

Delta County Clerk and Recorder:

Index in grantee's index under "West Mountain Ranch Subdivision" and "West Mountain Ranch Subdivision Homeowners Association, Inc." and in the grantor's index under "CMH Homes, Inc." and the names of each person executing or consenting to this Declaration.

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WEST MOUNTAIN RANCH SUBDIVISION**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
WEST MOUNTAIN RANCH SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions for West Mountain Ranch Subdivision ("Declaration") is made by CMH Homes, Inc., a Tennessee corporation referred to as the "Declarant."

RECITALS

- A. Declarant desires to create a planned residential Community on the real property described in Exhibit A.
- B. Declarant owns the real property described in Exhibit A.
- C. The West Mountain Ranch Subdivision Homeowners Association, Inc., a Colorado Nonprofit Corporation, ("Association") has been incorporated under the laws of the State of Colorado for the purpose of exercising the functions as set forth in this Declaration, and in which each Owner is a member.
- D. This Declaration is established after termination of the covenants recorded May 5, 2011, at Reception No. 650500, December 26, 2017, at Reception No. 700415, and April 27, 2020, at Reception No. 718415, which covenants and amendments have been terminated.

ARTICLE 1. SUBMISSION, NAME AND LOCATION

Section 1.1 Submission of Real Estate. Declarant submits the real property described in Exhibit A, together with exceptions including recorded easements and restrictions set forth on the Plat for West Mountain Ranch Subdivision. The initial number of Lots is 33, and the maximum number of Lots is 35.

Section 1.2 Name. The type of common interest community is a planned community. The planned community's name is West Mountain Ranch Subdivision. The Association's name is West Mountain Ranch Subdivision Homeowners Association, Inc.

Section 1.3 Location. The Community subject to this Declaration and the Act is located in Delta County, Colorado, as more particularly provided in Exhibit "A" to this Declaration. The Plat relating to the Community is in the records of the Clerk and Recorder of Delta County, Colorado. The Plat is incorporated herein by reference as fully as if the same was set forth in its entirety herein.

ARTICLE 2. DEFINITIONS

Section 2.1 General. Terms used in these Governing Documents, as defined below, have their normal, generally-accepted meanings or the meanings given in the Colorado Common Interest Ownership Act or the Colorado Revised Nonprofit Corporation Act, unless the context requires otherwise.

(a) Act means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as may be amended from time to time.

(b) Association means West Mountain Ranch Subdivision Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors. The Board of Directors will exercise all Association powers and conduct and manage all Association affairs, unless a particular power is expressly reserved to the Owners.

(c) Board or Board of Directors means the body responsible for management and operation of the Association. The term has the same meaning as executive board as defined in the Act.

- (d) Bylaws mean the Bylaws of the Association.
- (e) Common Area means all real property owned or to be owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon, but excluding the Lots. Common Area means the same as common elements in the Act.
- (f) Common Expenses mean the expenses and liabilities incurred or anticipated to be incurred by the Association, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Areas, and for fulfilling any of the Association's powers and duties.
- (g) Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing within the West Mountain Ranch Community. This standard may be more specifically determined by the Board of Directors.
- (h) Community means all that property described in Exhibit "A."
- (i) Declarant. The declarant named in this Declaration and/or any successor and/or assignee designated by written notice or assignment executed by a Declarant and by the transferee and recorded (to the extent any rights or powers of the Declarant are transferred or assigned to such transferee).
- (j) Declaration means this Declaration of Covenants, Conditions and Restrictions, as may be amended and supplemented from time to time.
- (k) Electronic Record means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form, such as email, web pages, electronic documents, and facsimile transmissions.
- (l) Governing Documents mean this Declaration and its exhibit, the Association's Articles of Incorporation, Bylaws, Plat, Rules and Regulations, and Policies and Procedures, all as may be supplemented or amended from time to time.
- (m) Improvement means every structure and all appurtenances thereto of every type and kind, including, but not limited to, buildings, outbuildings, fixtures, utilities, patios, recreational facilities, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers, and other facilities used in connection with water sewer, gas, electricity, solar energy, telephone, regular or cable television, or other utilities.
- (n) Lot means and refers to any of the separately numbered lots or plots shown upon any recorded subdivision Plat of the Community, together with all appurtenances and improvements, with the exception of the Common Area and any public streets or rights-of-way.
- (o) Majority means those eligible votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.
- (p) Member means any Owner. The terms "Member" and "Owner" may be used interchangeably.
- (q) Owner or Lot Owner means the record titleholder of a Lot within the Community, but does not include a Mortgage Holder.
- (r) Period of Declarant Control. The period of time commencing with the appointment of the initial Board of Directors and continuing until the earlier of: (a) 60 days after Declarant

conveys 75% of the Lots to Owners other than Declarant or an affiliate of the Declarant; (b) two years after the last conveyance of a Lot by Declarant in the ordinary course of business; or (c) two years after the right to add new Lots was last exercised. The Declarant may voluntarily relinquish such power as evidenced by a notice executed by Declarant and recorded with the Clerk and Recorder; provided that Declarant may, at its option, require that during the period that Declarant would otherwise be entitled to appoint and remove directors and officers, specified actions of the Association or the Board of Directors as described in the recorded notice be approved by Declarant before they become effective.

(s) Person means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(t) Plat means the subdivision plat(s) for the Community as recorded, which plat(s) is a part of this Declaration.

(u) Policies and Procedures mean any instrument, as a part of any of the Governing Documents and/or separately adopted by the Association, as required under the Act as responsible governance policies, and other policies as may be adopted by the Association. The definition of Policies and Procedures may include Rules and Regulations.

(v) Related User. Any person who resides with an Owner within a Residence, is a guest or invitee of an Owner, or an occupant or tenant of a Residence, and any family member, guest, invitee, or cohabitant.

(w) Residence means the dwelling located on the Lot.

(x) Rules and Regulations means any instrument adopted by the Association, as allowed for under this Declaration and the Act, for the regulation and management of the Community, residents, Common Area, and/or Lots, including any amendments or revisions.

ARTICLE 3. THE ASSOCIATION

Section 3.1 Mission Statement. The Association and the Governing Documents exist to help maintain the property values and assets of the West Mountain Ranch Subdivision Community. Other goals are to help promote harmonious community living, preserve the common scheme and design, and create a sense of fairness and equity among Members. These covenants have been designed to promote voluntary compliance. By fostering positive interaction with one another and working collaboratively on common issues and concerns, the Community will strive to maintain property values and assets.

Section 3.2 Membership. Every Person who is a record Owner of a fee interest in any Lot subject to this Declaration is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot is the sole qualification for membership. No Owner, whether one or more Persons, will have more than one membership per Lot owned. Membership does not include Persons who hold an interest as security for the performance of an obligation, but granting a security interest will not terminate the Owner's membership.

(a) Voting. The Owner(s) is entitled to one vote for the Lot. When more than one Person holds an ownership interest in any Lot, the vote for the Lot will be exercised as those Owners determine among themselves; otherwise, the Lot's vote will be suspended if more than one Person seeks to exercise it.

