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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
HARMAN PARK SUBDIVISION**

This Amended and Restated Declaration of Covenants Conditions and Restrictions For Harman Park Subdivision (the "Declaration"), is made on the execution date set forth below, by the Harman Park Owners Association Inc. (the Association) and the Owners of Lots within the common interest community known as Harman Park Subdivision.

RECITALS

A. On January 30, 2003, Harman Artist, LLC (the "Declarant") recorded a Declaration of Restrictions and Grant of Easements at Reception No. 20300810 in the office of the Archuleta County Clerk and Recorder (the "Original Declaration") for a mixed-use complex known as Harman Minor Impact Subdivision. Additional real property was annexed to the subdivision by the Declarant upon recordation of the Harman Park Subdivision Final Plat dated December 21, 2004 and recorded in the Office of the Archuleta County Clerk and Recorder at Reception No. 20412244 and a Vacation and Restatement of The Supplements and Amendments To The Declaration of Restrictions And Grant of Easement For the Harman Minor Impact Subdivision and Harman Park Subdivision recorded on November 1, 2005 at Reception No. 20511997 (referred to as the "2005 Amendment").

B. In order to provide for a means to govern the common interest community created by this Declaration and to maintain the common roads, open space and common facilities benefitting the lots within Harman Park Subdivision, the Declarant and Lot Owners created the Harman Park Owners Association. Declarant has conveyed all interest in the subdivision roads and common facilities to the Association and has transferred all Declarant rights under the Declaration to the Association.

C. The real property comprising a portion of the Harman Park Subdivision and as more fully described on Exhibit A (the "Property") is hereby subjected to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.

D. Harman Park Subdivision is a mixed-use common interest community governed by the provisions of the Colorado Common Interest Ownership Act ("CCIOA"), C.R.S. §38-33.3-101, et seq., as it may be amended from time to time. The Original Declaration and 2005 Amendment are hereby amended pursuant to C.R.S. 38-33.3-217(1) requiring the approval of not more than 67% of the Lot Owners.

E. **This Declaration shall supersede and replace, in their entirety, the Original Declaration and the 2005 Amendment (and all prior declarations and amendments of Harman Park Subdivision referenced in the 2005 Amendment and which were terminated by virtue of the 2005 Amendment) which shall no longer have any force and effect with respect to the Property.**



ARTICLE 1 SUBMISSION; DEFINED TERMS

Section 1.1 Submission of Property.

(a) The Association and Owners hereby declare that all of the Property shall be held or sold, and conveyed subject to the easements, restrictions, covenants, and conditions which are set forth herein and as described on the Plat for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof. Additionally, the Owners hereby submit the Property to the provisions of the Colorado Common Interest Ownership Act ("CCIOA"), C.R.S. §38-33.3-101, et seq., as it may be amended from time to time. In the event CCIOA is repealed, the CCIOA, on the effective date of this Declaration, shall remain applicable.

Section 1.2 Defined Terms. Each capitalized term not otherwise defined in this Declaration or in the Plat or map shall have the meanings specified or used in the CCIOA.

(a) Allocated Interest shall mean the allocation of votes in the Association as to any applicable Lot and the allocation to each Lot of the Common Expenses as set forth in Article 10. The formulas used to establish the Allocated Interests is set forth on Exhibit A.

(b) Association Documents means the Articles of Incorporation, Bylaws, Declaration, Rules and Regulations, if any, and Policies and Procedures of the Association.

(d) Common Elements shall mean all general common elements as designated on a recorded subdivision plat of any portion of the Property or as indicated in this Declaration, including all real estate and improvements within the Property that may be owned by the Association. Common Elements shall include, but not be limited to, the roads comprising the Harman Park Drive, Papoose Court, Ryder Court (collectively referred to herein as the "Roads"), common signage, street lighting, sprinkler system, entrance features and Open Space Parcel 2.

(e) Executive Board shall mean the board of directors designated to act on behalf of the Association.

(f) First Lienor or First Mortgagee shall mean any person named as a mortgagee or beneficiary in any first mortgage, or any successor to the interest of any such person under such first mortgage.

(g) Improvements shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or equestrian trails, sprinkler pipes, utility lines, facilities and appurtenances, satellite



dishes, antennae, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning and water softener fixtures.

