and/or to remove any structure, thing or condition which violates the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Any costs incurred, including reasonable attorneys' fees, shall be assessed against the Lot Owner as a Benefited Assessment.

#### 13.6. Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Area and enter upon adjacent Lots to the extent

necessary to (a) install, operate, maintain, and replace pipes, pumps and related equipment to supply irrigation water to the Common Area; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a Dwelling Unit or other structure) adjacent to or within 100 feet of bodies of water and wetlands within the Community, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Community; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Area; and (c) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences.

#### 13.7. Easements for Cross-Drainage.

Every Lot and the Common Area shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, and Declarant as long as it owns any property described in Exhibit "A" or "B" to the Declaration.

13.8. Retaining Walls. Retaining walls may have been constructed within the Property (the "Retaining Walls"). The Retaining Walls are not in all cases located on a Lot or tract line. The location of a Retaining Wall (or the construction by an Owner of any improvements on or near the Retaining Wall) shall not constitute evidence of the intended location of a Lot line, or provide grounds for any claim of adverse possession or prescriptive easement. Each Lot upon which any portion of a Retaining Wall is located shall be subject to an easement, for the benefit of all other Lots, for the purposes of support by and natural drainage from such Retaining Wall. No Owner shall take any action to add, construct or place any improvement on the Lot so that it may, in the judgment of the Association: result in disturbance of, weakening of, or damage to the Retaining Walls; increase any engineered load or alter design criteria; or cause damage to the wall and surrounding properties. Any improvements on Lot will need prior approval of Architectural Review Committee. Regardless of such approval, any Lot Owner who takes such action shall be responsible for all resulting costs of repair and restoration of the Retaining Wall. Otherwise, neither the Association nor any other Owner shall have any affirmative obligation to maintain or repair the Retaining Walls. However, should it elect to do so, the Association and its duly authorized agents and representatives, shall have the right to enter the property upon which any portion of a Retaining Wall is located for the purpose of making any necessary repair to or maintenance of the Retaining Wall. Before exercising such right of entry on a Lot, the Association shall give written notice to the Lot Owner and provide such Owner with an

opportunity to make any necessary repair to or maintenance of the Retaining Wall and if such Owner fails to make repair or maintenance within thirty days after notice was given, then the Association may make such repair or maintenance. Association may levy a Benefited Assessment against the particular Lot for the cost incurred by the Association to make the necessary repair or maintenance.

#### **ARTICLE XIV - LIMITED COMMON AREAS**

##### 14.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or benefit of Owners and occupants on one or more but less than all of the Lots within the Community. For example, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular area of the Community. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be assessed as a Benefited Assessment allocated among the Lots which are entitled to the exclusive use or benefit of such Limited Common Areas.

##### 14.2. Designation.

Initially, any Limited Common Area shall be designated as such in a Supplemental Declaration, the deed conveying such area to the Association, or on a Plat; provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 11.2.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Members representing a majority of the total Member votes to which the Limited Common Area has been allocated. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 11.2, Declarant's written consent also is required. Any assignment or reassignment of Limited Common Area shall be made in accordance with the requirements of the Act.

##### 14.3. Use by Others.

Upon approval of a majority of Owners of Lots to which any Limited Common Area has been allocated, the Association may permit Owners of Lots in other areas of the Community to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the expenses attributable to such Limited Common Area.

#### **ARTICLE XV - PARTY WALLS AND OTHER SHARED STRUCTURES**

##### 15.1. General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built on the Lots which serves and/or separates any two adjoining Lots or a Lot and Common Area shall constitute a Party Structure.

To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a Party Structure shall be handled in accordance with the provisions of Article XVI.

15.2. Maintenance; Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Lots, the cost of reasonable repair and maintenance of a Party Structure shall be shared equally by the Owners who own property benefited by the Party Structure.

If a Party Structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any benefited Owner shall contribute a pro rata share for the cost of restoration. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*The growth and success of Vista at Montaine as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.*

**ARTICLE XVI - DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

16.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;

(iii) the design or construction of non-residential improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review; or

(iv) a challenge to any decision by the Board or any decision by a Board Committee;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.2:

- any suit by the Association to collect assessments or other amounts due from any Owner;
  - any suit by the Association to enforce Article IV or the Design Guidelines with respect to residential improvements;
  - any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);
  - any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
  - any suit in which any indispensable party is not a Bound Party; and
  - any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 16.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article;
- a Construction Dispute as defined in Section 16.4.