(b) Common Expenses. Except as provided elsewhere in the Governing Documents, the amount of all Common Expenses will be assessed equally among all Lots.

Section 3.3 **General Purposes, Powers, Authority, and Restrictions on and of the Association.**

(a) Any purchaser of a Lot and all Owners are deemed to have assented to, ratified, and approved this Declaration and the terms of this Declaration.

(b) The Association has all power necessary or desirable to effectuate the purposes of the Community and the purposes of the Association.

(c) The Association is governed by the Governing Documents and other applicable laws.

(d) The Board of Directors may, by written resolution, delegate authority to a manager, managing agent, or bookkeeper for the Association, provided no such delegation relieves the Board of final responsibility.

Section 3.4 **Appointment and Removal of Officers and Board Members by Declarant.** The Declarant has the power and authority, pursuant to this Declaration and the other Governing Documents, to appoint and remove officers and members of the Board of Directors. This authority extends through the Period of Declarant Control.

Section 3.5 **Initial Owner Elections of Board Members.** Owners will elect an Owner-controlled Board as initially allowed for under the Act. Subsequently, Board positions are to be filled by vote of the Owners and as allowed for in the Bylaws.

ARTICLE 4. EASEMENTS AND COMMON AREA

Section 4.1 **Easements for Use and Enjoyment.** Owners and Related Users have a right and non-exclusive easement of ingress and egress, and use and enjoyment in and to the Common Areas, subject to the following provisions:

(a) the Association's right to have access to the Lots to discharge its rights and obligations under the Governing Documents, including, without limitation, the maintenance responsibility of the Association;

(b) the Association's right to grant easements, leases, and licenses across the Common Areas;

(c) the Association's right to dedicate or transfer all or any portion of the Common Areas subject to approval of Owners holding 67% of the total Association vote; and

(d) the Association's right to change the use of portions of the Common Areas or to close portions of the Common Areas.

Any Owner may delegate their right to use and enjoy the Common Areas and facilities located thereon to the members of the Owner's family, or other Related Users. If the Lot is leased, the Owner will be deemed to have delegated these rights to the Related Users of his Lot.

Section 4.2 **Easement for Entry.** The Association has an easement to enter onto Lots, but not the Residences on the Lots, to exercise rights and perform obligations as set forth in this Declaration, provided that exercise of this easement does not unreasonably interfere with or impair the use of any improvements constructed on a Lot, and will be exercised only after reasonable notice to the Owner, except in cases of emergency, in which case notice is not required.

Section 4.3 **Utilities.** A blanket easement upon, across, over, and under the Lots as shown upon the recorded Plat of the West Mountain Ranch Subdivision, and other easements

established or as may be established pursuant to the provisions of this Declaration or as may be granted by the Board of Directors of the Association.

Section 4.4 **Easements Deemed Created**. All conveyances of portions of the Community (including Lots) will be construed to grant and reserve the easements contained in this article, even though no specific reference to the easements or to this article appears in the conveyance.

Section 4.5 **Common Areas**. The Common Areas consist of all portions of the Community not located within the boundaries of a Lot that are owned or leased by the Association. The Common Areas will remain undivided, and no Owner or any other person is authorized to bring any action for partition or division of the whole or any part. Each Owner and the Association may use the Common Areas for the purposes for which they are intended, but no use will interfere with the lawful rights of other Owners.

ARTICLE 5. ASSESSMENTS

Section 5.1 **Purpose of Assessment**. The Association has the power to levy assessments. Assessments for Common Expenses are used to fulfill the Association's obligations pursuant to this Declaration and to promote the common benefit and enjoyment of the Owners and Related Users in the Community, as may be more specifically defined and authorized from time to time by the Association. Assessments may be used for the maintenance of the Common Area, irrigation system, storm water system (including drainage in private drainage easements and detention pond) and utility lines, or common improvements within the Community.

Section 5.2 **Personal Obligation For Assessments**. Each Owner covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) individual assessments which are established pursuant to the terms of this Declaration. These amounts are the personal obligation of the Person who owned the Lot when the assessment fell due. The personal obligation to pay any past-due sums due the Association does not pass to a successor-in-title unless expressly assumed.

Section 5.3 **Lien**. All assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney's fees, costs, and expenses), up to the maximum amount permitted by law, are a charge and a continuing lien upon the Lot against which each assessment is made. The Association has authority to record a notice of lien in the county's real property records evidencing the Association's lien. The Association's lien under this article is not subject to the provision of any homestead exemption as allowed under law. The lien has the priority set forth in the Act.

Section 5.4 **Payment of Assessments**. Assessments will be paid in the manner and on the dates fixed by the Association. No Owner is exempt from liability for or may withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Area, the Association's failure to provide services or perform its obligations, or inconvenience or discomfort arising from the Association's performance of its duties.

Section 5.5 **Individual Assessments**. The Association has the right to add to any Owner's assessment any amounts expended by the Association for the benefit of any individual Lot or resident thereof, including improvement, repair, replacement, and maintenance specific to the Lot as authorized under the terms of this Declaration; repair, replacement, and maintenance of any areas of Association maintenance responsibility caused by the negligent or willful acts of any Owner, Owner's guest, tenant, employee, licensee, or invitee; and all fines and costs assessed against an Owner and the Owner's Lot pursuant to the Governing Documents.

Section 5.6 **Delinquent Assessments.** All assessments and related charges not paid on or before the due date are delinquent, and the Owner is in default.

(a) If any assessment, fine, or charge is not paid in full within 30 days of the due date, or any later date specified in the Association's collection policy:

(i) a late charge in an amount specified in the Association's collection policy may be imposed without further notice or warning;

(ii) interest at the rate specified in the Association's collection policy may be imposed without further notice or warning; and

(iii) if payments are authorized to be made in installments, then upon 30 days' written notice, the Association may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner loses the privilege of paying assessments and charges in installments for that fiscal year, unless the Association, in its sole discretion, reinstates the privilege.

(b) If any assessments, fines, or other charges remain unpaid more than 30 days after the due date, the Owner's right to vote will be automatically suspended until all amounts owed are paid in full, and the Association may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Colorado law, including reasonable attorney's fees. Enforcement under this section is not dependent upon or related to other restrictions and/or other actions.

(c) If partial payment of assessments or other charges are made, the amount received will be applied as specified in the Association's collection policy.

(d) The Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay the delinquent assessments or related charges, and may foreclose its lien against the Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for delinquent assessments or related charges may be commenced and pursued without foreclosing, or in any way waiving the Association's lien.

(e) The Association's lien foreclosure, or attempted foreclosure, does not preclude the Association from foreclosing its lien again for any subsequent delinquent assessment or related charges. The Association may bid on or purchase any Lot at foreclosure or other legal sale, and acquire and hold, lease, mortgage, convey, or otherwise deal with the Lot. If a lien foreclosure action is filed, and an Owner abandons or vacates his Lot, the Association may apply for the appointment of a receiver for the Lot without prior notice to the Owner. The Association's rights are expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent provided under the Act.

