

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE SHORES AT THE HIGHLANDS

(A Residential Planned Community)

AFTER RECORDING, RETURN TO:
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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE SHORES AT THE HIGHLANDS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE SHORES AT THE HIGHLANDS ("**Declaration**") is made as of the ____ day of December, 2014, by PFP MeriwetherBreckenridge Holdings, LLC, a Delaware limited liability company ("**Declarant**") and The Shores at The Highlands Association, Inc., a Colorado nonprofit corporation ("**Association**"), including Members of the Association as noted on the signature page hereof

PREAMBLE

WHEREAS, that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Shores at the Highlands was recorded in the real estate records of Summit County, Colorado, on February 24, 2014 at Reception No. 1049376, and was amended by that certain First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Shores at the Highlands recorded in the real estate records of Summit County, Colorado, on June 24, 2014 at Reception No. 1057398 (collectively, "**Prior Declaration**");

WHEREAS, the Prior Declaration amended and restated in its entirety that certain Declaration of Covenants, Conditions and Restrictions for The Shores at The Highlands which was recorded in the real estate records of Summit County, Colorado, on September 9, 2008 at Reception No. 896027 ("**Original Declaration**");

WHEREAS, pursuant to that certain Assignment of Declarant Rights recorded in the real estate records of Summit County, Colorado, on June 25, 2014 ("**Assignment of Declarant Rights**"), Declarant was assigned all "Declarant Rights" described in the Assignment of Declarant Rights;

WHEREAS, the Prior Declaration provided that it could be amended at any time with the consent of at least sixty percent (60%) of the vote in the Association and with the written consent of Declarant during the Declarant Control Period (as defined in the Prior Declaration"); and

WHEREAS, at least sixty percent (60%) of the vote in the Association (including sixty-seven percent [67%] of the vote allocated to persons other than Declarant) and Declarant hereby wish to fully amend and restate the Prior Declaration.

NOW, THEREFORE, the Prior Declaration is hereby amended and restated in its entirety such that this Declaration fully and finally replaces the Prior Declaration. The Prior Declaration shall no longer encumber title to the Property (defined below) and is hereby released against title to the Property.

ARTICLE ONE
DEFINITIONS

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

- 1.1 "Act" means the Colorado Common Interest Ownership Act, C.R.S. §38-333-101, *et seq.*
- 1.2 "Agency" means any agency or corporation such as the U.S. Department of Housing and Urban Development ("**HUD**"), U.S. Veterans' Administration ("**VA**"), Federal National Mortgage Association ("**FNMA**") or the Federal Home Loan Mortgage Corporation ("**FHLMC**") that purchases or insures residential mortgages.
- 1.3 "**Allocated Interests**" means the Common Expense Liability and the votes in the Association that are allocated to each of the Units in the Project. The formulas used to establish the Allocated Interests are as follows:

(a) *Common Expense Liability.* Common Expenses shall be determined by first determining the Common Expenses due for each Undeveloped Unit, and then determining the Common Expenses due for each Developed Unit as follows:

(i) Undeveloped Units. Common Expenses levied against each Undeveloped Unit shall be determined by multiplying the number of Developed Units that may be located upon such Undeveloped Unit by \$4.58/month (i.e., at the recording of this Declaration, the Owner of Tract A would be responsible for an annual Common Expense payment of \$659.52- \$4.58 x 12 months x 12 Developed Units). Solely for purposes of calculating the Common Expense Liability of the Undeveloped Units: twelve (12) Developed Units are intended to be located upon Tract A (as described on **Exhibit A**); twenty-two (22) Developed Units are intended to be located upon Tract A-1B (as described on **Exhibit A**); two (2) Developed Units are intended to be located upon each of Lots 18 and 19 (as described on **Exhibit A**); one (1) Developed Unit is intended to be located upon each of Lot 3A and 3B; and zero (0) Developed Units are intended to be located upon Lot 17 (as described on **Exhibit A**).

(ii) Developed Units. The balance of Common Expense amounts in the Budget remaining after determining the Common Expenses for each Undeveloped Unit pursuant to the foregoing shall be levied against the Developed Units equally.

Declarant reserves the right to amend the denominator used for calculating the Common Expenses Liability (or to delegate in writing such right to the Board) by Amendment to this Declaration in the event that more or less than fifty-six (56) Developed Units are constructed at complete build out of the Project.

(b) *Votes.* Owners of a Developed Unit shall be entitled to one (1) vote for each Developed Unit owned within the Project. Owner(s) of an Undeveloped Unit shall be entitled to one (1) vote for each Developed Unit that may be located upon such Undeveloped Unit as described in the foregoing paragraphs.

1.4 "Articles" means the Articles of Incorporation of the Association.

1.5 "Assessments" means the (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, (d) Fines and (e) Costs of Enforcement levied pursuant to this Declaration.

1.6 "Assessment Lien" means the Association's statutory lien on a Unit for any Assessment levied against that Unit. Notwithstanding the amendment and restatement of the Original Declaration, the priority of the Assessment Lien dates back to the recording of the Original Declaration for purposes of §3 16(2)(a)(I) of the Act.

1.7 "Association" means The Shores at The Highlands Association, Inc., a Colorado nonprofit corporation, its successors and assigns. The Articles and Bylaws of the Association, along with this Declaration, shall govern the administration of the Project, the Members of which shall be all of the Owners of the Units within the Project.

1.8 "Board" means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by Declarant as provided in Section 4.6 below.

1.9 "Budget" means the annual budget of the Association prepared and adopted in accordance with Section 4.8 below.

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

1.11 "Clerk and Recorder" means the office of the Clerk and Recorder in Summit County, Colorado.

1.12 "Committee" means the committee formed to review and approve or disapprove plans for Improvements pursuant to Article Thirteen below.

1.13 "Common Areas" means any real property (including all Improvements located thereon), other than the Units, which is owned by the Association for the common use and enjoyment of the Owners, unless otherwise provided herein. As of the recording of this Declaration there are no Common Areas. Common Areas shall be added in the future and deeded to the Association pursuant to Article Eleven below.

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

1.14 "Common Expense Assessments" means the funds required to be paid by each Owner in payment of such Owner's Common Expense Liability as more fully defined in Section 5.2 below.

1.15 "Common Expense Liability" means the liability for the Common Expense Assessments allocated to each Unit and determined in accordance with that Unit's Allocated Interests as set forth in Section 1.3(a) above.

1.16 "Common Expenses" means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserve funds.

1.17 "Costs of Enforcement" means all fees, late charges, interest and expenses, including receivers' fees, reasonable attorneys' fees and costs incurred by the Association in connection with the collection of Assessments, and the enforcement of the terms, conditions and obligations of the Project Documents. Costs of Enforcement are collectible and enforceable as Assessments.

1.18 "County" means Summit County, Colorado.

1.19 "Declarant" means PFP Meriwether Breckenridge Holdings, LLC, a Delaware limited liability company, and its successors and assigns. A Person shall be deemed a "successor and assign" of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the Declarant Rights which are specifically designated in the recorded instrument.

1.20 "Declarant Rights" means the development rights, special declarant rights and other rights granted to or reserved by Declarant as set forth in this Declaration and the Act. The Declarant Rights granted or reserved herein supersede and control over the "Declarant Rights" assigned to Declarant pursuant to the Assignment of Declarant Rights.

1.21 "Declaration" means this Declaration, the Map and any supplements and amendments thereto recorded with the Clerk and Recorder.

1.22 "Developed Unit" means each of the Units described as Developed Units on the attached Exhibit A, including the Home located thereon.

1.23 "Fines" means those fines described in Section 5.3(d) below.

1.24 "Guest" means (a) any Person who resides with an Owner within the Project, (b) a guest or invitee of an Owner, (c) an occupant or tenant of a Unit within the Project, and any members of his or her household, invitee or cohabitant of any such Person, or (d) a contract purchaser.

1.25 "Home" means the residence and all other Improvements constructed on each Developed Unit parcel or lot within the Project and any replacement thereof.

1.26 "Improvements" means:

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

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

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

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

1.27 **'Individual Assessments'** means those Assessments defined in Section 5.3(c) below.

1.28 **'Land Use Restriction'** means that certain Declaration of Land Use Restrictions for West Braddock recorded with the Clerk and Recorder on December 1, 2006 at Reception No. 840220, as amended from time to time.

1.29 **'Managing Agent'** means any one (1) or more persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

1.30 **'Map'** means that certain Final Plat of The Shores at The Highlands recorded with the Clerk and Recorder on February 5, 2008 at Reception No. 879991, as amended by that certain Final Plat of The Shores at the Highlands Filing No. 1 recorded with the Clerk and Recorder on September 9, 2008 at Reception No. 896025, as amended by that certain Final Plat of The Shores at The Highlands Filing No. 2 recorded with the Clerk and Recorder on September 1, 2009 at Reception No. 921750, as amended by that certain Resubdivision Plat of The Shores at The Highlands, Filing No. 3 recorded with the Clerk and Recorder on July 16, 2012 at Reception No. 997584, as amended by that certain A Resubdivision Plat of Tract A of The Shores at The Highlands, Filing No. 2 recorded with the Clerk and Recorder on October 2, 2012 at Reception No. 1004529, as amended by Affidavit recorded with the Clerk and Recorder on January 15, 2013 at reception No. 1014810, as further amended and/or supplemented from time to time.