#### 16.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the Bound Parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Denver metropolitan area. Each Bound Party shall submit to the mediator a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within thirty (30) days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

### 16.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding against the Declarant or anyone else unless first approved by a vote of Members entitled to cast fifty percent (50%) of the total Member votes in the Association. It is a condition precedent to the Association commencing any such judicial or administrative proceeding relating to any "construction defect action" (as defined in Section 303.5 of the Act) that the Association has

fully complied with the requirements of Section 303.5 of the Act. The foregoing requirements for Member approval shall not apply to and no such approval is required for actions or proceedings:

- (a) initiated during the Declarant Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments, and foreclosure of liens and seeking injunctive relief for non-monetary violations;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor (exclusive of the Declarant and Builders), vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

In the matters listed above, the Directors of the Association shall be indemnified for their decisions pursuant to Section 7.7.

#### 16.4. Construction Disputes.

(a) Any claim, controversy or dispute, whether sounding in law, equity, contract or tort (excluding, however, tort claims arising from physical bodily injury) between the Declarant, the Association and/or any one or more Owners over or related to the design, construction or physical condition of the Common Area, Lots or Improvements related thereto constituting a “construction defect action” as defined in Section 303.5 of the Act and made against the Declarant, the Association, or any Construction Professionals (as defined in Section 303.5 of the Act) which shall be deemed a “Construction Dispute”, shall be resolved by binding arbitration in accordance with the Uniform Arbitration Act of 1975, C.R.S. §13-22-201, et seq., as amended (or if such Act is repealed, then such other uniform state arbitration law enacted in its place). Any such arbitration proceeding may be required by an aggrieved person upon written notice (“Arbitration Notice”) delivered to the Association, the Declarant or other person(s), as the case may be, before the date when commencement of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitations. No such demand for arbitration shall be made after the date when such proceedings would be barred by the applicable statute of limitations. The Judicial Arbitrator Group in Denver, Colorado (“JAG”) (or other arbitrator mutually acceptable to the parties) shall administer all aspects of arbitrations conducted hereunder, including the selection of arbitrators, pursuant to arbitration rules agreed upon by the parties or if agreement is not reached within thirty days after issuance of the Arbitration Notice, then pursuant to arbitration rules selected by the arbitrator. Arbitration hereunder shall be before a single arbitrator. The arbitrator shall possess the requisite experience and expertise in respect to matters to which the controversy relates to enable him or her to perform his or her arbitral duties competently. The cost of the arbitrator(s) and of any hearing transcript shall be divided equally between the parties. Any and all discovery in conjunction with such arbitration shall be limited to information directly relevant to the controversy or claim

in arbitration and shall be concluded within forty-five (45) days after the appointment of the arbitrator or arbitration panel. Judgment upon the arbitrator's determination shall be entered and enforced by the district court for the County in which the Community is located. This Section 16.4(a) may not be amended, nullified or modified without the written consent of the Declarant.

(b) **JURY WAIVER.** IN THE EVENT THAT ANY JUDICIAL PROCEEDING IS ALLOWED OR HAD HEREIN, IN ORDER TO EXPEDITE FINAL RESOLUTION OF ANY CONSTRUCTION DISPUTE, EACH PARTY TO THE DISPUTE WAIVES ANY RIGHT TO A JURY TRIAL FOR CLAIMS AND COUNTERCLAIMS RELATING TO THE CONSTRUCTION DISPUTE.

16.5. Limitations. Section 16.4 of this Article XVI shall not be amended unless such amendment is first approved by a vote of Members entitled to cast at least fifty percent (50%) of the total Member votes in the Association and shall not be amended, modified or repealed with respect to any Claims that constitute a "construction defect action" as defined in Section 303.5 of the Act without the prior written consent of the Declarant. The Association cannot sue anyone with respect to any issues on individual homes including, without limitation, construction and warranty claims, and can only sue for issues regarding the Common Areas and this limitation may not be amended, modified or repealed at any time without the prior written consent of the Declarant.

## ARTICLE XVII CONDOMINIUM AND OTHER HOMEOWNERS ASSOCIATIONS

### 17.1. In General.

Declarant may determine, in its sole discretion, that it is necessary or appropriate to have a portion of the Community administered by a condominium or non-condominium homeowners association which is separate and apart from the Association hereunder. For example, if the Declarant or other Person (with the consent of Declarant) desires to create a condominium on a portion of the Community pursuant to the Act, the Declarant or other Person having the consent of Declarant will record a condominium declaration with respect to such portion of the Community which condominium declaration will provide for the creation of a unit owners association to administer and maintain the condominium property. Similarly, the Declarant or other Person having the consent of Declarant may record a non-condominium declaration with respect to a portion of the Properties which will provide for the creation of a unit owners association to administer and maintain such portions of the Community. An example of a situation where the Declarant may create a separate homeowners association to administer a portion of the Community is where the homes which are made part of the Community will require services which are substantially, quantitatively or qualitatively different than those which will be furnished by the Association hereunder with respect to the Common Area, Limited Common Area or facilities. For purposes hereof, any separate declaration which is recorded against a portion of the Properties shall be referred to herein as a Supplemental Declaration and the association that is created to administer the real estate which is subject to the Supplemental Declaration shall be referred to herein as a Subassociation.