(h) Mortgagee shall mean any person named as Mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

(i) Owner or Lot Owner shall mean the undersigned entities and their successors and assigns which own a Lot in the communication interest community.

(j) Plat shall mean the Harman Park Subdivision Final Plat dated December 21, 2004 and recorded in the Office of the Archuleta County Clerk and Recorder at Reception No. 20412244 and shall include the amendments recorded on October 24, 2007 at 20709964 and December 16, 2014 at Reception No. 21407537.

(k) Sub-Association shall mean an association formed by a Lot Owner for the purpose of governing a commercial duplex or condominium within the Property.

ARTICLE 2 NAMES

Section 2.1 Names.

(a) The name of the common interest community shall be: Harman Park Subdivision.

(b) The name of the Association is Harman Park Owners Association, Inc. (hereinafter the "Association").

ARTICLE 3 THE ASSOCIATION

Section 3.1 Authority. The business affairs of the common interest community shall be managed by the Association. The Association shall be governed by its Bylaws, as amended from time to time.

Section 3.2 Powers.

(a) The Association shall have all of the powers, authority and duties permitted pursuant to the CCIOA necessary and proper to manage the business and affairs of the common interest community. Each Owner agrees that the Association has all the powers granted to it by the Colorado Revised Nonprofit Corporation Act and CCIOA, and any amendments thereto or replacements thereof. Such powers shall include, without limitation, levying Assessments against Owners, imposing a lien on Lots for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens, enforcing any deed restrictions and this Declaration, acquiring, holding, owning, leasing, mortgaging and disposing of property (except as such disposition of property may be otherwise limited herein), the adoption of rules and regulations, the defending, prosecuting or intervention in litigation on behalf of



all members, the borrowing of monies for Association purposes and the right to pledge future income in order to secure such borrowings. The term "pledge of future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to the lender as security for repayment thereof. The Association may exercise any other right, power or privilege, given to it by this Declaration, the Articles and Bylaws of the Association, or by law.

(b) The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Owners of Lots to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose.

(c) Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the improvements. Acceptance by any grantee of a deed or other instrument of conveyance from any Owner shall constitute appointment of the Association as attorney-in-fact as provided in this Article. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, to other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

Section 3.4 Memberships. Every Owner, by virtue of being an Owner, and for so long as he or she is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. No Owner, whether one or more persons, shall have more than one membership per Lot owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such Ownership. An Owner shall not transfer, pledge or alienate his or her membership in the Association in any way except upon the sale or encumbrance of a Lot, and then only to the purchaser or First Lienor of the Lot.

Section 3.5 Other Association Functions. The Association shall undertake those functions and provide those services to the Property as authorized by CCIOA or otherwise set forth in this Declaration. Such functions may be provided by the Association's employees or an independent contractor retained by the Association. With respect to any of the functions or services, the Executive Board shall have the authority to make common expense Assessments consistent with the provisions of Section 315 of CCIOA.

Section 3.6 Owner and Board Member Education. The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owner, the Association and the Executive Board under Colorado law. The criteria for compliance with this Section shall be determined by the Executive Board. In addition, the Board may authorize and account for as a Common Expense, reimbursement of Board members for their actual and necessary expenses incurred in attending education meetings and seminars on responsible governance of the Association. Such educational meetings or seminars must involve the Colorado Common Interest and Ownership Act.



Section 3.7 Responsible Governance Policies. The Executive Board, to promote responsible governance, shall adopt those policies and procedures required by Section 209.5 of the CCIOA which policies may be embodied in this Declaration, the Bylaws, Rules and Regulations of the Association or Policies and Procedures.

ARTICLE 4 LOTS

Section 4.1 Number of Lots. The Lots within the Property are identified in Exhibit A.

Section 4.2 Identification of Lots. The identification number of each Lot is shown on the Plat and in Exhibit A attached hereto and incorporated herein. Parcel 1 and Parcel 2 are dedicated Open Space.

Section 4.3 Description of Lots.