Section 5.7 **Budget and Assessment.** Prior to the beginning of each fiscal year, the Association will prepare a budget covering the estimated costs of operating the Community during the coming year, including an annual reserve contribution for replacement of improvements that are the Association's responsibility, and establish the annual assessment or installments for the coming year. The Association will deliver a summary of the budget to each Owner within 90 days after adopting the budget, and set a date for an Association meeting to consider the budget, which meeting will occur within a reasonable time after delivery of the budget summary. The budget and the assessment will become effective unless disapproved at a duly-called Association meeting by a majority of the total Association vote; provided, however, if a quorum is not obtained at the meeting called to ratify the budget, the budget will become effective even though a vote to disapprove the budget could not be called at this meeting. If the membership disapproves the proposed budget or the Association fails for any reason to determine the budget for the succeeding year, then until a new budget is determined, the budget in effect for the current year will continue.

The Association may propose a new budget at any time during the year. The approval procedure set forth in this section for budgets will also apply to a new budget proposed by the Association.

The budget will not operate as a limitation on expenditures by the Association, but is an estimate of Common Expenses on which the Association bases the annual assessments.

Section 5.8 **Special Assessments.** In addition to the annual assessment provided for above, the Association may, at any time, and in addition to any other rights it may have, propose a special assessment against all Owners in accordance with the meeting and notice procedures set forth above. Any special assessment (except as provided in this Declaration regarding repair or reconstruction of casualty damage to or destruction of all or part of the Community) will become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at the meeting, the special assessment will become effective even though a vote to disapprove the special assessment could not be called at this meeting. The special assessment may be payable in installments, as determined by the Association, and/or may provide for a discount for a lump sum payment.

Section 5.9 **Statement of Account.** The Association will furnish to an Owner or the Owner's designee, or to a holder of a security interest or its designee, a statement setting forth the amount of unpaid assessments then levied against the Owner's Lot. The Association will deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party within 14 calendar days after the Association's registered agent receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in the statement, when signed by the Association's treasurer or managing agent, if any, will bind the Association, the Board, and every Owner as to the person or persons to whom the statement is issued and who rely on it in good faith. The Association may establish a reasonable fee relating to the statement, which may incorporate any fees imposed by a managing agent.

Section 5.10 **Surplus Funds and Common Profits.** Common profits from whatever source will be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses will, at the option of the Board of Directors, be: (a) added to the Association's capital reserve account; (b) distributed to the Owners; or (c) credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Lot.

Section 5.11 **Borrowing.** The Association has the power to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments, but only upon the affirmative vote of a majority of the Association vote present and exercised, in person or by proxy, at a duly constituted meeting called for that purpose, or by ballot in lieu of a meeting, as provided in the Bylaws.

ARTICLE 6. MAINTENANCE RESPONSIBILITY

Section 6.1 **By the Owner.** Each Owner is obligated to maintain and keep in good repair all portions of the Owner's Lot consistent with the Community-Wide Standard. This maintenance responsibility includes, but is not limited to, the following:

(a) **Improvements.** Each Owner is responsible for maintenance, repair, and replacement of the property and Improvements located within their Lot boundaries, including, but not limited to the following: exterior lighting, decks, patios, driveways, doors, garage doors, windows, and painting or staining the exterior surfaces of the Residence; accessory buildings, sewage disposal systems, fences; and any other approved Improvement on the Lot. Maintenance is required as effects of damage, deterioration, or weather become apparent. Any changes to the exterior appearance, including painting or stain, require prior written approval of the Architectural Review Committee.

(b) **Landscaping.** The front yard area of the Lot must be landscaped in accordance with a plan approved by the Architectural Review Committee within 12 months of the date of purchase. Each Owner is required to maintain the landscaping on the Lot, as approved by the Architectural Review Committee, in a neat, attractive, and well-kept condition, which includes, but is not limited to, replacement of dead, diseased, or unsightly vegetation, and regular removal of weeds, including noxious weeds, and debris.

Each Owner must perform his obligations in a manner that does not unreasonably disturb other Owners and Related Users. Any maintenance or repair performed on or to the Common Areas by an Owner or Related User (including, but not limited to landscaping of Common Areas) will be performed at the Owner's sole expense, and the Owner or Related User is not entitled to reimbursement from the Association, even if the Association accepts the work.

Section 6.2 **By the Association.** The Association will maintain and keep the Common Areas of the Community in good repair as a Common Expense. The Association will maintain the irrigation system, including ditches and pipelines, on Common Areas and the storm water system, including drainage in private drainage easements and any detention as shown on the Plat. The Association will control noxious weeds in the Common Areas by a regular program of cutting or spraying all such weeds to prevent their growth and propagation within the Community using methods approved by the Delta County Extension Agent or the Soil Conservation Service. The cost of such noxious weed control program will be a Common Expense. The foregoing maintenance will be performed consistent with the Community-Wide Standard.

If the Association determines that the need for maintenance, repair, or replacement of the Common Areas is caused through the willful or negligent act of any Owner or Related User or their family, guests, lessees, or invitees, the Association may assess the cost of that maintenance, repair, or replacement against the Owner's Lot, which cost will become the Owner's personal obligation, a lien against the Lot, and collected as provided in this Declaration and the Association's collection policy.

Section 6.3 **Failure to Maintain.** If the Association determines that any Owner has failed or refused to properly discharge his maintenance, repair, or replacement obligations as provided in the Governing Documents, the Association will give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary work at the Owner's sole cost and expense. The notice will describe with reasonable particularity the work the Association deems necessary.

Unless the Association determines that an emergency exists, the Owner will have 15 days to control weeds, including noxious weeds, grass, and/or other unsightly growth on the Lot, and 30 days to complete maintenance or repair to the Residence or other Improvements on the Lot. If the maintenance or repair of the Residence or other Improvements on the Lot cannot reasonably be completed within such time period, the Owner must commence replacement or repair within 30 days. If the Association determines that: (a) an emergency exists or (b) the Owner has not complied with the Association's demand, the Association may perform the work, then assess the cost of that maintenance, repair, or replacement against the Owner's Lot, which cost will become the Owner's personal obligation, a lien against the Lot, and collected as provided in this Declaration and the Association's collection policy.

Section 6.4 **Maintenance Standards and Interpretation.** The maintenance standards and enforcement and the interpretation of maintenance obligations under the Governing Documents may vary from one term of the Board to another term of the Board. These variances do not constitute a waiver of any right to adopt and enforce maintenance standards. No decision or interpretation by a prior Board constitutes a binding precedent with respect to subsequent Board decisions or interpretations.

ARTICLE 7. ARCHITECTURAL CONTROLS

Section 7.1 **Architectural Review Committee.** The Declarant will serve as the Architectural Review Committee ("ARC") until the earlier of the date that all Lots are sold or five years from the date this Declaration is recorded. Upon expiration or earlier surrender by Declarant, the Board of Directors may appoint and remove members of the ARC; provided, that in the absence of such

appointment, the Board will serve as the ARC and will meet from time to time as necessary to perform its duties. The ARC may propose design guidelines from time to time.