1.31 **'Maximum Number of Units'** means a total of sixty (60) Units, including any Developed Units which may be constructed upon the Undeveloped Units in the future as described in Article Eleven below.

1.32 **'Member'** means each Owner, as defined in Section 1.37 below.

1.33 **'Mortgage'** means any mortgage, deed of trust or other document conveying any Unit or interest therein to a Mortgagee, but only as security for payment of a debt or obligation and not

intended to initially convey fee simple title thereof.

1.34 **"Mortgage"** means any Person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such Person under such Mortgage.

1.35 **"Nonprofit Act"** means the Colorado Revised Nonprofit Corporation Act.

1.36 **"Notice and Hearing"** means a written notice and an opportunity for a hearing before the Board in the manner provided for in the Bylaws.

1.37 **"Owner"** means the record owner of the fee simple title to any Unit which is subject to this Declaration.

1.38 **"Owner's Agent"** means any agent, contractor, employee, family member, licensee or Guest of an Owner.

1.39 **"Period of Declarant Control"** means the period of time during which Declarant may appoint and remove any officer of the Association and any member of the Board (subject to the provisions of Section 4.7 below).

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

1.41 **"Project"** means the common interest community created by this Declaration and as shown on the Map consisting of the Property, the Units, the Common Areas and such additional property that may be annexed into the common interest community pursuant to Article Eleven below.

1.42 **"Property"** means all of the real estate described on the attached **Exhibit A**.

1.43 **"Project Documents"** means this Declaration, the Map, the Articles, the Bylaws, the Design Review Guidelines (described in Article Thirteen below) and the Rules (and any other documents promulgated by the Board), as they may be amended or supplemented from time to time.

1.44 **"Rules"** means the rules and regulations adopted by the Board for the regulation and management of the Project, as amended from time to time.

1.45 **"Special Assessments"** means those Assessments defined in Section 5.3(b) below.

1.46 **"Town"** means the Town of Breckenridge, Colorado.

1.47 **"Undeveloped Unit"** means each of the Units described as Undeveloped Units on the attached **Exhibit A**, which currently do not have a Home constructed thereon.

1.48 **"Units"** means each of the Developed Units and Undeveloped Units.

ARTICLE TWO
SCOPE OF THE DECLARATION

2.1 Property Subject to this Declaration. The Property is subject to the provisions of this Declaration which creates a planned community subject to the Act.

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

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

2.3 Owner's Rights Subject to Project Documents. Each Owner shall own their Unit subject to the provisions of the Project Documents.

2.4 Initial Units. The initial number of Units within the Project is set forth on the attached **Exhibit A**. Declarant reserves the right, but not the obligation, to add and/or create additional Units, including additional Developed Units (and Common Areas) pursuant to Article Eleven below; *provided, however*, that in no event shall more than the Maximum Number of Units be located within the Project.

2.5 Identification and Boundaries of Units. The identification number and boundaries of each Unit is as shown on the Map.

ARTICLE THREE
COMMON AREAS

3.1 Transfer of Title to the Common Areas. Upon the creation of Common Areas within the Project, the owner of such property will convey title thereto to the Association. Any property conveyed to the Association shall be conveyed free and clear of all monetary liens and monetary encumbrances (other than the lien of real estate taxes not then due and payable), but otherwise subject to all covenants, conditions, easements and restrictions of record.

3.2 Owner's Rights in the Common Areas. Subject to use restrictions contained herein, or in any other recorded instrument affecting the Project, or in any other Project Document, or promulgated by the Association, every Owner and their Guests shall have the right and easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to the Unit to such *Owner; provided, however*, that the right to use and enjoyment of any Limited Common Areas are limited to the Owners of the Units to which such Limited Common Areas are allocated. Each Owner's right to own and use their Unit and the Common Areas shall also be subject to the Declarant Rights reserved herein and the following rights of the Board:

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

(b) To convey or dedicate all or any part of the said Common Areas for such purposes and subject to such conditions as may be agreed to by (i) Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Units not owned by Declarant, and (ii) all Owners of any Limited Common Area conveyed or dedicated as more fully set forth in §312 of the Act. The granting of permits, licenses and easements shall not be deemed a conveyance or dedication within the meaning of this Section 3.2(b).

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

(d) To suspend the voting rights of an Owner for any period during which any Assessment remains unpaid or for any violation of a Project Document.

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

(f) To close or limit the use of the said Common Areas temporarily while maintaining, repairing or replacing Common Areas.

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

(h) The rights granted to the Association and Board in Section 4.2 below.

3.3 Delegation of Use. Any Owner may delegate their right of enjoyment of the Common Areas to their Guests subject to limitations created by the Board.

ARTICLEFOUR THE ASSOCIATION

41 Name. The name of the Association is The Shores at The Highlands Association, Inc., and it is a Colorado nonprofit corporation.

42 Purposes and Powers. Except as otherwise provided herein, the Association, through its Board, shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and keep the same in an attractive and desirable condition for the use and enjoyment of all Owners and their Guests. In addition, the Association shall maintain all property required to be maintained by the Association pursuant to the Land Use Restriction as described in Section 103 below. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management rights. The Board shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association, including, but not limited to, the following:

(a) *Attorney-in-Fact.* The Board is hereby irrevocably appointed attorney-in-fact for each Owner in order (i) to manage, control and deal with the interest of each Owner in the Common Areas, so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, and (ii) to deal with the Project upon its destruction, condemnation or obsolescence as hereinafter provided.

Acceptance of any interest in any Unit shall constitute an appointment of the Board as attorney-in-fact as provided above and hereinafter. The Board shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Common Areas (and the Units when required herein) and to perform all of the duties required of it.

(b) *Contracts, Easements, and Other Agreements.* Subject to Section 4.9 below, the Board shall have the right to enter into, grant, perform, enforce, cancel and vacate any contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use of Common Areas by Owners, Guests or any other Persons, including, without limitation, the general public.

Any of such contracts, easements, licenses, leases, agreements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board, without the necessity of the consent thereto, or joinder therein, of the Owners, Mortgagees or any other Person.

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

(d) *Implied Rights.* The Board shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, including, without limitation, the Act and the Nonprofit Act, or which may be necessary or desirable to **fulfill** its duties, obligations, rights or privileges.

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

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

4.5 Membership/Voting Rights. Members of the Association shall be every record Owner of a Unit subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Unit. The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Project, of all former Owners entitled to distributions of the proceeds under §218 of the Act, or their heirs, personal representatives, successors or assigns.

The Association shall have one (1) class of voting membership. Where more than one (1) Person holds an interest in any Unit, all such Persons shall be Members but such Unit shall only have the number of votes described in Section 1.3(b) above.

4.6 Declarant Control of the Association. The Period of Declarant Control terminates no later than the earlier of:

- (a) sixty (60) days after conveyance by Declarant of seventy-five percent (75%) of the Maximum Number of Units to Owners other than a Declarant;
- (b) two (2) years after the last conveyance of a Unit by a Declarant in the ordinary course of business;
- (c) two (2) years after any right to add new Units to the Project was last exercised by Declarant; or
- (d) twenty (20) years after the recording of this Declaration.

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

4.7 Election by Owners. Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Maximum Number of Units to Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant.

Not later than sixty (60) days after conveyance of fifty percent (50%) of the Maximum Number of Units to Owners other than a Declarant, not less than thirty three and one-third percent (33 1/3%) of the members of the Board must be elected by Owners other than Declarant.

Not later than the termination of the Period of Declarant Control, Owners shall elect a Board consisting of at least three (3) members, at least a majority of whom must be Owners other than Declarant. The Board shall appoint the officers of the Association (see Bylaws).

48 Budget.

(a) *Annual Budget.* Within ninety (90) days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget within a reasonable time after delivery of the summary. Unless at that meeting Owners to which at least a majority of all of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent Budget adopted by the Board.

(b) *Amended Budget.* If the Board deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Section 4.8(a) above, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall be a reasonable time after the delivery of the summary of the proposed amendment. Unless at that meeting Owners to which at least a majority of the votes in the Association are allocated reject the amended Budget, the amended Budget shall be deemed ratified whether or not a quorum is present.

4.9 Association Agreements. Any agreement for professional management of the Project, or any contract providing for services of Declarant, may be terminated without penalty to the Association at any time after termination of the Period of Declarant Control, upon not less than ninety (90) days* notice to the other party.

4.10 Indemnification. Each officer of the Association and each director of the Board shall be indemnified by the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been an officer of the Association or director of the Board, or any settlements thereof, whether or not he or she is an officer of the Association or director of the Board at the time such expenses are incurred, to the full extent permitted by Colorado law and as further set forth in the Bylaws. In the event of any conflict between the terms of this Section 4.10 and the Bylaws, the Bylaws shall control.