### 17.2. Relationship of the Association and the Subassociations.

It is intended that each Subassociation shall operate independent of the Association hereunder. Thus, to the extent that a Subassociation is granted the power and authority to maintain Dwelling Units or portions of the Community which serve Dwelling Units, the Association hereunder shall not be obligated to maintain such areas or furnish such services. However, nothing herein shall be deemed to restrict or limit the right of the Declarant or the Association under Article IV relating to architectural approval. Owners of Dwelling Units within and subject to a Subassociation shall be obligated and bound by all the terms and provisions of the Governing Documents of the Association and the governing documents of such Subassociation.

17.3. [Reserved].

### **ARTICLE XVIII - MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

18.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any Association insurance policy;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders; or

(e) If the U.S. Department of Housing and Urban Development ("HUD") is insuring or the U.S. Department of Veterans Affairs ("VA") is guaranteeing the Mortgage on any Lot and requires notice, material amendment to the Governing Documents or extraordinary action of the Association.

18.2. No Priority.

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

18.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

18.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a dated written request from the Association to approve, to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified mail, return receipt requested and complies with any other requirements set forth in the Act for notice to Mortgagees.

18.5. HUD/VA Approval.

As long as there is a Declarant membership, the following actions shall require, to the extent required by HUD or VA, the prior approval of the HUD or the VA, if either such agency is insuring or guaranteeing the Mortgage on any Lot: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Area; or material amendment of this Declaration or the Bylaws. In addition, so long as HUD or VA insures or guarantees the Mortgage on any Lot, the above actions also shall require, to the extent required by HUD or VA, the prior approval of at least two-thirds (2/3) of the Members and the consent of the Declarant.

Notwithstanding anything to the contrary herein, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the Membership or HUD or VA.

18.6. Approvals During Period of Declarant Control.

Notwithstanding any other provision of this Declaration or any of the other Governing Documents to the contrary, during the period, and to the extent required by FHA or VA: (a) commencing with the earlier of: (i) the date FHA or VA first approves any subdivision in the Community for single family residential loan insurance or guarantee programs offered by FHA or VA; or (ii) the date FHA or VA first insures or guarantees a loan or any Lot within the Community; and (b) ending with the expiration or termination of the Period of Declarant Control:

(a) property which is not included with the Additional Property shall not be annexed to the Community without the prior approval of either FHA or VA if and to the extent that FHA or VA require approval (except to the extent such annexation involves only minor adjustments to boundaries of the Community);

(b) neither the Common Area nor any part thereof shall be dedicated to the public without the prior approval of either FHA or VA if and to the extent that FHA or VA require approval except for minor adjustments to the boundaries of any Common Area or any other portion of the Community; except the following shall not be deemed dedications requiring approval: correction of conveyances made in error; dedications or grants of easements to the public, to any municipal or other governmental agency or entity, or to any public, quasi-public or private utility company or other grants of easements; and grants of easements with respect to, or dedications of, Common Area situated within the boundaries of a Parcel zoned for non-residential use, if granted, made or approved by the Board;

(c) to the extent required by FHA or VA, no amendment to this Declaration or to the Articles or Bylaws shall be effective without the prior approval of either FHA or VA (except to make clerical or technical corrections, and to annex the Additional Property); and

(d) to the extent required by FHA or VA, the Association shall not be dissolved, or merged or consolidated with any other entity, without the prior approval of FHA or VA.

Notwithstanding the provisions of this Section, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which any Government Mortgage Agency requires to be amended or repealed as a condition to making, purchasing, insuring or guaranteeing Mortgages, or is required in order to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, HUD, FHA or other Government Mortgage Agency, may be amended or repealed solely by Declarant and no approval, consent or vote of any other person or entity shall be required. Any such amendment or repeal shall be effective upon the recordation of a certificate, executed by Declarant, setting forth the amendment or repeal in full.

#### 18.7. Obtaining Approvals.

As to any action that requires FHA or VA approval before becoming effective or before being taken, such action shall be submitted to FHA or VA for approval, and if the agency whose approval is requested does not disapprove the same, by written notice to the Association, the Declarant or other Person requesting such approval, within thirty (30) days after delivery to such agency of the request for approval, the action in question shall be deemed approved by such agency.

#### 18.8. Definitions.

For purposes of this Article, the term "FHA" means the Federal Housing Administration (or its successor federal agency).

### **CHANGES IN THE COMMUNITY**

*Planned communities are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Vista at Montaine and its Governing Documents must be able to adapt to these changes while protecting the things that make the Community unique.*

## **ARTICLE XIX - CHANGES IN OWNERSHIP OF LOTS**

Any Owner, other than Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Association's secretary or designee at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Upon completion of the transfer, the New Member Fee as described in Section 9.14 shall be paid to the Association. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including assessment obligations, until the date upon which the Association, notwithstanding the transfer of title, receives such notice.