Section 7.2 **Approval Required.** No Owner will commence, place, erect, alter, or demolish any Improvement to Property (as defined below) upon any portion of the West Mountain Ranch Subdivision without prior written ARC approval, except any Improvement to a Lot made by the Declarant.

Section 7.3 **Improvement to Property.** "Improvement to Property" requiring approval of the ARC means and includes, without limitation: (a) construction, installation, erection, or expansion of any building, structure, or other Improvements, including utility facilities; (b) demolition or destruction, by voluntary action, of any building, structure, or other Improvements; (c) grading, excavation, filling, or similar disturbances to the land including, without limitation, change of grade, ground level, or drainage pattern; (d) landscaping, planting, clearing, or removing of trees, shrubs, grass, or plants; (e) exterior lighting, and (e) any change or alteration of any previously approved Improvement to Property by an Owner or Owner's predecessor-in-title, including any change of exterior appearance, color, or texture.

Section 7.4 **Application Procedure.** The ARC may require that applications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed Improvement to Property, location and size of driveways, walls, windbreaks, and grading plan, as well as any other materials and information as may be required by the ARC and/or set forth in the Design Guidelines. Applications must be submitted to the ARC Chairperson with a copy to the Association's secretary or other designated person. Applications will be reviewed at ARC meetings. Owners submitting applications are responsible for providing documentation to the ARC regarding harmony of external design, effective location and use of existing Improvements and proposed Improvements to Property, preservation of aesthetic beauty, and conformity with specifications and purposes generally set forth in the Declaration and the Design Guidelines. The ARC may require submission of additional plans, specifications, or other information prior to approving or disapproving the application. Notwithstanding Section 7.8 below, until the ARC has received all required materials in connection with the application, the application will not be deemed complete, and the ARC may postpone review until required materials are submitted for approval.

Section 7.5 **Authority of Association to Engage Consultants.** The Board has the authority to select and engage professional consultants to assist in reviewing applications and/or to inspect any of the work performed. The cost of any consultants is to be paid by the submitting Owner, whether or not the application is approved. Prior to incurring consultant costs, the Association will notify the Owner of its belief that review and/or inspections by consultants are necessary. The Owner will then have the right to withdraw the submission. The Association may require payment of costs prior to review.

Section 7.6 **Architectural Review Criteria.** The ARC will exercise its reasonable judgment with the objective that proposed Improvement to Property conforms to and harmonizes with the existing surroundings, Residences, landscaping, and structures. The ARC's approval on matters coming before it will not be unreasonably withheld, and actions taken will not be arbitrary or capricious. Criteria for approval include, but are not limited to: (a) conformity and harmony of exterior appearances with neighboring structures, including design compatibility and scale; (b) color and materials to be used; (c) location on the Lot; (d) relation to the natural environment; (e) street visibility; (f) preservation of aesthetic beauty and conformity with the specifications and purposes generally set out in this Declaration and in the Design Guidelines, if any; and (g) any other matter the ARC deems to be relevant or appropriate.

Section 7.7 **Variances.** The ARC may recommend reasonable variances or adjustments from any conditions and restrictions imposed by the Governing Documents to overcome practical difficulties and unnecessary hardships resulting from the application of the conditions and restrictions contained in the Governing Documents. Any variance or adjustment must be documented in writing.

Section 7.8 **Reply and Communication.** The ARC will respond to Owner's application within 30 days of receipt of the completed application and all information the ARC reasonably requires, provided that the response time will be 45 days if a variance is requested or required. If the ARC fails to respond to the application within this time frame, then the applicant may send written notice, via certified

mail, to the Association's president and the Association's secretary, that the applicant intends to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within 15 days of receipt of the applicant's notice, the approval will not be required and this article will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this article are satisfied, nothing herein authorizes anyone to construct or maintain any improvement to Property that is otherwise in violation of the Governing Documents or of any applicable zoning or other laws.

Section 7.9 **Right to Appeal.** After the Declarant's right to appoint the Design Review Committee expires, and if the Board of Directors has appointed other persons to act as the ARC, an Owner may appeal any decision of the ARC to the Board of Directors by written appeal submitted to the Board and its managing agent, if any, within 20 days of the date that the ARC decision or notice is mailed to the Owner. The Board of Directors will review the decision of the ARC and all materials submitted to the ARC and the Design Guidelines, if any. Any decision of the ARC may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the reversal when the Board concludes that the ARC's decision was not consistent with the criteria set forth in this article and the Design Guidelines, if any.

Section 7.10 **Commencement of Approved Work.** All Improvements to Property approved by the ARC must be commenced within six months from the date of approval. If not commenced within this time, then approval expires, unless the ARC gives a written extension to start the work. At a mutually agreed time, the ARC or its representative is authorized to enter the Lot to inspect the ongoing and completed work. All work must be performed in accordance with the plans as approved by the ARC, including any conditions the ARC imposed.

Section 7.11 **Completion of Approved Work.**

(a) Except for new construction of Residences, all work approved by the ARC will be completed within 90 days from the date of commencement, unless the ARC otherwise agrees in writing. New construction of Residences must be completed within 18 months of commencement. All approved Improvements to Property must be completed in their entirety, unless the ARC otherwise agrees in writing.

(b) Upon completion, the Owner will give written notice of completion to the ARC. All applicable statutes of limitation will be tolled until the Association receives the written notice of completion.

Section 7.12 **Notice of Noncompliance.** The Committee will issue the owner a notice of non-compliance if work is done without prior approval, is not performed in accordance with the approved application, or is not completed within the required time frame. Within 45 days, and at the Owner's sole cost and expense, the Owner must correct items listed in the notice of non-compliance or restore the Lot to the condition that existed prior to the commencement of the work.

Section 7.13 **Limitation of Liability.** Neither the Association nor its directors, officers, committee members, or agents will bear any responsibility for the design, quality, structural integrity, or soundness of approved construction or modifications, nor for compliance with building codes, zoning regulations, and other governmental requirements. The Association, its directors, officers, committee members, and agents are not liable for any injury, damages, or loss arising out of the manner, design, or quality of approved construction on or to modifications to any Lot. No lawsuit, action, or claim may be brought against any of the foregoing for any injury, damage, or loss.

Section 7.14 **No Waiver of Future Approvals.** The Association's approval of any proposals and applications for any work done or proposed, or in connection with any other matter requiring the Association's approval, is not a waiver of any right to withhold approval as to any similar proposals and applications.

ARTICLE 8. COVENANTS

Section 8.1 Owner Responsibility for Compliance. Each Owner is responsible for ensuring that the Owner and the Owner's Related Users comply with all provisions of the Governing Documents. Each Owner and Related User will endeavor to observe and promote the purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family and Related Users as a result of the person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner.

Section 8.2 Use of Lots.

(a) **Residential /Business Use.** Except as provided below, each Lot will be used for residential purposes only. Unless otherwise expressly authorized by the Act and subject to its terms, no trade or business of any kind may be conducted in or from a Lot or any part of the Community, except that the Owner or Related User residing in the Residence may conduct ancillary business activities within the Lot so long as the business activity: (i) is not apparent or detectable by sight, sound, or smell from outside of the Lot; (ii) has no advertising signs; (iii) does not involve visitation of the Lot by employees, clients, customers, suppliers, or other business invitees in greater volume than would normally be expected for guest visitation to a Residence without business activity; (iii) is legal and conforms to all zoning requirements; and (iv) is consistent with the Community's residential character, and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Related Users, as determined by the Association.