ARTICLE FIVE ASSESSMENTS

5.1 Obligation. Each Owner shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, (d) Fines and (e) Costs of Enforcement, all of which shall be a continuing lien upon the Unit against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts payable in full when due without notice or demand and without setoff or deduction. All Owners of each Unit shall be jointly and severally liable to the Association

for the payment of all Assessments attributable to their Unit notwithstanding any agreement to the contrary among such Owners.

Each Assessment against a Unit is the continuing personal obligation of the Person(s) who owned the Unit at the time the Assessment became due and shall also pass to successors in title, jointly and severally. *By acceptance of a deed for a Unit, each Unit purchaser thereby consents to assume the foregoing joint and several obligation for all Assessments due against the Unit pursuant to this Section 5.1.*

The omission or failure of the Board to levy Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay Assessments.

No Owner may waive or otherwise escape liability for the payment of Assessments by the non-use of the Common Areas or the abandonment of such Owner's Unit.

5.2 Purpose of the Common Expense Assessments. The Common Expense Assessments levied by the Association shall be used for the purpose of promoting the welfare and interests of the Owners, including, but not limited to (a) providing for the administration and management of the Project, (b) providing for the upkeep, operation, improvement, repair, maintenance and reconstruction of the Common Areas, including, but not limited to, the maintenance required in Article Ten below, (c) providing for the upkeep, operation, improvement, repair, maintenance and reconstruction of certain portions of the Units and other property as described in Article Ten below, (d) providing the insurance required by Article Eight below, (e) paying for any maintenance required pursuant to the Land Use Restriction, (f) creating a reasonable and adequate contingency or other reserve or surplus funds for insurance deductibles and general, routine maintenance, repairs and replacement of the Common Areas on a periodic basis, as needed, and (g) satisfying any other purpose reasonable, necessary or incidental to such purposes.

5.3 Levy of Assessments.

(a) *Common Expense Assessments.* Common Expense Assessments shall be levied based upon the Budget's cash requirements. The Common Expense Liability shall be allocated among all Units in accordance with each Unit's Common Expense Liability as set forth in Section 1.3(a).

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

(b) *Special Assessments.* In addition to the other Assessments authorized herein, the Board, subject to the requirements set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense, including, but not be limited to, the cost of any construction, reconstruction, improvement, repair or replacement of any property for which it has a maintenance, repair or replacement responsibility, or for the funding of any operating deficit incurred by the Association provided that, except as otherwise set forth herein, any such Assessment shall have the approval of Owners to whom at least a majority of the votes in the Association are allocated. Any such Special Assessment shall be levied against each Unit in accordance with that

Unit's Common Expense Liability determined in accordance with Section 1.3(a) above, subject to §315(3)(b) of the Act and Section 5.3(a) above.

(c) *Individual Assessments.* The Board shall have the right to individually levy upon any Owner(s) amounts as provided for by this Declaration. Individual Assessments may be levied at any time as required and are exempt from any voting requirements by the Owners required by other Assessments called for under this Declaration.

(d) *Fines.* The Board shall have the right to levy a Fine against an Owner(s) for violations of the Project Documents. No such Fine shall be levied until the Owner(s) to be charged has been given the opportunity for a Notice and Hearing. Fines may be levied in a reasonable amount as determined from time to time by the Board in its discretion and uniformly applied. Fines may be levied at any time as required and are exempt from any voting requirements of the Owners required by other Assessments called for under the Declaration.

5.4 **Due Date.** Special Assessments, Individual Assessments, Costs of Enforcement and Fines shall be due and payable as established by the Board. Common Expense Assessments shall be due and payable in monthly installments, in advance, or in such frequency as the Board determines in its discretion from time to time. Written notice of all Assessments may be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

5.5 **Remedies for Nonpayment of Assessments.** If any Assessment is not fully paid within fifteen (15) days after the same becomes due and payable, then interest shall accrue at the default rate set by the Board on any amount of the Assessment in default accruing from the due date until the date of payment, and the Board may also assess a late fee in an amount as determined in the Board's discretion. In addition, the Board may in its sole discretion:

(a) Accelerate and declare immediately due and payable all unpaid installments of any Assessment payable for the balance of the fiscal year during which such default occurred;

(b) Bring an action at law against any Owner obligated to pay the Assessment and obtain a judgment for the amounts due; and/or

(c) Proceed to foreclose its Assessment Lien against the Unit pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages, subject to the last paragraph of Section 5.6, below.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving its Assessment Lien. The Association may require reimbursement for Costs of Enforcement without the necessity of commencing a legal proceeding.

5.6 **Assessment Lien.** Pursuant to §316 of the Act, the Association has an Assessment Lien for all Assessments payable to the Association. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. The Assessment Lien shall be superior to all other liens and encumbrances on a Unit except as set forth in

§316 of the Act. No sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve an Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.

Recording of the Declaration constitutes record notice and perfection of the lien; *provided, that*, the priority of the Association's lien shall relate back to the recordation of the Original Declaration. No further recordation Of any claim of lien for Assessments under this Article Five is required. However, the Board may prepare, and record with the Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

The Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. Ownership of a Unit at the recordation of this Declaration and the acceptance of a deed to a Unit subject to this Declaration shall each constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

Notwithstanding the foregoing provisions of this Section 56, in order to comply with §316(1 1)(a) of the Act, the Association may not foreclose its lien against a Unit unless (a) the amount of Assessments and other amounts due to the Association is equal to or greater than six (6) months' worth of Common Expense Assessments against the Unit, and (b) there is a recorded vote of the Board authorizing the foreclosure of the specific Unit being foreclosed. The Board authority to initiate a foreclosure cannot be delegated to the Managing Agent, an attorney or any other Person, nor can the Association have a policy of automatically requiring foreclosure when an Owner becomes six (6) months delinquent (see Bylaws).

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

58 Initial Association Payment. To provide the Association with sufficient funds to cover the cost of initial expenses and any future expenses authorized by the Board for which there are insufficient budgeted funds, at the closing of the initial sale of a Unit to an Owner (other than to a Declarant), a non-refundable payment shall be made by such Owner to the Association in an amount equal to three (3) months of Common Expense Assessments. Amounts paid pursuant to this Section 58 do not constitute advance payments of Common Expense Assessments and do not relieve an Owner from making regular payments of Common Expense Assessments as they become due. In the event that Declarant makes such payment on behalf of any Owner, such amount shall be reimburseable to Declarant by such Owner upon the conveyance of title to the Unit to such Owner by Declarant.

5.9 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owner's Mortgagee(s) upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Managing Agent, if any, and if there is no Managing Agent then to the Board, a written statement setting forth the amount of unpaid Assessments currently

levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding upon the Association, the Board and every Owner. If no statement is furnished to the Owner or Mortgagee(s), delivered personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party, then the Association shall have no right to assert an Assessment Lien upon the Unit for unpaid Assessments which were due as of the date of the request.

ARTICLE SIX USE RESTRICTIONS

6.1 Limitations and Restrictions. All Units and Common Areas shall be used and enjoyed subject to the following limitations and restrictions, and any other limitations and restrictions affecting the Project. Notwithstanding the foregoing, so long as Declarant owns a Unit within the Project, Declarant shall be exempt from the provisions of this Article Six to the extent that it impedes, in Declarant's sole discretion, its development, construction, marketing, sales or leasing activities.

6.2 Residential Use. Each Developed Unit shall be used and occupied primarily as a residence. No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in or on any Developed Unit except as expressly provided herein. The foregoing shall not, however, be construed in such a manner as to prohibit an Owner from (a) maintaining their personal professional library in a Home, (b) keeping their personal business or professional records or accounts in a Home, (c) handling their personal business or professional telephone calls or correspondence from a Home, or (d) maintaining a computer or other office equipment within a Home. In no event shall a Developed Unit be used as a "bed and breakfast" or "chalet." Any accessory business use of a Developed Unit permitted by this Section 6.2 must be in compliance with all applicable statutes, ordinances and governmental regulations and must be conducted in accordance with the Project Documents.

6.3 Animals and Pets. No household pet or animal shall be allowed in or about the Project at any time without close supervision by an Owner. Owners shall be responsible for strict compliance with all laws related to pet ownership, including any regulation wholly excluding or limiting the number or type or breed of pets allowed, and each such Owner shall ensure that their pet does not interfere with other Owners' quiet use and enjoyment of the Project. Owners will be held responsible for any litter, waste, mess, damage or offensive noises created by their pets. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pet(s).