## **ARTICLE XX - CHANGES IN COMMON AREA**

### **20.1. Condemnation.**

If a Lot or Common Area, or any portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Area shall be allocated as provided in the Act.

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within sixty (60) days after such taking, Declarant, so long as Declarant owns any property described in Exhibit "A" or "B" of this Declaration, and at least sixty-seven percent (67%) of the total Members in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

### **20.2. Partition.**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees.

### **20.3. Transfer or Dedication of Common Area.**

The Association may dedicate or convey fee title in portions of the Common Area to any local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Section 19.5 and the approval of Members to the extent required by the Act.

## **ARTICLE XXI - AMENDMENT OF DECLARATION**

### 21.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until a Lot is conveyed to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration (a) to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (b) to correct clerical, typographical or technical errors; or (c) to the extent or for any purpose permitted by the Act, or as permitted as an exercise of a Declarant right.

### 21.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration or the Act, this Declaration may be amended, changed or modified, only by the affirmative vote or written consent, or any combination thereof, of Members representing at least sixty-seven percent (67%) of the total votes in the Association. In addition, the approval requirements set forth in Article XVIII shall be met, if applicable.

### 21.3. Validity and Effective Date.

No amendment may remove, revoke, limit, condition, or modify this Section 21.3 or any right or privilege of the Declarant established by a provision under this Declaration, which provisions are not merely covenants but contractual in nature and may not be unilaterally amended by the Owners to affect or alter the contractual agreement without the written consent of the Declarant or the assignee of such right or privilege. Each Amendment to this Declaration enacted by the vote or agreement of Owners of Lots shall be applicable only to disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred after the date of recording of such amendment in the County, and no such amendment shall be applied retroactively (i) to any disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred before the date of recording of such amendment in the County, or (ii) to impair the rights or obligations of any Person, including Declarant, bound by the provisions of this Declaration.

Any repeal or modification of any provision of the Association Documents permitting or requiring indemnification of director's and officer's shall be prospective only, and shall not adversely affect any limitation on the personal liability of a current or former director or officer of the Association for acts or omissions prior to such repeal or modification; any such repeal or modification shall not be effective as against a current or former director or officer of the

Association for acts or omissions prior to such repeal or modification without such director's of officer's written consent. Any indemnification or right of indemnification of directors and officers of the Association as provided by any of the Association Documents shall continue as to a person who has ceased to be a director or officer of the Association and shall inure to the benefit of the director's or officer's estate, heirs, personal representatives, executors and administrators.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall only become effective upon Recording, unless a later effective date is specified in the amendment. Any action to challenge the validity of an amendment must be made within one year of its Recordation or such amendment shall be presumed to be valid.

21.4. Exhibits.

Exhibits "A," "B," "C" and "D" attached to this Declaration are incorporated by this reference and may be amended as provided in this Declaration or the Act.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

**DECLARANT:**

Toll Southwest LLC, a Delaware limited liability company

By: *MB*

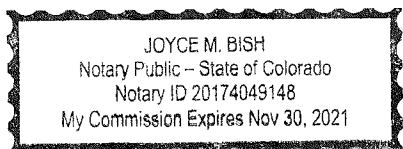
Name: MARK BAILEY

Title: GROUP PRESIDENT

STATE OF COLORADO §

COUNTY OF Arapahoe §

The foregoing instrument was acknowledged before me this 17 day of August, 2020 by Mark Bailey as Group President of Toll Southwest LLC, a Delaware limited liability company.



*Joyce M Bish*  
Notary Public

My Commission Expires: Nov. 30, 2021



**EXHIBIT "A"**

**Land Initially Submitted**

Lots 11 through 19, inclusive, and Lots 25 through 34, inclusive, Block 1,  
Lots 7 through 11, inclusive, Block 2,  
The Lanterns, Filing No. 2, Final Plat,  
Town of Castle Rock, County of Douglas, State of Colorado

Additional real property may be added and made subject to this Declaration at any time from time to time in accordance with Article XI of this Declaration.

**EXHIBIT "B"**

**Land Subject to Annexation**

Parcel A:

That portion of Section 27 lying east of the east right-of-way line of the Denver & Rio Grande Western Railroad, Township 8 South, Range 67 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, more particularly described as follows:

Commencing at the Southeast corner of Section 26;  
Thence, N89°48'30"W along the south line of the Southeast Quarter of said Section 26 for a distance of 2644.79 feet to a point on a line.  
Thence, N89°49'05"W for a distance of 2645.18 feet;  
Thence, N88°57'18"W for a distance of 1550.40 feet to the true point of beginning.

Thence, N88°57'18"W for a distance of 795.52 feet;  
Thence, N24°18'40"E for a distance of 1080.09 feet;  
Thence, S67°22'12"E for a distance of 406.21 feet;  
Thence, S01°38'45"W a distance of 842.86 feet to the true point of beginning.