(b) The terms "business" and "trade" as used in this section have their ordinary, generally-accepted meanings, and include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves provision of goods or services to persons other than the provider's family, and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity.

Section 8.3 Leasing. The Community is intended to be an owner-occupied community. However, any Owner has the right to lease or allow occupancy of a Lot upon terms and conditions the Owner deems advisable, subject to restrictions of this Declaration any other restrictions of record, and the following:

(a) "Leasing" for the purposes of this Declaration is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner, with or without consideration. For the purposes of this Declaration, occupancy by not more than one roommate of an Owner who occupies the Lot as his primary residence does not constitute leasing under this Declaration.

(b) Leases will be for or of the entire Lot. There will be no subleasing of Units or assignment of leases without prior written Association approval.

(c) Occupancies of less than 30 days are prohibited without the Association's prior written approval.

(d) All leases will be in writing and will provide that the lease is subject to the Governing Documents. The Association has the authority to require a particular lease form or addendum to implement the provisions of this section. Owners are required to provide residents with copies of the current Declaration and Rules and Regulations.

(e) Each Owner who leases his Lot will provide the Association, upon request, a copy of the current lease (lease amount may be redacted) and tenant information, including the names of all residents, vehicle descriptions including license plate numbers, and any other information reasonably requested by the Association or its agents.

(f) All leases will state that the failure of the resident or guests to comply with the Governing Documents is a default of the lease and this Declaration.

Section 8.4 **Use of Common Areas.** There will be no obstruction of the Common Areas, nor will anything be kept, parked, or stored on or removed from any part of the Common Areas without the prior written consent of the Board, except as specifically provided herein. The Association may remove unattended personal property from Common Areas. The Association will not be liable to the Owner of any Lot or Related Users for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Areas or for the removal of such property.

Section 8.5 **Lot Combination.** If two or more contiguous Lots are owned by the same Owner or Owners, they may be combined by means of a written instrument, executed and acknowledged by the Owners of said Lots, and approved in writing by the Board of Directors, which approval will not be unreasonably withheld, and recorded in the office of the Clerk and Recorder of Delta. The Owner will also comply with any requirements of the City of Delta and Delta County. If Lots are combined, they will retain the same voting rights and assessment obligations as prior to the combination.

Section 8.6 **Subdivision.** No Lot may be subdivided except for the purpose of combining portions with an adjoining Lot, provided that no additional building site is created. All requirements for subdivision set forth in C.R.S. 38-33.3-213 and all requirements and applicable ordinances or resolutions adopted and enforced by the local governing body must be met and written approvals obtained. No less than one entire Lot as originally laid out shall be used as a building site, except that if portions of any Lot are combined with adjoining property, the decrease in size will not prohibit the remainder of such Lot from being used as a building site, provided the remainder consists of no less than one acre. No additional building sites will be created by the combining of any portion of any Lot with adjoining property. No Owner has the right to partition or seek partition of the Common Area or any Lot.

Section 8.7 **Residence Size, Height, and Setbacks.** All Residences must include a minimum of 1600 square feet of living space, exclusive of roofed or unroofed porches, terraces, garages, unfinished basements, or other structures. Each Residence must have an attached or detached garage that includes no fewer than two completely enclosed parking spaces and is built at the same time as the initial construction of the Residence. No Residence or structure will exceed a height of 35 feet. All structures are subject to City of Delta setback requirements.

Section 8.8 **Accessory Dwelling Units and Accessory Buildings.**

(a) If permitted by the City of Delta, and subject to compliance with the City of Delta Municipal Code and prior written approval of the ARC in accordance with the terms of this Declaration, accessory dwelling units ("ADUs") may be allowed as an accessory use to a single-family detached dwelling unit. Either the primary Residence or the ADU must be owner-occupied. Only one of the dwellings may be leased to a non-owner.

(b) Accessory buildings or structures require prior written approval of the ARC. Accessory buildings and structures are to be complementary to the principal structure and must comply with setback requirements. Up to two accessory buildings or structures are permitted as follows: one accessory building or structure not to exceed 1,000 square feet and one shed or similar structure not to exceed 200 square feet.

Section 8.9 **Roofing.** Roofs will be constructed with asphalt shingles, stone, or tile. Metallic roofing commonly used for residential dwellings is acceptable. Other types of metallic roof, such as corrugated tin, are not permitted. Prior written approval by the ARC is required for any new roof.

Section 8.10 **Temporary and other Structures.** During construction of Improvements on the Lot, temporary structures may be permitted subject to ARC approval. No permitted temporary structure may be used as a Residence. The Association may adopt Rules and Regulations allowing the temporary use of tents in the backyard for recreational purposes.

Section 8.11 Tanks. No elevated tanks or appurtenances of any kind will be erected, placed, or permitted upon any part of a Lot. Any tank used in connection with any Residence (e.g., for storage of gas, oil, or water) or any type of refrigeration or heating apparatus must be located underground or concealed by appropriate fencing or screening. The restrictions in this subsection may be varied or waived only with prior written approval of the ARC.

Section 8.12 Utilities. All electric, cable, television, telephone, radio, or other utility lines will be placed underground when extended from the Lot line to a Residence or other Improvement on a Lot.

Section 8.13 Irrigation. The Association is responsible for delivery of irrigation water to the individual Lot lines within the Community; provided, however, that such responsibility is limited to times when irrigation water is actually made available to the Association by the North Delta Canal Company or its successor. Each Lot Owner is responsible for pumping irrigation water from its Lot line for use on its Lot.

Section 8.14 Drainage. There will be no interference with the established drainage patterns over any property within the Community, unless adequate provision is made for proper drainage and approved by the ARC. In the event of any interference with established drainage patterns where there has been no adequate provision made for proper drainage, the Owner interfering with the established drainage patterns will be liable for any damage resulting from such interference.

Nothing in this section will be construed to affect the rights of an aggrieved Owner to proceed individually against a violator of this section for relief from interference with his or her property rights, and the Board may, in its discretion, require the aggrieved Owner to seek redress personally for interference with the Owner's property rights before the Association intervenes and commences enforcement action. No claim for any loss, damage, or otherwise will exist by an aggrieved Owner against the Association for failure to enforce the provisions hereof if the aggrieved Owner has not pursued all available remedies against the violator for redress provided under Colorado law.

Section 8.15 Wildfire Mitigation. The Association will promulgate reasonable rules relating to wildfire mitigation based upon recommendations of the Fire Department and Delta County requirements, if any.

Section 8.16 Fences and Hedges. No wall or fence except a decorative wood, stone, brick, or vinyl fence, not exceeding three feet in height measured from the adjoining ground surface inside the fence, may be erected or maintained on any Lot in the front yard area, defined as the area between the front Lot line and a point of intersection of the side Lot line and a line parallel to the front of the Residence, subject to City setback requirements. Fences from such point along the side Lot lines and across the rear Lot line may be up to six feet in height, measured as provided above, and subject to City setback requirements. Vinyl is a permitted material for fences. All walls and fences must be approved in writing by the ARC prior to installation.