6.4 Nuisances. No noxious or offensive activity shall be carried on upon any part of the Project, nor shall anything be done or placed on or in any part of the Project that is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project that are or might be unsafe or hazardous to any Person or property. No sound shall be emitted on any part of the Project that is unreasonably loud or annoying. No Owner shall operate any machines, appliances, electronic devices, sound systems, accessories or equipment in such a manner as to cause an unreasonable disturbance to others, or cause any damage to or overloading of any mechanical,

electrical, plumbing, or any other system serving the Project. No odor that is unreasonably noxious or offensive to others shall be emitted on any part of the Project. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

6.5 No Hazardous Activities. No activity shall be conducted on any portion of the Project which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Project and no open fires shall be lighted or permitted on any portion of the Project except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

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

6.7 Lease of a Unit. An Owner shall have the right to lease his or her Unit upon such terms and conditions as the Owner may deem advisable, subject to reasonable Rules that may be adopted by the Board from time to time.

6.8 No Timeshares. No "timeshare estate" or "timeshare use" may be created in the Project. Timeshare estate is defined in C.R.S. 38-33-110; timeshare use is defined in C.R.S. 12-61-401. Bona fide leases or rentals of the Unit in accordance with the terms of this Declaration and applicable laws are permitted as is the sale of a Unit to unrelated tenant-in-common purchasers so long as the relationship among the Owners is not structured as a timeshare estate or timeshare use. In the event that a Unit is sold to unrelated tenant-in-common purchasers as permitted by this paragraph, each such Owner shall be jointly and severally liable for all Assessments against the Unit and each such Owner shall maintain its current name, address, email and phone number with the Association.

The Board can adopt additional Rules regarding the foregoing provisions of this Article Six.

ARTICLESEVEN EASEMENTS

7.1 Generally. The Project shall be subject to all easements as shown or created on the Map, those of record, those provided in the Act and those set forth in this Article Seven and in other provisions of this Declaration. The Board is hereby granted the right to establish from time to time utility and other easements, permits or licenses over the Common Areas for the best interest of the Association as a whole, subject to Declarant Rights described herein.

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

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

The easements granted in this Section 7.2 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) within the Project.

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

In addition to the foregoing, each Owner, and such Owner's Agents, is hereby granted a perpetual, non-exclusive right of ingress to and egress from the Owner's Unit, over and across the driveway providing access to such Owner's Unit which is on Property owned by Declarant as of the date of this Declaration ("**Driveway Easement**"). Each Driveway Easement shall be appurtenant to the Owner's Unit for which the Driveway Easement provides access. Declarant reserves the right to create additional "Driveway Easements" within the Project, and to terminate a Driveway Easement so long as Declarant designates the Driveway Easement as a Common Area or Limited Common Area to the Units served.

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

7.5 Recording Data Regarding Easements. Pursuant to §205(m) of the Act, the recording data for certain recorded easements and licenses appurtenant thereto, or included in the Project or to which any portion of the Project is or may become subject to as of the date of the recording of this Declaration, are identified on the attached **Exhibit B**.

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

7.7 Party Walls.

(a) *Party Walls Defined.* There lie along and over the common boundaries of the Homes one (1) or more common walls that in conjunction with the footings underlying and those portions of the roof thereover, form a structural part of and physically join the Homes (**'Party Walls'**).

(b) *Ownership of Party Walls.* Each Unit sharing a Party Wall shall be deemed to include that portion of the Party Wall extending from the interior surface of the Party Wall to the approximate center of the Party Wall (as further depicted on the Map), together with the necessary easements for perpetual lateral and subjacent support, maintenance, repair and inspection of the Party Wall, and with equal rights of joint use. In the event of a conflict between the boundary described herein and the depiction and description on the Map, the depiction and description on the Map shall control.

(c) *Protection of Party Walls.* No Owner shall have the right to destroy, remove or make any structural changes in or to a Party Wall that would jeopardize the structural integrity of any Home without the prior written consent of the affected Owner(s). No Owner shall subject a Party Wall to the insertion or placement of timbers, beams or other materials in such a way as to adversely affect the Party Wall's structural integrity. No Owner shall subject a Party Wall to any use that in any manner whatsoever may interfere with the equal use and enjoyment of the Party Wall by the other Owner(s) that owns a portion of the Party Wall.

(d) *Damage by Intentional or Negligent Act of Owner.* Should a Party Wall be structurally damaged or destroyed by the intentional act or negligence of an Owner or Owner's Agent, such Owner shall be responsible for paying the cost to rebuild and/or repair the Party Wall. In addition, such Owner shall compensate the other Owner(s) for any damages sustained to person or property as a result of such intentional or negligent act.

(e) *Damage from Other Causes.* Should a Party Wall be structurally damaged or destroyed by causes other than the intentional act or negligence of an Owner or Owner's Agent, the damaged or destroyed Party Wall shall be repaired or rebuilt at the joint expense of the Owners owning any portion of the Party Wall, each such Owner to pay an equal share of the cost thereof.

ARTICLE EIGHT INSURANCE

8.1 Association Insurance.

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

(i) The Association shall maintain blanket "all risk" property insurance in an amount not less than one hundred percent of the current replacement cost of the Common Areas. The Association's insurance may exclude land, excavations, foundations and other items normally excluded from such property insurance policies and may provide for a deductible in an amount not to exceed a reasonable and prudent amount as determined by the Board. The Association shall not be

obligated to purchase such insurance until the creation of Common Areas within the Project and then only if the Common Areas include Improvements intended to be insured under this paragraph.

(ii) Commercial general liability insurance, insuring the Association and the Owners against damage or injury caused by the negligence of the Association or any of its Owners, employees, agents or contractors while acting on its behalf. Owners and Declarant may be named as additional insureds for claims and liabilities arising in connection with the ownership, use or management of the Common Areas and Driveway Easements. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage.

(iii) Workers' compensation insurance and employer's liability insurance to the extent required by law.

(iv) Directors' and officers' liability coverage in an amount determined by the Board providing coverage for the members of the Board.

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than three months' Assessments plus all reserves on hand, and containing a waiver of all defenses based upon the exclusion of Persons serving without compensation.

(vi) Such additional insurance as the Board determines advisable.

(b) *Policy Requirements.* All Association policies shall provide for a certificate of insurance to be furnished to the Association and upon request, to Declarant, any Owner or Mortgagee. Premiums for all insurance maintained by the Association shall be a Common Expense and shall be included in the Common Expense Assessment. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines after providing Notice and Hearing, that the loss is the result of the recklessness or willful misconduct of one (1) or more Owners or an Owner's Agent, then the Association may specifically assess the full amount of such deductible against such Owner and their Unit as an Individual Assessment pursuant to Section 5.3(c) above. All insurance coverage obtained by the Association shall

(i) Be written with companies authorized to do business in the State of Colorado;

(ii) Be written in the name of the Association as trustee for the Association and the Owners;

(iii) Be written as a primary policy, not contributing with and not supplemental to the coverage that any Owner, Owner's Agent, Declarant or Mortgagee may carry individually;

(iv) Include an inflation guard endorsement, as applicable;

(v) Include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) Include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any curable defect or violation or any act or omission of any Owner, without prior written demand to the Association to cure the defect, violation, act or omission and allowance of a reasonable time to effect such cure;

(vii) Include an endorsement precluding cancellation, invalidation or condition to recovery under the policy on account of any act or omission of any Owner, unless such Owner is acting within the scope of its authority on behalf of the Association; and

(viii) Include an endorsement requiring at least thirty (30) days prior written notice to the Association and Declarant of any cancellation, substantial modification or non-renewal.

(c) *Other Policy Provisions.* In addition, the Association may use reasonable efforts to secure insurance policies that provide:

(i) A waiver of subrogation as to any claims against Declarant, the Board, the officers, and employees of the Association;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement excluding Owners' and Declarant's individual policies from consideration under any "other insurance" clause;

(iv) A cross liability provision; and

(v) A provision vesting in the Association exclusive authority to adjust losses; *provided, however,* no Mortgagee having an interest in such losses may be prohibited from participating in settlement negotiations, if any, related to such losses.

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

8.3 **Owner Insurance.** Each Owner, at their sole cost and expense, shall (a) carry property insurance on all portions of their Unit, and (b) carry general liability insurance providing coverage for bodily injury and property damage for the benefit of the Owner in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property. Each Owner shall provide the Managing Agent with a certificate of the insurances required hereunder. In the event that an Owner fails to provide such certificate after fifteen (15) days-notice from the Association, the Association may purchase such insurance on behalf of the Owner and charge the cost thereof to such Owner as an Individual Assessment. An Owner may request that the adjacent

Owner (i.e., the Owner with whom they share a Party Wall) name them as an additional insured on the property insurance policy required herein and in such event the adjacent Owner shall provide the Owner with evidence of such insurance within fifteen (15) days.

ARTICLE NINE RESTORATION UPON DAMAGE OR DESTRUCTION/CONDEMNATION

9.1 Duty to Restore Common Areas. In the event of damage or destruction to any portion of the Common Areas which is covered by insurance carried by the Association, the insurance proceeds shall be applied by the Board to reconstruction and repair. The Common Areas must be repaired and restored in accordance with either the original plans and specifications, or other plans and specifications which have been approved by the Board.