Parcel B:

A parcel of land lying in the South half of Section 26, and in the Southeast Quarter of Section 27, Township 8 South, Range 67 West of the 6th Principal Meridian, County of Douglas, State of Colorado, more particularly described as follows:

Commencing at the Southeast corner of said Section 26, thence along the south line of the Southeast Quarter of said Section 26 N89°48'30"W, a distance of 1337.81 feet to the point of beginning;

Thence continuing along said south line N89°48'30"W, a distance of 1,306.98 feet to the South Quarter corner of said Section 26;  
Thence along the south line of the Southwest Quarter of said Section 26 N89°49'05"W, a distance of 2,645.18 feet to the southeast corner of the Southeast Quarter corner of said Section 27;  
Thence along the south line of said Southeast Quarter N88°57'17"W, a distance of 1,550.40 feet;  
Thence N01°38'45"E, a distance of 842.86 feet;  
Thence S67°22'12"E, a distance of 956.92 feet;  
Thence S89°48'30"E, a distance of 2,734.64 feet;  
Thence S58°53'53"E, a distance of 194.67 feet;  
Thence S89°48'30"E, a distance of 785.36 feet;  
Thence N49°36'38"E, a distance of 905.37 feet;  
Thence N17°02'03"E, a distance of 694.83 feet;  
Thence S00°31'14"E, a distance of 1,654.11 feet to the point of beginning.

Parcel C:

A portion of Section 26, that portion of Section 27 lying east of the east right-of-way line of the Denver & Rio Grande Western Railroad and that portion of the Southeast Quarter of the Southeast Quarter of Section 22 lying east of the east right-of-way line of the Denver & Rio Grande Western Railroad, Township 8 South, Range 67 West of the 6th Principal Meridian, County of Douglas, State of Colorado, more particularly described as follows:

Beginning at the Northwest corner of said Section 26;  
 Thence South 89 degrees 50 minutes 08 seconds East along the north line of the Northwest Quarter of the Northwest Quarter of said Section 26, 1313.69 feet to the Northwest corner of the Northeast Quarter

of the Northwest Quarter of said Section 26;

Thence South 89 degrees 50 minutes 08 seconds East along the north line of said Northeast Quarter of the Northwest Quarter, 1313.69 feet to the North Quarter corner of said Section 26;

Thence South 89 degrees 49 minutes 35 seconds East along the north line of the Northeast Quarter of said Section 26, 2626.94 feet to the Northeast corner of said Section 26;

Thence South 00 degrees 31 minutes 15 seconds East along the east line of the Northeast Quarter of said Section 26, 2650.59 feet to the East Quarter corner of said Section 26;

Thence South 00 degrees 29 minutes 22 seconds East along the east line of the Southeast Quarter of Said Section 26, 992.58 feet;

Thence North 90 degrees 00 minutes 00 seconds West, 1316.85 feet;

Thence South 18 degrees 44 minutes 16 seconds West, 701.53 feet;

Thence South 49 degrees 36 minutes 38 seconds West, 905.37 feet;

Thence North 89 degrees 48 minutes 30 seconds West, 785.36 feet;

Thence North 58 degrees 53 minutes 53 seconds West, 194.67 feet;

Thence North 89 degrees 48 minutes 30 seconds West, 2734.64 feet;

Thence North 67 degrees 22 minutes 12 seconds West, 1363.12 feet to the east right-of-way line of the Denver & Rio Grande Western Railroad and a point of curve;

Thence along said east right-of-way line the following twelve (12) courses:

1. Along the arc of said curve to the left having a radius of 6027.22 feet, a central angle of 03 degrees 21 minutes 51 seconds (the chord of which bears North 22 degrees 37 minutes 45 seconds East, 353.84 feet), 353.89 feet to the north line of the South half of the Southeast Quarter of said Section 27,

2. Thence North 89 degrees 04 minutes 00 seconds West along said line, 53.24 feet to a point on a curve;

3. Thence along the arc of said curve to the left having a radius of 5977.22 feet, a central angle of 10 degrees 28 minutes 41 seconds (the chord of which bears North 15 degrees 52 minutes 57 seconds East, 1091.57 feet), 1093.09 feet to a point of tangent;

4. Thence North 10 degrees 38 minutes 37 seconds East along said tangent, 1158.08 feet to the West line of the Southeast Quarter of the Northeast Quarter of said Section 27;

5. Thence South 00 degrees 33 minutes 47 seconds East along said line, 257.26 feet;

6. Thence North 10 degrees 38 minutes 37 seconds East, 719.23 feet to the south line of the Northeast Quarter of the Northeast Quarter of said Section 27;