Section 8.17 Prohibition of Damage, Nuisance, and Noise. Without the prior written consent of the Board of Directors, nothing will be done or kept on a Lot or in the Community that would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive, offensive, or unsanitary activities may not be carried on within the Community. No Owner or Related User may use, or allow the use of, the Lot or any portion of the Community, at any time, in any way, that may endanger persons or property, unreasonably annoy, disturb, or cause embarrassment or discomfort to other Owners or Related Users, or constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Related Users a right of redress for actions, activities, or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Community.

No exterior horns, whistles, bells, or other sound devices that create or produce excessively loud noises, except security devices used exclusively to protect the security of Residences and other Lot Improvements, or that are essential to the function of community services, will be used on any Lot or the Common Areas.

Nothing in this section will be construed to affect the rights of an aggrieved Owner or Related User to proceed individually against a violator for relief from interference with his property or personal rights. The Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their rights before the Association intervenes and commences enforcement action. No aggrieved Owner or Related User will have a claim against the Association for failure to enforce the provisions of this section if the aggrieved Owner or Related User has not personally pursued all available remedies against the violator for redress provided under Colorado law.

Section 8.18 Animals/Pets.

(a) A reasonable number of generally recognized household pets may be kept on a Lot, as determined in the discretion of the Board of Directors. Up to a total of four of the following types of animals may be kept on a Lot: horses, mules and/or burros, llamas, donkeys, or goats, subject to any City and County restrictions. Up to four chickens or four ducks may be kept in a chicken coop or pen approved by the ARC. For purposes of this section, the following are prohibited: poultry (other than permitted chickens and ducks), fowl, peacocks, pigs or swine, other types of livestock, venomous snakes, or animals determined in the Association's sole discretion to be dangerous animals. Any structures for housing or protection of animals/pets must have the prior written approval of the ARC. The Association may adopt additional Rules and Regulations to supplement this section.

(b) No Owner or Related User may keep, breed, or maintain any pet for any commercial purpose.

(c) Dogs must be under the physical control of a responsible person at all times while not on the Owner's Lot. Feces left by pets upon the Common Areas must be removed promptly by the pet owner or other person responsible for the pet.

(d) Any Owner or Related User who keeps or maintains any pet within the Community is deemed to agree to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim, or liability of any kind or character whatsoever arising by reason of keeping or maintaining the pet within the Community.

Section 8.19 Unsightly Articles. No unsightly article will be permitted to remain on any Lot or other portion of the property if it is visible from an adjoining Lot or the street. Without limiting the generality of the foregoing, service areas, storage piles, compost piles, and facilities for hanging, drying, and airing clothing or household fabrics will be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk or scrap materials, refuse, or trash will be kept, stored, or allowed to accumulate on any Lot except within an enclosed structure or when appropriately screened from view. Tractors, graders, wagons, sleighs, snow removal equipment, and garden and maintenance equipment will be kept at all times (except when in actual use) in an enclosed structure or otherwise be fully screened from view in a manner consistent with this Declaration.

Section 8.20 Trash Removal Restrictions. No burning of trash, garbage, or other debris is permitted on Lots or the Common Areas. Trash containers will be kept within an enclosed structure or otherwise screened from view except that trash containers may be placed outside at those times necessary to permit garbage or trash pick-up. All such materials will be contained inside plastic garbage containers, and is put out no earlier than a reasonable time before the scheduled pick-up and removed a reasonable time after pick-up.

Section 8.21 Vehicles.

(a) Recreational Vehicles. Recreational vehicles, boats, trailers, and other recreational equipment must be stored behind a fence at least six feet in height along the side Lot line and behind a six foot fence along a line parallel to the front Lot line, intersecting at the front side of the residence and the side Lot line. Alternatively, recreational equipment must be kept within an enclosed structure approved by the ARC.

(b) Other Vehicles. Pick-up trucks with a load capacity greater than one-ton, other trucks, busses, vans, or other commercial vehicles longer than 24 feet are prohibited except in an enclosed garage or other approved enclosed structure on the Lot. Permitted commercial vehicles with writing on their exteriors may be parked in a driveway, but equipment in pick-up truck beds and other open vehicle beds must be covered. Heavy equipment may not be stored or kept on any part of the subject property for more than seven consecutive days, provided, however, that this covenant shall not be deemed to apply to construction trucks for reasonable times during periods of construction of Improvements on any part of the subject property.

(c) Unlicensed or Junk Vehicles. Unlicensed or junk vehicles are prohibited on any part of the Community for a period of time in excess of 24 hours in the aggregate during one calendar week, unless enclosed within a garage or carport.

(d) Vehicle Repair. Maintenance, repair, rebuilding, dismantling, repainting, or any kind of servicing of vehicles, trailers, or boats may not be performed or conducted in the Community unless done within completely enclosed structures that screen the sight and sound of the activity from the street and from adjoining property. This restriction does not prevent washing and polishing of any motor vehicle, boat, or trailer, together with those activities normally incident and necessary to washing and polishing.

(e) Rules. Rules of the Association may further govern the types of vehicles that may be parked or stored within the Community.

Section 8.22 Signs. Except as may be provided in this section or as may be required by state law or legal proceedings, no signs, advertising posters, political placards, or billboards of any kind will be erected, placed, or permitted to remain on a Lot without the prior written consent of the Board or its designee, except as follows: (a) residential identification signs compatible with the architecture of the Community, not to exceed face area of three square feet, that are approved by the ARC, (b) one professional security sign, not to exceed one square foot in size, may be displayed on the Lot and a reasonable number of professional security decals, not larger than eight inches by eight inches, may be displayed within windows in a Residence; (c) one professionally lettered "For Rent" or "For Sale" sign, not to exceed total face area of six square feet in size, may be displayed on a Lot being offered for sale or for lease; (d) signs, not to exceed a total face area of six square feet, of the type usually used by contractors, subcontractors, and tradesmen may be erected during the authorized time of construction; (e) political signs as permitted by Colorado law; and (f) patriotic display of American flags and State of Colorado flags, not exceeding four feet by six feet in size, attached to a flagstaff on a Residence. The Board has the right to erect reasonable and appropriate signs on behalf of the Association.

Section 8.23 Hazardous Activities. No activities will be conducted on a Lot, and no Improvements will be constructed on a Lot, that are, or might be, unsafe or hazardous to any person or property. Without limiting the generality of the foregoing: no firearms will be discharged upon the property, and no open fires will be lighted or permitted on any portion of the property except in a contained barbecue unit while attended and in use for cooking purposes, or within an interior or exterior fireplace or gas fire pit designed to prevent dispersal of burning embers.

Section 8.24 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind are permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavation, or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil or natural gas will be erected, maintained, or permitted upon any Lot.