(a) Any contract for sale, deed, lease, mortgage, will or other instrument affecting a dwelling Lot may describe it by its Lot No. ____, Harman Park Subdivision according to the plat thereof recorded on December 21, 2004 at Reception No. _____ and the Amended and Restated Declaration of Covenants Conditions and Restrictions of Harman Park Subdivision recorded on _____, 2015 at Reception No. _____ in the records of the Clerk and Recorder of Archuleta County, State of Colorado, as amended from time to time.

(b) With the exception of the Common Elements, each Owner is entitled to exclusive ownership and possession of his Lot.

(c) Lots may be developed according to the terms of the Development Improvements Agreement dated August 4, 2004 with the Town of Pagosa Springs (the "DIA") for those commercial purposes allowed within the Town of Pagosa Springs, zoning designation: D-4 West Corridor Business District, as amended from time to time by the Town of Pagosa Springs. The zoning and DIA allows for residential live-work units. Certain commercial uses are prohibited within the Harman Park Subdivision as set forth below in Article 9.17.

(d) Residential "live-work" units are permitted upon a Lot so long as in conformance with the following restrictions: Residential quarters shall be located on the second floor of a commercial building and shall consist of no more than 800 sq. ft. and may contain no more than one bathroom, one kitchen/living area and one bedroom. Residential quarters shall not be leased for vacation rental purposes or short-term rentals of less than 30 days. Live-work units must be occupied by Owners of the Lot or by employees who work at the commercial business located on the Lot.



ARTICLE 5 COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 5.1 Creation of Association Lien and Personal Obligation for Assessments.

Each Lot Owner, shall be deemed to covenant and agree, and each Lot Owner, by acceptance of a deed therefore whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association (i) Annual Assessments or charges as provided in this Declaration to generally carry out the functions of the Association (sometimes referred to herein as the "Association Dues"), (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration, and (iii) Default Assessments, if any. Such assessments, together with fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be the personal obligation of the Lot Owner at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may exempt himself/herself from liability for any assessment by abandonment of his or her Lot or by waiver of the use and enjoyment of the Common Elements.

The assessments of the Association shall be a continuing lien upon the Lot against which each such assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first lien Security Interest on the Lot recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot shall not affect the Associations' lien except that sale or transfer of any Lot pursuant to foreclosure of any first Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the CCIOA. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any assessments thereafter becoming due, nor from the lien thereof.

Section 5.2 Apportionment of Common Expenses. Common Expenses are expenditures made, or liabilities incurred by, or on behalf of, the Association together with any allocations or reserves. Common Expenses shall be assessed against all Lots for the upkeep, repair and replacement of all Common Elements, with each Lot to pay a percentage according to the percentage share described in Article 10 and Exhibit A attached hereto and incorporated herein.

Section 5.3 Purpose of Assessments. The assessments levied by the Association through its Executive Board shall be used generally for the purposes of promoting the recreation, health, safety, and welfare of the residents in the Common Interest Community and for the maintenance, repair, and replacement of Common Elements. Without limitation, said assessments may be used for the following purposes:

- (a) Maintenance, repair, improvement and snow removal of paved areas and Roads; ;



- (b) Weed control, and maintenance, including cutting, trimming, mowing, fertilizing and general upkeep of any common lawns, trees, shrubbery and other common landscaped areas;
- (c) Maintenance of common area exterior lighting and sprinkler/irrigation system;
- (d) Maintenance of common signage and mailboxes, if any;
- (e) Obtaining and maintaining insurance, establishing and maintaining reserves for maintenance of Common Elements that must be replaced or repaired on a periodic basis, taxes, capital improvements, and satisfying unpaid assessments;
- (f) Legal and accounting fees, management fees; and
- (g) All costs and expenses pertaining to the operation of the Association.

Section 5.4 Assessment of Utilities. Telephone services, gas and electric are separately metered for each Lot and the charges for such utilities shall be paid by the Lot Owner directly to the utility company providing such service. Water and electric serving common areas shall be a Common Expense of the Association.

Section 5.5 Association Dues/Commencement of Common Expense Assessments. The Executive Board shall prepare a budget before the closing of each fiscal year of the Association and submit the budget to the Association. Association Dues for Common Expenses (or Annual Assessments) shall be based upon the Association's estimated advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The Association shall establish the first assessment year by the action of adopting a budget and the levying of the first Association Dues in accordance with its Bylaws.