7. Thence North 89 degrees 08 minutes 38 seconds West along said line, 50.75 feet;

8. Thence North 10 degrees 38 minutes 37 seconds East, 122.51 feet to a point of curve;

9. Thence along the arc of said curve to the right having a radius of 11409.21 feet, a central angle of 02 degrees 02 minutes 31 seconds, 406.61 feet to a point of tangent;

0. Thence North 12 degrees 41 minutes 08 seconds East along said tangent, 1624.70 feet;

1. Thence South 77 degrees 18 minutes 52 seconds East, 100.00 feet;

2. Thence North 12 degrees 41 minutes 08 seconds East, 567.51 feet to the north line of the Southeast Quarter of the Southeast Quarter of said Section 22;

Thence South 89 degrees 05 minutes 49 seconds East along said line, 527.42 feet to the Northeast corner of the Southeast Quarter of the Southeast Quarter of said Section 22;  
Thence South 00 degrees 09 minutes 41 seconds West along the east line of the Southeast Quarter of the Southeast Quarter of said Section 22, 1329.96 feet to the Point of Beginning,  
Excepting therefrom that portion conveyed to the Town of Castle Rock by Deed recorded February 13, 2006, under Reception No. 2006012500.

Parcel D:

A portion of Section 26, Township 8 South, Range 67 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, more particularly described as follows:  
Starting at the Southeast corner of said Section, the Point of Beginning;  
Thence N00°29'22"W along the East line of the Southeast Quarter of said Section 26, 2,651.16 feet to the East Quarter corner of said Section 26;  
Thence N00°31'15"W along the East line of the Northeast Quarter of said Section 26, 1,325.39 feet, to the Southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 26;  
Thence N89°49'38"W along the South line of the Northeast Quarter of the Northeast Quarter of said Section 26, 1,339.25 feet;  
Thence S00°31'15"E, 3,976.13 feet, to a point on the South line of the Southeast corner of Section 26;  
Thence N89°48'30"W along the South line of the Southeast Quarter of said Section 26, 1,337.81 feet to the Point of Beginning,

but EXCEPTING THEREFROM the following described parcel of land conveyed in Special Warranty Deed recorded February 21, 2018 at Reception No. 20180010017 of the Records of Douglas County Colorado:

A parcel of land lying in the East half of Section 26, Township 8 South, Range 67 West of the 6th Principal Meridian, County of Douglas, State of Colorado, more particularly described as follows:

Beginning at the Southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 26;

Thence along the east line of the Southeast Quarter of the Northeast Quarter of said Section S00°29'19"E, a distance of 1,325.68 feet to the East Quarter corner of said Section;  
Thence along the east line of the Northeast Quarter of the Southeast Quarter of said Section S00°30'18"E, a distance of 992.28 feet;  
Thence N90°00'00"W, a distance of 1,338.21 feet;  
Thence N00°31'15"W, a distance of 2321.85 feet to a point on the south line of the North half of the Northeast Quarter of said Section 26;  
Thence along said South line S89°49'37"E, a distance of 1,339.27 feet, to the point of beginning.

Excepting and excluding the real property described on Exhibit "A".

**Note to clerk and title examiners:**

This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit C. Such title may be encumbered by this Declaration only by the annexation of the property, or portion thereof, into the Community in accordance with the provisions of this Declaration.

## EXHIBIT "C"

### Initial Use Restrictions

The purpose of Design Guidelines and Use Restrictions is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities which fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IV, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Lot under one set of circumstances, the same thing may be disapproved for another Lot under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it estop the Board from taking enforcement action in any appropriate circumstances.

Subject to the above, the following restrictions shall apply to all of the Community until such time as they are amended, modified, repealed, or limited pursuant to Article III of the Declaration.

(a) General. When used in these Use Restrictions, the phrase "Visible from Neighboring Property" shall mean, with respect to any given object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of the neighboring property at an elevation no greater than the elevation of the base of the object, structure or building being viewed, except where the object is visible solely through a view fence and would not be visible if the view fence were a solid six-foot tall fence.

(b) Animals and Pets. No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Community, except that for each Dwelling Unit there shall be permitted a reasonable number of usual and common household pets, such as dogs and cats, as determined in the Board's discretion. Pets which are permitted to roam free, or, in the Association's sole discretion, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners or residents of any portion of the Community shall be removed upon the Board's request at the Owner's expense. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner's expense. No pets shall be kept, bred, or maintained for any commercial purpose.

(c) Wildlife. Capturing, killing, or trapping wildlife is prohibited within the Community, except for trained professionals in circumstances imposing an imminent threat to the safety of Persons or pets.

(d) Firearms or Other Weapons. The carrying, use or discharge of firearms or other weapons within the Community is prohibited. The term "firearms or other weapons" includes, but is not limited to, handguns, rifles, "B-B" guns, pellet guns, cross-bows and other firearms or other weapons of all types, regardless of size.

(e) Nuisances. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Community or which results in unreasonable levels of sound or light pollution.