Section 8.25 **Restriction on Marijuana Use, Growth and Distribution.** Except as permitted by Colorado law, due to the pungent odor of growing marijuana and the migration of that odor to neighboring Lots, growing or cultivation of marijuana on a Lot is prohibited. No Owner or Related User or other person may use any portion of the Lot for the purpose of distributing marijuana. The intent of this restriction is not to regulate use of marijuana, but is limited to growing or cultivation and distribution. No Lot may be used for production of hash oil. The restrictions in this section may be further clarified by the Board through Rules and Regulations. Owners will be responsible for any costs or damages resulting from a violation of this section.

Section 8.26 **Disclaimers of Declarant.** Declarant has disclosed that the site that includes each Lot is subject to construction. Owners acknowledge that construction dust, construction noise, inconveniences, and related issues may exist during construction. These inconveniences include those from construction labor personnel, storage, port-a-potties, construction debris, parking of construction personnel, and more.

Section 8.27 **Rules and Regulations.** The Board of Directors may adopt, amend, and repeal Rules and Regulations concerning and governing the Residences, Lots, and Common Areas to further the provisions of this Declaration and the general plan of development.

ARTICLE 9. INSURANCE

Section 9.1 **Insurance on the Lots.** Each Owner will obtain property and liability insurance covering loss, damage, or destruction by fire or other casualty to the Improvements installed or made to their Lot, the other property of that Owner, and any injuries occurring to persons while on their Lot. The Association will not be liable for the failure of any Owner to maintain insurance.

Section 9.2 **Insurance to be Carried by the Association.** The Association will obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act. Insurance coverage includes the following and will be provided by financially responsible and able companies duly authorized to do business in the State of Colorado:

(a) **Property Insurance on Common Areas.** The Association will obtain property insurance covering loss, damage, or destruction by fire or other casualty to Improvements installed or made to any portion of the Common Areas, if any, and any other property that is the Association's maintenance responsibility, in amounts the Board determines. Property insurance may contain customary deductibles.

(b) **Association Comprehensive/General Liability Insurance.** The Association will obtain comprehensive/general liability insurance for the Common Areas and any other property the Association maintains, in amounts the Board determines from time to time. Coverage will include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

(c) **Association Fidelity Insurance.** The Association will obtain fidelity coverage to protect against dishonest acts on the part of its officers, directors, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees, and employees, and others who are responsible for handling the funds of the Association. The fidelity coverage will be in at least an amount equal to the aggregate of two months' assessments plus reserves, based on the current budget, to the extent reasonably available.

(d) **Directors' and Officers' Personal Liability Insurance.** The Association will obtain directors' and officers' personal liability insurance to protect the officers, directors, Committee members, and any other individuals acting at the Board's direction from personal liability in relation to their duties and responsibilities in acting on the Association's behalf.

(e) **Other Insurance.** The Association may obtain other insurance against other risks of similar or dissimilar nature as it deems appropriate with respect to its responsibilities and duties.

Section 9.3 Miscellaneous Terms Governing Insurance Carried by the Association. The Association will maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

(a) All insurance policies will provide that each Owner is an insured party under the policy with respect to liability arising out of the Owner's membership in the Association.

(b) All insurance policies will contain waivers of subrogation against any Owner or member of the Owner's household.

(c) All insurance policies will contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner, and will provide that policies may not be canceled or modified without at least 30 days' prior written notice to all of the Owners, holders of first lien security interests, and the Association, except in instances of nonpayment of premiums, which will require at least ten days' prior written notice.

(d) If requested, duplicate originals of all policies and renewals, together with proof of payment of premiums, will be delivered to all holders of first lien security interests at least ten days prior to the expiration of the policies.

(e) All liability insurance will cover the Association, the directors and officers, the manager or managing agent, if any, holders of first lien security interests, their successors and assigns, and Owners, with respect to Owner's liability arising out of Association membership.

(f) All Association insurance policies will be primary if there is other insurance in an Owner's name covering the same risk.

Section 9.4 Insurance Premium. Insurance premiums will be a Common Expense included as a part of the Association's annual assessments.

Section 9.5 Insurance Review. The Board may review the insurance carried by the Association periodically to determine the amount of insurance required and the service capabilities of the current carrier.

Section 9.6 Claims and Adjustments by the Association. Any loss covered by an Association insurance policy will be adjusted by the Association. The insurance proceeds for a loss will be payable to the Association and not to any holder of a first lien security interest. The Association will hold any insurance proceeds for the repair or restoration of the damaged property. The Association is not entitled to use insurance proceeds for other purposes unless there is a surplus after the damaged property has been completely repaired or restored.

Section 9.7 Duty to Repair. The Association must repair or replace promptly any portion of the Community for which insurance is required under this article that is damaged or destroyed, unless Owners entitled to cast 67% of the total Association vote not to rebuild.

Section 9.8 Condemnation and Property Insurance Allocations and Distributions. In the event condemnation proceeds or property insurance proceeds are distributed to the Owners, the distribution will be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 9.9 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, submits a claim under the Association's insurance policies or not, the Association will pay or absorb the deductible amount for any work, repairs, or reconstruction for damage to property that is the Association's maintenance responsibility, unless the damage is caused by the negligent or willful act or

omission of an Owner, the Owner's family, guests, or invitees, in which case the Association will seek reimbursement of the deductible amount as an individual assessment in compliance with and under the terms of the Declaration.

Section 9.10 Insurance Assessments. If the insurance proceeds are not sufficient to defray the costs of reconstruction and repair for any reason, including the allocation of deductibles, the deductible or additional cost will be a Common Expense.

Section 9.11 Damage to or Destruction of Residences on Lots. In the event of damage to or destruction of structures on a Lot, the Owner will promptly repair or reconstruct the damaged structure(s) in a manner consistent with the original construction or plans approved in accordance with this Declaration, unless the Owner elects not to rebuild in cases of substantial damage or destruction. If the structure(s) is substantially destroyed and the Owner determines not to rebuild or reconstruct, the Owner will promptly clear the Lot of all debris and continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

ARTICLE 10. AUTHORITY AND ENFORCEMENT

Section 10.1 Compliance With and Enforcement of Governing Documents.

(a) **Compliance Required.** Every Owner and Related User will comply with the applicable provisions of the Governing Documents. Any aggrieved Owner or Related User has the right to take action to enforce the terms of the Governing Documents against another Owner or Related User.

(b) **Association Remedies.** The Association may enforce all applicable provisions of the Governing Documents and may impose sanctions for their violation. Sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which will be a lien upon the violator's Lot; (in the event that any Related User of a Lot violates the Governing Documents and a fine is imposed, the fine will first be assessed against the violator. If the fine is not paid by the violator within the time period set by the Association, the Owner will pay the fine upon notice from the Association);

(ii) suspending voting rights;

(iii) exercising self-help or action to abate any violation of the Governing Documents in a non-emergency situation, subject to any requirements set forth in this Declaration, including those related to maintenance, repair, or replacement, provided that the Association does not have the authority to enter the Residence;

(iv) requiring an Owner, at the Owner's expense, to cease any construction of any modification that has not been approved, or to remove any structure or Improvement in the Lot or the Common Areas in violation of the Governing Documents, and to restore the Lot or Common Areas to its previous condition, and upon the Owner's failure to do so, the Association has the right to enter the Lot or Common Areas, remove the violation, and restore the Lot or Common Areas to substantially the same condition as previously existed, and any action is not deemed a trespass;

(v) recording in the real property records a notice of violation identifying any uncured violation of the Governing Documents; and

(vi) other remedies provided for in this Declaration or by applicable law.