Within thirty (30) days after adopting a proposed Budget, the Board shall deliver a summary of the proposed Budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed budget to the Owners. Unless at that meeting sixty-seven (67%) percent of the votes allocated to all Owners, whether or not a quorum is present, rejects the proposed budget, the proposed budget shall be deemed ratified. If the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Board.

If the Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under this Section 5.5, the Board may adopt a proposed amendment to the annual 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 not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed amendment. Unless at that meeting, sixty-seven percent (67%) of the votes allocated to



Owners, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

Association Dues may be collected in the manner as determined by the Executive Board i.e., annually, quarterly or monthly.

Section 5.6 Special Assessments. In addition to the Association Dues authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for other extraordinary expenses. Special Assessments shall be allocated with the same formula as utilized for Annual Assessments. If any assessment is caused by the misconduct of any Lot Owner, the Association, at its discretion, may assess that expense exclusively against such Owner's Lot.

Section 5.7 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner according to the procedures set forth in the Bylaws.

Section 5.8 Effect of Non-Payment of Assessments. Any assessment, charge or fee provided in this Declaration, or any monthly or other installment thereof, which is not fully paid within five (5) days after the date due thereof shall bear interest at the rate of 18% per annum and the Association, at its option, may assess a late charge thereon and suspend the voting rights of the Lot Owner during the period of delinquency. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefore.

Section 5.9 Failure to Assess. The omission or failure of the Board to fix the Association Dues amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Association Dues on the same basis as for the last year for which an Assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 5.10. Owner Caused Damage. If, due to the act or neglect of an Owner, or such Owner's guests, loss or damage shall be caused to any person or property within Harman Park Subdivision, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with the costs of collection and reasonable attorney's fees, may be collected by the Executive Board, at their sole discretion, exclusively from such Owner as an assessment against



such Owner in accordance with paragraph 5.7.

Section 5.11. Agreement in Advance Regarding Surpluses. The Board shall establish an adequate reserve fund for the maintenance repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced. To the extent possible, such reserve fund shall be funded through the monthly installments of the annual Common Expense Assessments. Any surplus funds derived from assessments shall be transferred to the reserve fund or used for Association operations during the next fiscal year, in the Executive Board's sole discretion. In no event shall any surplus funds be distributed to Owners. Each Owner by acceptance of the deed to the Owner's Lot, for each fiscal year of the Association in which such Lot is owned, hereby authorizes the Executive Board, in its sole discretion, to either use such surplus during the next fiscal year or to transfer to the reserve fund.

Section 5.12 Procedure for Collection of Assessments.

Section 5.12.1. Due Date: All Annual Assessments are due on such date as determined by the Executive Board. Interest of eighteen percent (18%) accrues on delinquent amounts as stated in Section 5.8 of the Declaration. All assessments are payable to the Association and are mailed as directed by the Executive Board or Manager.

Section 5.12.2. Delinquency. When an Owner fails to pay an Association assessment within thirty (30) days of the due date, the Executive Board or the Manager, acting on behalf of the Board, will notify such Owner that his voting rights in the Association have been suspended until the delinquent Assessment has been paid. The Association may also, at any time after expiration of thirty (30) days after the due date, file a Statement of Lien with the Archuleta County Clerk and Recorder. Further, the Association may attempt to send a written notification to the Mortgagee or holder of the first deed of trust, if any on the delinquent Owner's Lot.

Section 5.12.3. Application of Payment; Definition of Assessment. Any fine, late charge or other monetary charge or penalty levied by the Association pursuant to the Declaration, the Act, including attorney's fees and costs incurred by the Association and for which the Owner is liable, shall be collectible as an Assessment as that term is defined by the Act.

Payments received from an Owner shall be applied to the Owner's account in the following order:

- a. Attorney's fees and costs incurred by the Association and for which the Owner is responsible pursuant to the Act or the Declaration;
- b. Interest which has accrued on all unpaid charges;
- c. Fines, late charges or other monetary charges or penalties;
- d. Past due Default Assessments;
- e. Past due Special Assessments;
- f. Past due installments of Annual Assessments;
- g. Current Special Assessments; and
- h. Current installment for Annual Assessments.