9.2 Use of Insurance Proceeds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage to the Common Areas, the Board shall levy a Special Assessment in the aggregate amount of such insufficiency, and shall proceed to make such repairs or reconstruction. If all of the damage to the Common Areas covered by the Association's insurance is not repaired or reconstructed, the insurance proceeds attributable to the damage shall be used to restore the damaged portion of the Common Areas to a condition compatible with the remainder of the Project and the remainder of the proceeds shall be distributed to the Association.

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

ARTICLE TEN MAINTENANCE

10.1 Maintenance of Common Areas. The Association shall keep and maintain the Common Areas in an attractive, clean and functional condition, and in good repair and may make necessary or desirable alterations or improvements thereon; *provided, however*, the Board shall have the right to designate certain Common Area repair and maintenance to Owners as set forth in the Rules. Determination of whether repair or maintenance of the Common Areas is the obligation of the Association, or if the repair and maintenance is necessary, shall rest solely with the Board, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

The Association shall also keep and maintain the Driveway Easements in an attractive, clean and functional condition and in good repair, and may make necessary or desirable alterations or improvements thereon with the prior written approval of Declarant.

10.2 Maintenance of the Units. All Unit maintenance, repair and replacement shall be the obligation of the Owner of the Unit, except as otherwise provided herein or in other Project Documents.

10.3 Maintenance of Town Property. The Association shall be responsible for any maintenance of property owned by the Town that is required of any Owner pursuant to the Land Use Restriction.

10.4 Owner's Failure to Maintain and Repair. In the event that a Unit is not properly maintained and repaired by an Owner, the Board, after Notice and Hearing to the Owner (and after a determination by the Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair and charge the cost thereof to such Owner as an Individual Assessment.

10.5 Maintenance of the Drainage Pattern/Irrigation System. Except for changes resulting from the initial construction of improvements undertaken by Declarant, there shall be no interference with the established drainage pattern initially established over any portion of the Project or the irrigation system installed within a Unit (including systems and sprinklers), except as approved in writing by the Committee. The established drainage pattern may include the drainage pattern from the Common Areas over any Units within the Project and from any Unit within the Project over the Common Areas or from any Unit over another Unit.

10.6 Owner-Caused Damages. If, due to the act or neglect of an Owner or an Owner's Agent, loss or damage shall be caused to any Person or property within the Common Areas or another Unit (or within the Owner's own Unit), such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board, from such Owner as an Individual Assessment. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Section 10.6 shall be made by the Board and shall be final.

ARTICLEELEVEN

ADDITION OF ADDITIONAL UNITS AND REAL ESTATE/WITHDRAWAL

11.1 Reservation of Right to Create Additional Developed Units/Common Areas. Without in any way being bound to do so, Declarant reserves the right to subdivide from time to time (without the consent thereto or the joinder therein by the Owners, the Association, Mortgagees or any other Person) any Undeveloped Unit owned by Declarant and to construct and locate thereon (a) any number of Developed Units so long as the total number of Units resulting from such subdivision(s) does not cause the Project to exceed the Maximum Number of Units (60), and (b) additional Common Areas and Common Area Improvements.

IN ORDER TO CREATE SUCH ADDITIONAL DEVELOPED UNITS, COMMON AREAS AND COMMON AREA IMPROVEMENTS, DECLARANT SHALL HAVE THE RIGHT TO USE THE COMMON AREAS AND ANY UNITS THAT IT OWNS FOR CONSTRUCTION STAGING, STORING, PARKING AND OPERATIONS, CRANE LOCATION AND OPERATION AND ALL OTHER REASONABLE CONSTRUCTION ACTIVITIES.

11.2 Supplemental Declarations/Map. Upon the addition of new Developed Units, Common Areas and/or Common Area Improvements to the Project, Declarant shall record a supplement to this Declaration and/or the Map describing the new Developed Units, Common Areas and/or Common Area Improvements and including such additional information that Declarant deems useful or necessary. In the event that Declarant has created new Developed Units within the Project, Declarant shall amend Section 1.3 and **Exhibit A** of this Declaration to designate the-then Developed Units and Undeveloped Units.

To the extent that the Town and/or County requires the consent of Owners to undertake the subdivision of any Unit pursuant to this Article Eleven, or to create any Units (or lots) and/or Common Areas pursuant to this Article Eleven, then Declarant is hereby appointed as attorney-in-fact on behalf of the Owners and the Association to execute any and all documents (including the Map) related to such action without the need for the joinder of the Association, any other Owners or any other Person

11.3 Right to Add Additional Real Estate. Declarant reserves the right to add additional real estate to the Project from such locations as Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Project pursuant to this sentence, and not described on **Exhibit A**, does not exceed ten percent (10%) of the total area described on **Exhibit A**.

11.4 Withdrawal. Declarant reserves the right to withdraw from the Project all or any portion of an Undeveloped Unit owned by Declarant (other than the Driveway Easements). In addition, Declarant reserves the right to withdraw from the Project any Developed Unit that is owned by Declarant. Notwithstanding the foregoing, in the event such withdrawal affects an Owner's access to their Unit or affects an Owner's ability to utilize existing utilities benefitting their Unit, Declarant shall provide a reasonable non-exclusive easement in order to allow such Owner continued access to their Unit and to existing utilities benefitting their Unit.

11.5 Termination of the Right of Expansion. The rights to expand the Project pursuant to the provisions of this Article Eleven shall terminate at the option of Declarant as set forth in a recorded instrument executed by Declarant, but in any event shall terminate without further act or deed in accordance with the limitations set forth in Section 12.3 below.

ARTICLE TWELVE DECLARANT RIGHTS

12.1 Reservation. Notwithstanding any provision in this Declaration to the contrary, Declarant reserves for itself the following Declarant Rights which may be exercised, where applicable, anywhere within the Project, without the consent thereto or the joinder therein by the Owners, the Association, Mortgagees or any other Person:

(a) To complete any Improvements shown on the Map or any site plan for the Property;
(b) To exercise any Declarant Rights reserved or described herein and as provided by the Act;

(c) To maintain business/sales offices, sales trailers, parking spaces, management offices, storage areas, construction yards, signage, advertisements and model homes upon the Common Areas or any Unit owned by Declarant;

(d) To have and use, and to permit others to have and use, easements through the Common Areas and any Unit owned by Declarant as may be reasonably necessary for construction within the Project and for the purpose of discharging Declarants obligations under the Act and this Declaration;

(e) To amend this Declaration and/or the Map in connection with the exercise of any Declarant Rights;

(f) To expand the Project from time to time, without in any way being bound, in accordance with Article Eleven above;

(g) To merge or consolidate the Project with another common interest community;

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

(i) To designate certain Common Areas as Limited Common Areas by amendment to this Declaration and to reallocate Limited Common Areas among Units that it owns;

U) To modify, amend or revise plans for construction, location and design of any Common Area (including any Improvements located thereon) and Developed Units that it owns;

(k) To create additional Driveway Easements within the Project;

(l) To terminate a Driveway Easement so long as Declarant has designated the Driveway Easement as a Common Areas or Limited Common Area to the Units served.

(m) To exercise all rights described in Article Eleven above;

(n) To amend the denominator used for calculating the Common Expenses Liability (or to delegate in writing such right to the Board) by Amendment to this Declaration in the event that more or less than fifty-six (56) Developed Units are constructed at complete build out of the Project.;

(o) To terminate The Shores at The Highlands Common Interest Community Map recorded with the Clerk and Recorder on September 9, 2008 at Reception No. 896028 ("**Prior Map**") because the Prior Map is not required by the Act and all information shown on the Prior Map is shown on the Map;

(p) To exercise any other "development rights" or "special declarant rights" as described in the Act; and

(q) To exercise any other Declarant Right created or implied by any other provisions of this Declaration or the Act.

12.2 Rights Transferable. All or a portion of the Declarant Rights created or reserved under this Article Twelve for the benefit of Declarant may be transferred to any Person by Declarant by an instrument recorded with the Clerk and Recorder describing the Declarant Rights transferred. Such instrument shall be executed by the transferor Declarant and the transferee.

12.3 Limitations. Except as otherwise set forth in this Declaration, Declarant Rights shall terminate at the option of Declarant as set forth in a recorded instrument executed by Declarant, but in any event such Declarant Rights shall terminate without further act or deed twenty (20) years after the date of the recording of this Declaration.

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

12.5 Declarant's Easements. Declarant reserves for itself the right to (a) perform warranty work, and repair and construction work on Units and Common Areas, (b) store materials in secure areas upon the Common Areas and/or Units owned by Declarant, and (c) to control and have the right of access to work and repair through completion. All work performed by Declarant shall not require the consent or approval of the Board, Owners, Mortgagees or any other Person.

Declarant shall have an easement through the Common Areas as may be reasonably necessary for the purpose of discharging its obligations or exercising its rights, whether arising under the Act, reserved in this Article Twelve or reserved in other provisions of this Declaration. Notwithstanding any other provision of this Declaration (including, but not limited to, Section 12.3 above), the easements reserved herein shall remain in effect for the benefit of Declarant until the termination of all applicable warranty periods with respect to any particular Unit, Home and Common Areas.