(c) **Emergencies and Legal Action.** In addition, the Association may take the following enforcement procedures to seek compliance with the Governing Documents:

- (i) exercising self-help in any emergency situation; and/or
- (ii) instituting any civil action to enjoin any violation or to recover monetary damages or both.

(d) Remedies Are Cumulative. All remedies set forth in the Governing Documents are cumulative of any remedies available at law or in equity.

(e) Costs Incurred By Association. If the Association exercises any of its rights pursuant to this section, all costs will be assessed against the violating Owner or Related User and will be a lien against the Lot. Additionally, subject to the Act, the Association will also be entitled to reasonable attorney's fees actually incurred, which will be collected as an assessment.

Section 10.2 Failure to Enforce. The Board will have the discretion to determine whether enforcement action in any particular case will be pursued; provided that the Board will exercise judgment, be reasonable, and not be arbitrary and capricious. Notwithstanding the above, no right of action will exist against the Association for failure of enforcement where: (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so. A decision of the Association not to pursue enforcement action will not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

ARTICLE 11. DEVELOPMENT RIGHTS OF DECLARANT

Section 11.1 Development Rights and Special Declarant Rights. The Declarant reserves, through 40 years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

- (a) the right to annex any Lots shown on the Plat that are not subject to this Declaration, with the consent of the owner of the Lot;
- (b) the right to relocate boundaries between adjoining Lots owned by the Declarant, enlarge or reduce the area of Lots, reduce the areas that may become Common Areas, subdivide Lots owned by Declarant, or complete or make improvements, as may be indicated on Plats filed of record, but only to the extent permitted by Delta County;
- (c) the right to exercise any additional reserved right created by any other provision of this Declaration;
- (d) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;
- (e) the right to amend the Declaration in connection with the exercise of any development right;
- (f) the right to appoint or remove any officer of the Association or any Director during the Period of Declarant Control;
- (g) the right to amend the Plat in connection with the exercise of any development right;
- (h) the right to make amendments to the Declaration, Bylaws, or Articles of Incorporation to meet or comply with any requirement of FHA or VA; and

(i) the right to use and to permit others to use, easements through the areas to become Common Areas and existing Common areas, as may be reasonably necessary.

The rights reserved to Declarant, for itself, its successors, and assigns, shall expire as set forth above, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by the Declarant, recorded in the real property records of Delta County.

Section 11.2 Additional Reserved Rights. In addition to the rights set forth above, Declarant also reserves the following additional rights:

(a) **Sales.** The right to maintain mobile and other sales offices, parking lots, management offices, and models on the Declarant's Lots and on Common Areas.

(b) **Signs.** The right to maintain signs and advertising at the Community and to advertise the Community or other communities developed or managed by or affiliated with Declarant.

(c) **Construction Easement.** Declarant and its assignees expressly reserve to itself the right to perform warranty work and repairs, and construction work, and to store materials in secure areas on Lots and on Common Areas, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Areas as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities in the Community.

(d) **Access Easement.** Declarant and its successors and assigns shall have an access easement to and from any real property accessible through the Community.

(e) **Other Rights.** The right to exercise any additional reserved right created by any other provision of this Declaration or by the Act.

ARTICLE 12. AMENDMENTS

Except where a higher vote is required for action under any other provision of this Declaration or by the Act, in which case such higher vote will be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Lot Owners holding at a majority of the total Association vote.

Notice of any meeting at which a proposed amendment will be considered will state the fact of consideration and the subject matter of the proposed amendment. The Association may seek approval of an amendment by mail ballot in accordance with the procedures outlined in the Bylaws. No amendment will be effective until certified by the President and Secretary of the Association, or such other officers as designated by the Board, and recorded in the Delta County, Colorado real property records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to correct any scrivener's errors, comply with any applicable city, state, or federal law, and/or to bring the Community into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD"), and the Veterans Administration ("VA") pursuant to federal law.

Any proposed amendment or repeal of any provision of this Declaration reserving rights of the Declarant, or for the benefit of the Declarant, or its assignees, is not effective unless the Declarant, and its assignees, if any, have given written consent to the amendment or repeal. That consent may be evidenced by the execution by the Declarant or its assignees of any certificate of amendment or repeal.

The foregoing requirement for consent to any amendment or repeal terminates five years from the date this Declaration is recorded.

Any action to challenge the validity of an amendment adopted under this article must be brought within one year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

ARTICLE 13. GENERAL PROVISIONS

SECTION 13.1 Security. The Association may, but will not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her family members, tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security, and the Association will not have a duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or Related Users. It will be each Owner's and Related User's responsibility to protect his or her person and property, and all responsibility to provide such security will lie solely with each Owner. The Association will not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

Section 13.2 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate any of its rights or privileges.

Section 13.3 Electronic Records, Notices, and Signatures. Notwithstanding any other portion of this Declaration, records, signatures, and notices will not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made, or presented electronically. The relevant provisions of the Bylaws will govern the giving of all notices required by this Declaration.

Section 13.4 Duration. The covenants and restrictions of this Declaration will run with and bind the property perpetually unless otherwise terminated as provided in C.R.S. § 38-33.3-218.

Section 13.5 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise will in no way affect the application of such provision to other circumstances or affect any other provision(s), which will remain in full force and effect.

Section 13.6 Public in General. The rights and burdens created in this Declaration do not, are not intended to, and will not be construed to create any rights and burdens in or for the benefit of the general public.

Section 13.7 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference, and do not enlarge, limit, or otherwise affect that which is set forth in any paragraph, section, or article.

Section 13.8 Singular Includes the Plural. Unless the context otherwise requires, the singular includes the plural, and the plural includes the singular, and each gender referral is deemed to include the masculine, feminine, and neuter.

Section 13.9 Conflicts. In the event of a conflict between this Declaration and the Articles of Incorporation or Bylaws, this Declaration will control. In the event of a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

[SIGNATURE ON FOLLOWING PAGE]

This 20th day of May, 2021.

CMH HOMES, INC., a Tennessee corporation

By: [Signature]

STATE OF COLORADO)
) ss.
COUNTY OF Mesa)

The foregoing Declaration was acknowledged before me by Shawn Ruse,
authorized agent of CMH Homes, Inc., on this 20th day of May, 2021.

[Signature]
Notary Public

My commission expires: 05.25.2022

REBECKA TEMMER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20064020445
My Commission Expires May 25, 2022
County of Mesa

EXHIBIT "A"

Legal Description of Community

Lots 1 through 12, Lots 14 and 15, and Lots 17 through 35 and Outlots A, B, C, D, E, and F, as more particularly described on the West Mountain Ranch Subdivision Plat recorded March 19, 2008, at Reception No. 623958, Delta County, Colorado.