(f) Garages. Garages shall be used only for parking vehicles and storage, and shall not be used or converted for living or recreational activities or used for storage which prevents the parking of an automobile in the garage.

(g) Storage of Goods. Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Association), or, if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Parcel, except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction or modification) of a building, appurtenant structures of other Improvements; and (b) that which Declarant or Association may permit or require for the development, operation and maintenance of the Community.

(h) Prohibited Conditions. The following conditions, structures, or activities are prohibited on any Lot.

(i) Guest House (except as initially constructed by Declarant or approved by Declarant as part of the initial construction of a Dwelling Unit on a Lot);

(ii) Storage sheds, shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of improvements within the Community. Temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair;

(iii) Portable sport goals may be used on a Lot without prior approval by must be stored overnight or otherwise on in use. No swingsets, trampolines, permanent basketball standards, similar devices or other play structures shall be placed or constructed on any Lot without the prior approval of the Reviewer (including, without limitation, approval as to appearance and location); and

(iv) Statues, lawn ornaments and yard decorations of any size or type must be placed in compliance with the Design Guidelines.

In any event, and notwithstanding the above list of prohibited conditions, as set forth in Article IV, any structure, improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval unless otherwise specifically exempt under this Declaration, the Design Guidelines or under applicable law.

(v) Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits unreasonably foul or obnoxious odors outside the Lot or creates unreasonable noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Lots.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants and invitees of other Lots.

(i) Signs. No sign shall be erected within the Community, except those required by legal proceedings, including posters, circulars, and billboards; provided, the following types of signs may be erected on a Lot without the Reviewer's written consent: (i) residential identification signs of a face area of 75 square inches or less for identification of the occupant and its address, in the number, size, color, design, message content and location designated by the ARC; (ii) one temporary sign of customary size, as determined by the ARC, for the purpose of advertising the Lot for sale, and which shall not be allowed to remain on a Lot or Parcel for more than a total of ninety (90) days during any 365 day period; (iii) temporary "open house" signs indicating that a Lot is available for inspection by interested parties, but such signs may only be erected or maintained during the hours of 7:00 a.m. through 6:00 p.m. on Saturdays, Sundays, legal holidays or other days designated by the ARC; (iv) one temporary sign identifying the Person installing landscaping or a pool on the Lot, but only during the period that such installation is in progress; (v) security signs of a face area of 75 square inches or less, in a style and location designated by the Design Guidelines or approved by the ARC; (vi) such construction job identification signs, business identification signs and subdivision identification signs which are in conformance with the requirements of the municipality having jurisdiction over the property and which have been approved in writing by the Reviewer as to number, size, color, design, message content and location; (vii) "political signs" as defined in the Act which are displayed by an Owner or occupant on such Owner's or occupant's lot or in a window of such Owner's or occupant's home that are displayed in conformance with ordinances of the Town; and (viii) a no soliciting sign placed near the front door in a style designated by the Design Guidelines. This restriction shall not apply to entry, directional, and marketing signs installed by Declarant or a Builder. The Board and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate.

(j) Holiday Decorations. Owners may display holiday decorations located or visible from outside their Dwelling Units if the decorations are of the kinds normally displayed in single family residential neighborhoods, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed in season only from November 15 to January 15 and, during other times of the year, from ten (10) days before to ten (10) days after any nationally recognized holiday. Illumination of holiday lighting shall be allowed only from Thanksgiving Day through January 5.

(k) Antennas and Satellite Dishes. Except as may otherwise be permitted by the Reviewer, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction in the Community. Notwithstanding the foregoing, neither the restrictions nor the requirements of this Section shall apply to those antennae (which may include some satellite dishes and other devices) that are specifically covered by the Telecommunications Act of 1996, as amended from

time to time. As to antennae which are specifically covered by the Telecommunications Act of 1996, as amended, the Association shall be empowered to adopt rules and regulations governing the types of antenna that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance. Residents are encouraged to place any satellite dish antenna in the back yard, below the wall level, if reception is available at that location. If not, then placement should be on the back or side of the house below the roofline, if reception is available at that location. If an acceptable signal is not available in either of those locations, then placement may be above the roofline or in the front of the house and any associated conduits should match the home. Any front of house or front yard installation should be screened from view to the extent practicable.

(l) Trash Containers and Collection. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage, trash or recycling pickup. Such containers shall not be kept or stored in a manner that is Visible from Neighboring Property except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. No outdoor incinerators shall be kept or maintained on any Lot.

(m) Pool Equipment. All pool equipment stored on any Lot shall be screened.

(n) Unightly or Unkempt Conditions. All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate within, upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unightly, offensive or detrimental to any other portion of the Community.

Woodpiles or other material shall be stored in a manner so as not to be Visible from Neighboring Property and not to be attractive to rodents, snakes, and other animals and to minimize the potential danger from fires. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Community. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace.