12.6 Exercise of Rights. The exercise of any or all of the rights reserved to Declarant shall be at the sole option and discretion of Declarant. No assurances are made with respect to the boundaries of the Project, the number of Developed Units to be created, or the parcels of real property that may be subject to Declarant Rights, nor the order in which Declarant Rights may be exercised. Subject to Section 12.3 above, Declarant Rights may be exercised at any time and from time to time, and, if Declarant exercises any Declarant Rights, such rights may but need not be exercised as to all or any other portion of the Project.

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

**ARTICLE THIRTEEN
DESIGN REVIEW**

13.1 Generally. Other than Improvements as originally constructed by Declarant, each Improvement must be constructed, and may thereafter be removed, altered or modified, in accordance with Design Review Guidelines (described below) adopted by the Committee, if any, or otherwise approved in accordance with this Article Thirteen. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

13.2 Committee Approval of Improvements Required. Other than Improvements originally constructed by Declarant, approval by the Committee shall be required prior to the commencement of the construction, alteration, modification, expansion, addition, removal, demolition or destruction of any Improvements on any portion of the Project, including any change of exterior appearance, finish material, color or texture.

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

13.3 Membership of the Committee. A "**Committee**" shall be formed to review and approve or disapprove plans for Improvements. The Committee shall consist of up to three (3) members, the initial number and the members of which shall be determined by Declarant in its sole discretion. Declarant shall have the continuing right to appoint and reappoint the members of the Committee, which right shall terminate at the option of Declarant, but in any event shall terminate without further act or deed at such time as Declarant no longer owns any Unit. Thereafter, the Committee shall consist of three (3) members, and the Board shall have the right to appoint the members of the Committee. Members of the Committee appointed by the Board must be Owners. Notwithstanding the foregoing, after Declarant's right to appoint the Committee has expired, the Board may decide to act as the Committee.

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

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

13.5 Submission of Plans/Design Review Fee. Prior to the commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement ("**Applicant**") shall submit to the Committee such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Committee shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement.

The Committee may, in the Design Review Guidelines or by resolution, provide for the payment of a reasonable fee to accompany each request for approval of any proposed Improvement. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvements or that the fee shall be determined in any other manner, such as the estimated cost of the proposed Improvement. Said fee may be used to compensate any consultant as the Committee deems necessary to assist the Committee in the performance of its duties.

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

Depending on the proposed Improvement, the Committee may require that the Applicant carry builder's risk insurance naming the adjacent Owner (i.e., the Owner with whom they share a Party Wall) and the Association as additional insureds, and provide a certificate of such insurance to the Committee.

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

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

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

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

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

The Committee may also disapprove the proposed Improvement if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials

submitted to be contrary to the spirit or intent of this Declaration. The Committee may condition its approval of any proposed Improvement upon the making of such changes thereon as the Committee may deem appropriate.

13.8 Decision of the Committee. The decision of the Committee shall be made within forty-five (45) days after receipt by the Committee of all materials required by the Committee unless such time period is extended by mutual agreement of the Committee and the Applicant. The Committee's decision shall be in writing and, if the decision is not to approve a proposed Improvement, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee.

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

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

13.9 Appeal to the Board. If the Committee disapproves or imposes conditions on the approval of a proposed Improvement, and the Board is not serving as the Committee, the Applicant may appeal to the Board by giving written notice of such appeal to the Board and the Committee within ten (10) days after notice of such disapproval or conditional approval is given to the Applicant.

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

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

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

The appeal rights set forth in this Section 13.9 shall only be available after the period in which Declarant has the right to appoint the Committee has terminated.

13.10 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant in writing by the Committee within forty-five (45) days after the date of receipt by the Committee of all necessary materials, as determined by the Committee.

13.11 Prosecution of Work after Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and as diligently as possible and in complete conformity with the approval given by the Committee, including the description of the

proposed Improvement, any materials submitted to the Committee in connection with the proposed Improvement and any conditions imposed by the Committee. Failure to complete any proposed Improvement within the timeframe set forth in the approval, if any, shall constitute a violation of this Article Thirteen unless extended by the Committee.

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

13.13 Inspection of Work. The Committee, or its duly authorized representative, shall have the right to inspect any Improvement prior to, and/or after completion; *provided, however*, the right of inspection shall terminate thirty (30) days after the Committee receives a Notice of Completion from the Applicant.

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

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

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

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

The appeal rights set forth in this Section 13.16 shall only be available after the period in which Declarant has the right to appoint the Committee has terminated.

13.17 Correction of Noncompliance. If the Committee or the Board determines that a noncompliance exists, the Applicant shall remedy or remove the noncompliance within a period of not more than thirty (30) days from the date of receipt by the Applicant of a Letter of Noncompliance or a decision of the Board (if a Letter of Noncompliance is appealed pursuant to Section 13.16 above). If the Applicant does not comply with the Letter of Noncompliance or the Board's ruling within such time period, the Committee or Board may, at its option, record a "Notice of Noncompliance" against the Unit on which the noncompliance exists, or may remove the non-complying Improvement or may otherwise remedy the noncompliance.

The Board may levy an Individual Assessment in accordance with Section 5.3(c) above against the Owner of such Unit for such costs and expenses incurred in enforcing this Section 13.17. The right of Declarant (during the period in which Declarant has the right to appoint the Committee) or the Board to remedy or remove any noncompliance shall be in addition to all other rights and remedies that Declarant or the Board may have at law, in equity, or under the Project Documents.

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

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

13.20 Estoppel Certificates. The Board shall, upon the reasonable request of any interested Person and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein. Notwithstanding the foregoing, during the period that Declarant appoints the members of the Committee, such certificate must come from Declarant and not the Board.

13.21 Architectural Standards/Design Guidelines. The Committee may promulgate rules and regulations to interpret and implement the provisions of this Article Thirteen. These rules and regulations shall be known as the "**Design Review Guidelines**" and may contain, among other things, guidelines which will clarify the types of designs and materials that will be considered in design approval. The Committee may review and revise the Design Review Guidelines from time to time in its sole discretion so long as said guidelines are not discriminatory and are uniformly applied.

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

In reviewing any matter, the Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters and the Committee shall have no responsibility or liability with respect to such matters.

13.23 Exemptions for Declarant. So long as Declarant Rights exist, Declarant shall be exempt from the provisions of this Article Thirteen.

ARTICLEFOURTEEN DISPUTE RESOLUTION

14.1 Definitions Applicable to this Article Fourteen. For purposes of this Article Fourteen only, the following terms have the following meanings:

(a) **"AAA"** means the American Arbitration Association.

(b) **"Claimant"** means any Party having a Claim.

(c) **"Claim"** means, except as excluded or exempted by the terms of this Article Fourteen (including Section 14.3 below), any claim, grievance or dispute between one Party and another, regardless of how it may have arisen or on what it might be based, including, without limitation, disputes arising out of or related to: (i) the interpretation, application or enforcement of the Project Documents; (ii) the location, planning, sale, development, design, construction and/or condition of the Units, Homes and Project, including, without limitation, the soils of the Project; and (iii) any statements, representations, promises, warranties or other communications allegedly made by or on behalf of any Party relating to the foregoing.

(d) **"InspectingParty"** means a Party causing an inspection of the Subject Property to be made.

(e) **"Party"** means each of the following: (i) Declarant and its officers, owners, employees and agents; (ii) the Association, and all Owners and Owner's Agents; (iii) any builder of any portion of the Project and its officers, owners, employees and agents; and (iv) any Person not otherwise subject to this Declaration who agrees to submit to this Article Fourteen.

(f) **"Respondent"** means any Party against whom a Claimant asserts a Claim.

(g) **"Subject Property"** means the property regarding which a Party contends a defect exists or another Claim pertains and/or property being inspected under the inspection right in Section 14.4 below.

(h) **"Termination of Mediation"** means a period of time expiring thirty (30) days after a mediator has been agreed upon by the Parties and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent) and upon the expiration of which the Claimant and Respondent have not settled the Claim.

14.2 Intent of Parties; Applicability of Article; and Applicability of Statutes of Limitations.

(a) Each Party agrees to work towards amicably resolving disputes, without the emotional and financial costs of litigation. Accordingly, each Party agrees to resolve all Claims by using the procedures in this Article Fourteen and not litigation. Further, each Party agrees that the procedures in this Article Fourteen shall be the sole and exclusive remedial process that each Party shall have for any Claim. Should any Party commence litigation or any other action against any Party(ies) in violation of this Article Fourteen, such action shall be dismissed and the Party bringing the action shall reimburse all costs and expenses, including attorneys' fees, incurred by the other Party(ies) in such litigation or action within ten (10) days after written demand.

(b) By holding title to a Unit at the recordation of this Declaration or by accepting a deed for a Unit, each Owner agrees on behalf of itself and its Owner's Agents to be bound by and to comply with this Article Fourteen.

(c) The Parties agree that no Claim may be commenced after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

14.3 Exclusions from "Claim." Unless specifically exempted by this Article Fourteen, all Claims between any of the Parties shall be subject to the provisions of this Article Fourteen.