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ARTICLE 6 ARCHITECTURAL REVIEW

Section 6.1 Membership of Architectural Review Committee. The ARC shall initially consist of three (3) members, all of whom shall be members of the Executive Board until such time as the Executive Board establishes a separate committee of three persons to serve as the ARC. The members of the ARC shall serve for a period of one year or longer as established by the Board. Members of the ARC may, but shall not necessarily, be Owners or architects, engineers or other design professionals. Members of the ARC appointed by the Board may be removed at any time by the Board. Unless otherwise specified in this Declaration, the vote or written consent of a majority of the members of the ARC shall constitute the act of the ARC. The Board may at any time, and from time to time, change the authorized number of members of the ARC, provided, however, the number of members shall always be an odd number and shall not be less than three (3).

Section 6.2 Address of Committee. The address of the ARC shall be that of the principal office of the Association or to such other person or such other address designated by notice sent to the Owners.

Section 6.3 "Improvement to a Lot" Defined. "Improvement to a Lot," requiring approval of the ARC, shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure or other Improvements, including, without limitation, buildings, utility facilities and signs; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or perennial plants; (e) the construction, installation, erection, placement or expansion of any temporary or other nonpermanent structure, improvement or facility such as, without limitation, any tent, shed, trailer or outdoor storage area or facility; and (f) any change or alteration to the exterior of any previously approved Improvement to a Lot, including any change of exterior appearance, finish material, color or texture.

Section 6.4 Approval of Improvements Required. The approval of the ARC shall be required prior to the construction, installation or alteration of any "Improvement to a Lot", and except as prior approval may be waived or certain Improvements to a Lot may be exempted in writing or under written guidelines or rules promulgated by the ARC, and except and to the extent that the requirement for such approval may otherwise specifically be prohibited pursuant to the provisions of applicable federal, state or local laws, statutes, ordinances, rules or regulations.

Section 6.5 Design Review Criteria. The ARC has issued the Architectural Design Review Criteria, and may issue additional guidelines or rules, relating to the procedures, materials to be submitted, design requirements or standards and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to a Lot. Such guidelines or rules may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part. Such guidelines or rules



may waive the requirement for approval of certain Improvements to a Lot or exempt certain Improvements to a Lot from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

Section 6.6 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to a Lot, the Person proposing to make such Improvement to a Lot ("Applicant") shall submit to the ARC at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the ARC shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to a Lot. The Applicant shall be entitled to receive a receipt for the same from the ARC or its authorized agent. The ARC may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement to a Lot. Until receipt by the ARC of all required materials in connection with the proposed Improvement to a Lot, the ARC may postpone review of any materials submitted for approval by a particular Applicant. Additionally, all obligations of the ARC hereunder to review and approve all such plans, specifications and other materials with respect to a proposed Improvement to a Lot (but not the Applicant's obligation to obtain the ARC's approval thereof) shall be suspended during the period of time in which the Applicant shall be in default under the provisions of this Declaration, and such default shall remain uncured by the Applicant, with respect to such Lot.

Section 6.7 Criteria for Approval. The ARC shall approve any proposed Improvement to a Lot only if it deems in its reasonable discretion that the Improvement to a Lot in the location indicated will not be detrimental to the appearance of the surrounding areas of the Property as a whole; that the appearance of the proposed Improvement to a Lot will be in Harmony with the surrounding areas of the community; that the Improvement to a Lot will not detract from the beauty, wholesomeness and attractiveness of the community or the enjoyment thereof by Owners; and that the Improvements to a Lot are in conformity with the Design Review Criteria. The ARC may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the ARC may deem appropriate.

Section 6.8 Design Review Fee. The ARC may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to a Lot. The ARC may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to a Lot or that the fee shall be determined in any other reasonable manner, such as based on the estimated cost of the proposed Improvement to a Lot.

Section 6.9 Decision of Committee. The decision of the ARC shall be made within thirty (30) days after the date the ARC receives all materials required by the ARC, unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is to disapprove a proposed Improvement to Property, the reasons therefore shall be stated. The decision of the ARC shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the ARC.

Section 6.10 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved unless notice of approval or conditional approval or a request for additional information or materials is transmitted to the Applicant by the



ARC within thirty (30) days after the date the ARC receives all required materials.