(o) Landscaping. Pursuant to Section 5.1 of the Declaration, initial landscaping shall be installed, as approved, in the front, rear and side yards of a Lot within two-hundred ten (210) days from the date of the initial closing of the purchase of the Lot or the issuance of a certificate of occupancy on the Lot, whichever is later, or within any extension of that time period set forth in the Design Guidelines or granted by the Reviewer.

(p) Vehicles and Parking. The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

No person shall park any recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, stored vehicles, and unlicensed vehicles or inoperable vehicles on a Lot or Common Area within the Community other than in enclosed garages. This Section shall not apply to emergency vehicle repairs.

Notwithstanding the above, for purposes of cleaning, loading, unloading, and short term parking, recreational vehicles may be parked on the Lot's driveway for period not exceeding forty-eight (48) hours no more frequently than four such periods every thirty (30) days. The Association may require Owners to obtain a recreational vehicle permit for such short term parking from the Association office. Short term recreational vehicle parking may be allowed on the street by special permit from the Association office.

(q) Wetlands, Lakes, and Other Water Bodies. All wetlands, lakes, ponds, and streams within the Community, if any, shall be aesthetic amenities only, and no other active use of lakes, ponds, streams, or other bodies of water within the Community is permitted, unless the Association has granted the use prior authorization. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to the Community.

(r) Solar Equipment. Notwithstanding any provision in the Governing Documents to the contrary, the Association may not effectively prohibit renewable energy generation devices or the installation or use of any energy efficient measures, provided that the Association may adopt reasonable aesthetic rules and regulations concerning dimensions, placement or external appearance of such devices or measures to the extent such rules and regulations do not conflict with or violate applicable laws.

(s) Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Dwelling Unit or other building so as to be Visible From Neighboring Property.

(t) Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot or Parcel unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot or Parcel of an aboveground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace or a spa or "hot tub," so long as any such tank either: (a) has a capacity of ten (10) gallons or less; or (b) is appropriately stored, used and/or screened, in accordance with the Rules or as to otherwise approved by the Reviewer, so as not to be Visible from Neighboring Property.

## EXHIBIT "D"

### Licenses and Easements

The Community is or may be subject to the recorded easements, licenses and other matters listed below, which are recorded in the office of the clerk and recorder of Douglas County.

1. An easement for communication systems and incidental purposes granted to American Telephone and Telegraph Company, as set forth in an instrument recorded August 31, 1951 in Book 103 at Page 316.
2. Reservation of 1/2 interest in all oil and gas rights as set forth in Warranty Deed recorded November 23, 1953 in Book 110 at Page 74.
3. The Lanterns Annexation Map, recorded June 25, 2003 at Reception No. 2003094054.
4. Easements, notes, covenants, restrictions and rights-of-way as shown on the Preliminary Plat/Final PD Site Plan for: The Lanterns, recorded April 25, 2006 at Reception No. 2006034280, and Planned Development Plan, Amendment No. 3 recorded December 8, 2014 at Reception No. 2014071295 and terms, conditions, provisions, obligations and agreements as set forth in the Ordinance No. 2014-08 recorded December 8, 2014 at Reception No. 2014071294 and the Amendment thereto recorded November 1, 2018 at Reception No. 2018066758.
5. Terms, conditions, provisions, obligations and agreements as set forth in The Lanterns Amended and Restated Development Agreement recorded December 8, 2014 at Reception No. 2014071296.
6. Terms, conditions, provisions, obligations and agreements as set forth in the Agreement of Sale evidenced by Memorandum of Agreement recorded July 24, 2018 at Reception No. 2018044682.
7. Any tax, lien, fee or assessment by reason of inclusion of subject property in the Lanterns Metropolitan District No. 1, as evidenced by instrument recorded September 17, 2018 at Reception No. 2018056736. NOTE: Order for Exclusion in connection therewith recorded February 6, 2019 at Reception No. 2019006037.
8. Any tax, lien, fee or assessment by reason of inclusion of subject property in the Lanterns Metropolitan District Nos. 4 and 5, as evidenced by instrument recorded January 17, 2019 at Reception No. 2019002913 and January 25, 2019 at Reception No. 2019003941.
9. Reservation of any and all minerals, oil, gas and other hydrocarbon substances and geothermal resources and mineral rights, on, over, in, under or that may be produced from the property as contained in that certain Special Warranty Deed recorded June 12, 2019 at Reception No. 2019033592.

10. Easements, notes, covenants, restrictions and rights-of-way as shown on The Lanterns, Filing No. 2, Final Plat, County of Douglas, State of Colorado, recorded on December 12, 2019 at Reception No. 201985015.

11. Terms, conditions, provisions, obligations and agreements as set forth in Lanterns Filing No. 2 Subdivision Improvements Agreement.