Notwithstanding the foregoing, unless all Parties thereto otherwise agree, "Claim" does not include the following, whether such are brought by lawsuit, counterclaim or cross-claim and shall not be subject to the provisions of this Article Fourteen:

(a) Any action by the Association to enforce the provisions of the Project Documents (other than this Article Fourteen) against an Owner or Owner's Agent;

(b) Any action by the Association to assess or collect any Assessments or to enforce or foreclose any Assessment Lien;

(c) Any claim, grievance or dispute related to a written limited warranty or purchase contract that itself contains enforceable alternative dispute resolution procedures;

(d) Any action, suit or proceeding to compel arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Article Fourteen;

(e) Any action pursuant to the provisions of this Declaration concerning mechanics liens; and

(f) Any actions of the Association permitted by §217(7) of the Act.

14.4 Right to Inspect and Repair. Before any Party commences a legal proceeding involving another Party, including, without limitation, any alleged defect of a Unit, the Respondent shall have the right to access, inspect, correct the condition of, or redesign any portion of any Improvement allegedly containing a defect or otherwise correct the alleged defect. In exercising these inspection rights, the Inspecting Party shall:

(a) Act carefully to avoid unreasonable intrusion on, or harm, damage or costs to the other Party including using its best efforts to avoid causing any damage to, or interference with, any improvements on the Subject Property at issue;

(b) Minimize any disruption or inconvenience to any Person who occupies the Subject Property;

(c) Remove daily all debris caused by the inspection and remaining on the Subject Property; and

(d) In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials from the Subject Property, repair and replace all damage, and restore the Subject Property to its pre-inspection condition unless the Subject Property is to be immediately repaired.

The Inspecting Party shall not permit any lien, claim or other encumbrance arising from the inspection to attach to the Subject Property.

14.5 Mandatory Procedures.

(a) Before proceeding with any Claim against any Respondent, each Claimant shall provide notice to everyone Claimant contends contributed to the alleged problem. The notice shall state plainly and concisely:

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

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

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

(b) The Parties shall first make every reasonable effort to meet in person and confer to resolve the Claim by good faith negotiation. The Parties shall seek to understand clearly the Claim and resolve as many aspects or issues as possible. Any Party may be represented by attorneys and independent consultants to assist such Party, including by attending all negotiations.

(c) If the Parties cannot resolve the Claim through negotiations within thirty (30) days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of the AAA under the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(i) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, so that Respondent shall be released and discharged from all liability to Claimant for such Claim.

(ii) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If mediation ends without a complete settlement, the mediator shall issue a notice of Termination of Mediation. This notice shall state that the Parties are at an impasse and the date that mediation was terminated.

(iii) Each Party shall pay its own costs of the mediation, including its own attorneys' fees. Each Party shall share equally all of the mediator's charges.

(iv) If the Parties resolve any Claim through negotiation or mediation under this Section 14.5(c) and any Party later fails to comply with the settlement agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the above procedures in this Section 14.5(c). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and costs.

(d) After receiving a Termination of Mediation, if Claimant wants to pursue the Claim, Claimant may do so only by initiating final, binding arbitration of the Claim under the auspices of the AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate, and Claimant shall provide to Respondent a "Notice of Intent to Arbitrate" all within twenty (20) days after the Termination of Mediation. If Claimant does not initiate final, binding arbitration of the Claim and provide a Notice of Intent to Arbitrate to Respondent within twenty (20) days after the Termination of Mediation, then Claimant shall be deemed to have waived the Claim, so that Respondent shall be released and discharged from all liability to Claimant for such Claim.

The following arbitration procedures shall govern each arbitrated claim:

(i) The arbitrator must be a person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.

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

(iii) The arbitrator shall hold at least one (1) hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the Town unless the Parties otherwise agree.

(iv) The arbitration shall be presided over by a single arbitrator.

(v) No formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.

(vi) Unless directed by the arbitrator, there shall be no post-hearing briefs.

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

(viii) The arbitrator determines all issues about whether a Claim is covered by this Article Fourteen. Notwithstanding anything herein to the contrary (including, but not limited to, Section 14.5(d)(ix) below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

(ix) The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, attorneys' fees and/or costs to the prevailing Party. Each Party is responsible for any fees and costs incurred by that Party. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction.

(x) The Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator and their consultants.

(xi) The arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants.

(xii) Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior written consent of all Parties to the arbitration.

14.6 Notice of Certain Claims. If a Claim includes a construction defect allegation, an Owner shall disclose the Claim and its details to his/her prospective purchasers and prospective Mortgagees.

14.7 Conflicts with Law. In the event that any provisions of this Article Fourteen conflict with any applicable federal or Colorado statutes which provide non-waivable legal rights, including, without limitation, the Colorado Construction Defect Action Reform Act or the Colorado Consumer Protection Act, then the non-waivable terms of such statute shall control and all other provisions herein remain in full force and effect as written.

14.8 Amendment. Any amendment to or deletion of all or any portion of this Article Fourteen shall not apply to Claims based on alleged acts or omissions that predate the recording of the amendment or deletion with the Clerk and Recorder.

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

15.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Section 15.4 below.

15.2 Amendments by Owners. Except in cases of amendments that may be executed by the Board, by Declarant pursuant to Article Eleven, Article Twelve and Section 15.3 below, and except as otherwise required by the Act, this Declaration may be amended by the written agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Any such amendment shall be effective upon the recording of the amendment with the Clerk and Recorder together with a notarized certificate of an officer of the Association certifying that the requisite number of Owners have given their written consent to the amendment.

15.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of any Owner, the Association, any Mortgagee or any other Person, the Project Documents at any time as follows:

- (a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement;
- (b) To comply with any requirements, standards or guidelines of any Agency;
- (c) To comply with any requirements of the Act or governmental agencies; and
- (d) As provided in Section 1.3(a) above.

15.4 Termination. Notwithstanding Section 15.2 above, the Project may only be terminated upon the written agreement of: (a) Owners holding at least sixty-seven percent (67%) of the vote in the Association; and (b) Declarant for so long as Declarant retains any Declarant Rights.

15.5 Consent Required. So long as Declarant has any rights or obligations under or pursuant to this Declaration or any of the other Project Documents, any proposed amendment of any provision of the Project Documents shall require Declarant's prior written consent to such amendment. Any amendment made without such prior written consent as required herein shall be null and void and shall have no effect.

The foregoing requirement for consent of Declarant to any amendment shall terminate without further act or deed in accordance with the limitations set forth in Section 12.3 above.

ARTICLESIXTEEN GENERAL PROVISIONS/DISCLAIMERS

16.1 Right of Action. The Association and any aggrieved Owner shall have a right of action against an Owner for such Owner's failure to comply with the Project Documents (or with decisions of the Board which are made pursuant thereto) which shall be brought in accordance with Article Fourteen above (except to the extent that the complaint, notice and hearing procedures in the Bylaws must first be exhausted). Owners shall have a similar right of action against the Association.

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

16.3 Severability. The provisions of this Declaration shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Declaration, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) the invalid or unenforceable provision shall be reformed, to the minimum extent required to render such invalid or unenforceable provision enforceable in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Declaration and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision.

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

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

All notices, demands or other notices intended to be served upon the Board or the Association shall be sent by certified mail, postage prepaid, to the Managing Agent, if any, and if there is no Managing Agent, then to the registered agent for the Association on file in the Office of the Secretary of State, State of Colorado.

16.6 Conflicting Provisions. The Project Documents are intended to comply with the requirements of the Act and the Nonprofit Act (collectively, the "**Governing Acts**"). If there is any conflict between any provision of the Project Documents and any mandatory provision of either of the Governing Acts, the mandatory provision of the applicable Governing Act shall control and neither Declarant, nor the Association shall have any liability for actions taken in conformity with such Governing Act. If there is any conflict between any provision of the Project Documents and any permissive or non-mandatory provision of either of the Governing Acts, the provision of the Project Documents shall control. In the event of any conflict between this Declaration and any other Project Documents, this Declaration shall control, except as otherwise provided herein. In the event the Articles conflict with the Bylaws, the Articles shall control.

16.7 Declarant Liability. THE ASSOCIATION AND EACH OWNER ACKNOWLEDGE AND AGREE THAT ALL DEVELOPED UNITS DESCRIBED ON **EXHIBIT A** AS OF THE DATE HEREOF WERE NOT DESIGNED OR CONSTRUCTED BY DECLARANT OR ITS

AFFILIATES, NOR DID DECLARANT OR ITS AFFILIATES PARTICIPATE IN THE DESIGN OR CONSTRUCTION OF, OR SUPERVISE THE DESIGN OR CONSTRUCTION OF SUCH DEVELOPED UNITS. ACCORDINGLY, DECLARANT IS NOT A "BUILDER-VENDOR" OF THE DEVELOPED UNITS EXISTING AS OF THE DATE HEREOF AND HAS NO LIABILITY THEREFOR.