Section 6.11 Obtaining Governmental Approvals. Applicant shall obtain, prior to commencement of construction of any Improvements to a Lot, all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any governmental authority having jurisdiction ("Governmental Approvals") in order for Applicant to construct, operate and maintain the Improvements to a Lot. The Governmental Approvals shall be deemed to include, but not be limited to, (i) issuance of a special use permit by The Town of Pagosa Springs along with an excavation and/or building permit issued by the Building Department for The Town of Pagosa Springs, (ii) approval of Improvement plans by The Town of Pagosa Springs's Department of Planning and Community Development, or (iii) a site specific development plan approved by The Town of Pagosa Springs planning commission along with an excavation and/or building permit issued by the Building Department for The Town of Pagosa Springs.

Section 6.12 Prosecution of Work After Approval. After approval of any proposed Improvement to a Lot, the proposed Improvement to a Lot shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to a Lot, any materials submitted to the ARC in connection with the proposed Improvement to a Lot, any conditions imposed by the ARC and in compliance with the Restrictions contained in this Declaration. **Failure to complete any proposed Improvement to a Lot within one (1) year after the date work is commenced or to complete the Improvement to a Lot in accordance with the description and materials furnished to, and the conditions imposed by, the ARC, shall constitute a violation of this Article 5.**

Section 6.13 Notice of Completion. Upon completion of the Improvement to a Lot, the Applicant shall give written Notice of Completion to the ARC. Until the date of receipt of a Notice of Completion, the ARC shall not be deemed to have notice of completion of any Improvement to a Lot.

Section 6.14 Inspection of Work. The ARC or its duly authorized representative shall have the right to inspect any Improvement to a Lot prior to or after completion; provided that the right of inspection shall terminate one hundred and twenty (120) days after the ARC receives a Notice of Completion from the Applicant.

Section 6.15 Notice of Noncompliance. If, as a result of inspections or otherwise, the ARC finds that any Improvement to a Lot has been done without obtaining the approval of the ARC, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the ARC, or was not completed within one (1) year after the date of commencement of work, the ARC shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within one hundred and twenty (120) days after the ARC receives any Notice of Completion from the Applicant ("Notice of Noncompliance"). The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance. In addition, the ARC shall send a copy of such notice to any "Interim Lender," as hereinafter defined, for the Lot upon which the Improvement to a Lot is being constructed, who shall have previously requested in writing to the ARC that the ARC send to it a copy of any such



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notice of noncompliance. "Interim Lender" shall mean any Mortgagee providing the Owner with funds for the construction of an Improvement to a Lot.

Section 6.16 Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the ARC fails to notify the Applicant of any noncompliance within one hundred and twenty (120) days after receipt by the ARC of written Notice of Completion from the Applicant, the Improvement to a Lot shall be deemed to be in compliance if the Improvement to a Lot was, in fact, completed as of the date of Notice of Completion.

Section 6.17 Fines or Remedies in Event of Noncompliance. If the ARC determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date the ARC gives its notice. If the Applicant does not comply with the ARC notice within such 45 day period, the ARC may, at its option, do the following:

- (i) impose a fine of up to \$150.00 per day against any Owner and such Owner's Lot for each day the Owner fails to comply with the requirements of this Declaration or Design Review Criteria;
- (ii) enter upon the property and remove or cure the noncompliant Improvement to Property at the Owner's sole cost and expense; or
- (iii) otherwise remedy the noncompliance by taking such actions as the ARC determines are necessary or desirable, including a suit to enjoin such action and the Applicant shall reimburse the ARC, upon demand, for all expenses, including legal expenses, incurred in connection therewith.

If such fines or expenses are not promptly repaid by the Applicant or Owner to the ARC, the ARC may levy a Default Assessment against the Owner of the Site for reimbursement of such costs and expenses. The right of the ARC to impose a fine, or remedy or remove any noncompliance shall be in addition to all other rights and remedies which the ARC may have at law, in equity, or under this Declaration, including an award for damages or injunctive relief.