16.8 Noise Disturbances. Each Unit and the Project are located in a location which is undergoing redevelopment and is near a highway. Each Owner acknowledges that their Home shares common walls with other Homes in the Project. Due to these and other factors, there may be a certain amount of unpredictable noise disturbances within the Project ("**Noise Disturbances**"). The Noise Disturbances may include, without limitation: (a) noise from pedestrians, automobiles and busy streets and highways; (b) noise from construction related activities; and (c) noise from adjacent Units and the Common Areas, including, but not limited to, voices, music, televisions, appliances, walking, running, opening and closing of doors, falling objects, cabinet and furniture operation, plumbing and HVAC operation and elevator operation.

Each Owner, by acquiring a Unit, acknowledges that the Noise Disturbances, and the impacts and disturbances generated by the Noise Disturbances, may occur in and around the Project, and may occur during daytime and nighttime and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time. Each Owner, by acquiring a Unit, forever waives and releases any actions or claims the Owner and its successors and assigns may have against Declarant which in any way arise out of the existence, occurrence, or the temporary or permanent interruption, discontinuance or modification of the Noise Disturbances and such impacts and disturbances.

16.9 Other Properties. Each Owner, by acquiring a Unit, acknowledges that other properties are located adjacent to and in the general vicinity of the Project ("**Other Properties**") and that the Other Properties may be developed pursuant to the land uses permitted by the County's zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, "**Ordinances**"). Neither Declarant, nor Declarant's employees, agents, officers, directors and affiliates, make any representations concerning the planned uses of the Other Properties. Each Owner, by acquiring a Unit, further acknowledges that the zoning for the Project and the Other Properties is established and governed by the Ordinances. Any amendment to those Ordinances requires approval by the County. By acquiring a Unit each Owner acknowledges that they have not relied upon any statements or representations regarding the Project or the Other Properties, including, without limitation, any representations made by Declarant or any agents or employees of Declarant or any real estate agency or any agent, except for those statements and representations expressly set forth in this Declaration.

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

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

IN WITNESS WHEREOF, Declarant and the Association have caused this Declaration to be executed as of the date first written above.

Declarant:

PF P Meriwether Breckenridge Holdings, LLC,
a Delaware limited liability company

By: MMC Shores, LLC, a Delaware limited
liability company, its Co-Manager

By: Meriwether Corn an
limited liab

STATE OF **Co | o f vt_d o**)
) SS.
COUNTY OF **boLLlcl ~**)

The foregoing instrument was acknowledged before me this **2..3** day of December, 2014, by **Not?vh t\CLhh** as **1)avt~** of Meriwether Companies LLC, a Delaware limited liability company, Manager of MMC Shores, LLC, a Delaware limited liability company, Co-Manager of PF P Meriwether Breckenridge Holdings, LLC, a Delaware limited liability company.

WITNESS my hand and official seal.

My commission expires:

MELISSA MORGAN
NOTARY PUBLIC
STATE OF COLORADO
2014404U38
MY COMMISSION EXPIRES 10/22/2018

Association

The undersigned President hereby certifies that (1) this Declaration has been approved by at least 67% of the votes in the Association allocated to Owners other than Declarant as required by C.R.S. 38-333-217(4)(a); and (2) that at least 60% of all votes in the Association have approved this Declaration.

STATE OF *Cb* | *OVV(do)*
country or *~OW deJr:* ^{) ss.}

The foregoing instrument was acknowledged before me this **J-3** day of December, 2014, by Garrett Simon, as President of The Shores at The Highlands Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: *t \) (:1-J-/ 2-0 r S'*

MELISSA MORGAN
NOTARY PUBLIC
STATE OF COLORADO
20144041138
MY COMMISSION EXPIRES 10/22/2018

Exhibit A

(Property)

Developed Units:

Lot 1A, Lot 1B, Lot 2A, Lot 2B, Lot 26A, Lot 26B, Lot 27A, Lot 27B, Lot JOA and Lot 30B according to the Resubdivision Plat of Tract A, The Shores at the Highlands, Filing No. 2 recorded in the real estate records of Summit County, Colorado, on October 2, 2012 at Reception No. 1004529

Lot 4A, Lot 4B, Lot 5A and Lot 5B, according to the Resubdivision Plat of The Shores at the Highlands, Filing No. 3, a Resubdivision of Tract A-1 and Tract B, the Shores at the Highlands, recorded in the real estate records of Summit County, Colorado, on July 16, 2012 at Reception No. 997584

and

Lot 6A and Lot 6B, according to the Resubdivision of Lot 6, The Shores at The Highlands, Filing No. 3, recorded in the real estate records of Summit County, Colorado, on July 30, 2014 at Reception No. 1060556

Undeveloped Units

Tract A, Lot 3A and Lot 38 according to the Resubdivision Plat of Tract A, The Shores at the Highlands, Filing No. 2 recorded in the real estate records of Summit County, Colorado, on October 2, 2012 at Reception No. 1004529

Lot A-1B, Lot 17, Lot 18 and Lot 19, according to the Resubdivision Plat of The Shores at the Highlands, Filing No. 3, a Resubdivision of Tract A-1 and Tract B, the Shores at the Highlands, recorded in the real estate records of Summit County, Colorado, on July 16, 2012 at Reception No. 997584

Exhibit B

(Recording Data for Certain Recorded Easements, Licenses and Other Matters of Record which
the Project is or may become Subject to)

1. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED JUNE 24, 1887, IN BOOK 31 AT PAGE 64 AND RECORDED JANUARY 4, 1909 IN BOOK 89 AT PAGE 80.
2. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED JUNE 24, 1887, IN BOOK 31 AT PAGE 64 AND RECORDED JANUARY 4, 1909 IN BOOK 89 AT PAGE 80.
3. ALL MINERAL RIGHTS AS RESERVED BY B&B MINES INC., A COLORADO CORPORATION IN THE DEED TO WM. JAMES STARK RECORDED FEBRUARY 18, 1960 IN BOOK 154 AT PAGE 286.
4. TERMS, CONDITIONS AND PROVISIONS OF WATER SURCHARGE AGREEMENT RECORDED MARCH 07, 1985 AT RECEPTION NO. 293301.
5. TERMS, CONDITIONS AND PROVISIONS OF MEMORANDUM OF SEWER LINE EXTENSION AGREEMENT RECORDED SEPTEMBER 26, 2006 AT RECEPTION NO. 833975.
6. TERMS, CONDITIONS AND PROVISIONS OF SUBDIVISION IMPROVEMENT AGREEMENT RECORDED DECEMBER 01, 2006 AT RECEPTION NO. 840218 AND AMENDMENT RECORDED DECEMBER 1, 2006 UNDER RECEPTION NO. 840218 AND AMENDMENT RECORDED SEPTEMBER 10, 2007 UNDER RECEPTION NO. 874097.
7. TERMS, CONDITIONS AND PROVISIONS OF LAND USE RESTRICTIONS FOR WEST BRADDOCK RECORDED DECEMBER 01, 2005 AT RECEPTION NO. 840220.
8. TERMS, CONDITIONS AND PROVISIONS OF DECLARATION OF MODIFICATION OF EASEMENTS RECORDED SEPTEMBER 09, 2008 AT RECEPTION NO. 896023.
9. TERMS, CONDITIONS AND PROVISIONS OF RESTRICTIVE COVENANT AND AGREEMENT (LANDSCAPING) RECORDED SEPTEMBER 09, 2008 AT RECEPTION NO. 896026.
10. TERMS, CONDITIONS AND PROVISIONS OF NO-BUILD COVENANTS RECORDED FEBRUARY 17, 2010 AT RECEPTION NO. 934048.

11. NOTES, DEDICATIONS AND EASEMENTS SET FORTH ON THE PLAT FOR THE SHORES AT THE HIGHLANDS, FILING NO. 1 RECORDED SEPTEMBER 9, 2008 UNDER RECEPTION NO. 896025 AND THE RESUBDIVISION PLAT FOR THE SHORES AT THE HIGHLANDS, FILING NO. 3 RECORDED JULY 16, 2012 UNDER RECEPTION NO. 997584 AND THE RESUBDIVISION PLAT OF TRACT A, THE SHORES AT THE HIGHLANDS, FILING NO. 2 RECORDED OCTOBER 2, 2012 UNDER RECEPTION NO. 1004529 AND AFFIDAVIT RECORDED JANUARY 15, 2013 UNDER RECEPTION NO. 1014810

12. TERMS, CONDITIONS AND PROVISIONS OF VACATION OF EASEMENT RECORDED JANUARY 22, 2013 AT RECEPTION NO. 1015867.

13. TERMS, CONDITIONS AND PROVISIONS OF PEDESTRIAN EASEMENT RECORDED JANUARY 23, 2013 AT RECEPTION NO. 1015868.

14. RESTRICTIVE COVENANTS AND AGREEMENT (MAINTENANCE OF DRAINAGE FACILITIES WITHIN SHORES AT THE HIGHLANDS FILING NO. 2) RECORDED DECEMBER 13, 2013 UNDER RECEPTION NO. 1044239