Section 6.18 Correction of Noncompliance by Interim Lender. If, within a period of not more than thirty (30) days after the date of receipt by the Interim Lender of the copy of the Notice of Noncompliance as provided in Section 5.17, the Interim Lender notifies the ARC that it has begun, and will continue to diligently pursue, proceedings to obtain title to the Lot upon which is being constructed the Improvement to a Lot pursuant to the remedies provided in the Mortgage held by such Interim Lender or pursuant to any foreclosure, or deed or assignment in lieu of foreclosure, of such Mortgage, then the ARC, at its option, may extend the period for remedy or removal of the noncompliance for a period expiring forty-five (45) days after the date the Interim Lender obtains title to the Lot. If the Interim Lender does not comply with the ARC ruling within such extended period, or if at any time during such extended period the Interim Lender shall fail to diligently pursue proceedings to obtain title to the Lot as aforesaid, the ARC may, at its option, exercise all of its rights and remedies provided in Section 5.17 hereof.

Section 6.19 No Implied Waiver or Estoppel. No action or failure to act by the ARC shall constitute a waiver or estoppel with respect to future action by the ARC with respect to any



Improvement to a Lot. Specifically, the approval by the ARC of any Improvement to a Lot shall not be deemed a waiver of any right or an estoppel to withheld approval or consent for any similar Improvement to a Lot or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to a Lot.

Section 6.20 Committee Power to Grant Variances. The ARC may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the ARC or by its authorized representative. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that no variance shall operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision covered by the variance nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or other requirements imposed by any governmental authority having jurisdiction.

Section 6.21 Authorized Representative. The powers and duties of the ARC may be delegated to one or more authorized representatives, who shall have the power to review and approve or disapprove proposed Improvements to Property and to grant variances and exemptions. Notwithstanding the foregoing, the authorized representative shall not have the authority to change the policies and guidelines of the ARC. The ARC may, from time to time, by resolution in writing adopted by a majority of the members, designate an authorized representative or representatives (who may, but need not, be members of the ARC). The action of such authorized representative or the written consent or the vote of a majority of the members of the ARC shall constitute the action of the ARC.

Section 6.22 Meetings of Committee. The ARC shall meet from time to time as necessary to perform its duties hereunder.

Section 6.23 Records of Actions. The ARC shall record in writing all final actions of the ARC, and the ARC shall keep a permanent record of such actions.

Section 6.24 Estoppel Certificates. The ARC shall, upon the request of any interested party and after confirming any necessary facts with the ARC, furnish a certificate with respect to the approval or disapproval of any Improvement to a Lot or regarding whether any Improvement to a Lot 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.

Section 6.25 No Liability for Committee Action. There shall be no liability imposed on the ARC, any member of the ARC, any authorized ARC representative for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the ARC, if such party acted in good faith and without malice. In reviewing any matter, the ARC 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 to Property be deemed approval of such matters.

Section 6.26 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to a Lot, and provided that construction is proceeding with due diligence, the ARC shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided, however, that, during the course of any such construction (including the use of temporary construction trailers), nothing is done which will result in a violation of any of the provisions of this Declaration upon completion of construction, and nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

ARTICLE 7 MAINTENANCE OF LOTS

Section 7.1 Maintenance of Lots. Each Owner shall, at such Owner's sole cost and expense, maintain such Owner's Lot and the Improvements located thereon in good order and repair. Maintenance, repair and upkeep of each Lot shall include, without limitation, maintenance, repair and replacement of all buildings and other structures located thereon; maintenance, repair and replacement of shrubs, trees, vegetation, irrigation systems and other landscaping on such Lot, including, but not limited to, removal of snow, ice, dirt, mud and debris from any walkways, driveways and parking areas on such Owner's Lot and any public sidewalks adjacent to such Lot. If, in the reasonable judgment of the Association, an Owner fails to maintain Owner's Lot or the Improvements located thereon, and such failure remains uncured for more than thirty (30) days after the Association's delivery of written notice thereof to such Owner, the Association may enter upon Lot, including its Common Elements, perform such maintenance and repairs the Association deems necessary and appropriate, and charge all costs and expenses incurred by the Association in connection therewith to such Owner as a Default Assessment. The Association may, without notice, make emergency repairs to and maintain any Lot or Improvements located thereon, as may, in its judgment, be necessary for the safety of all persons or to prevent damage to any other property. The cost of such emergency repairs shall be charged to the Owner of the Lot as a Default Assessment.

Section 7.2 Maintenance by Sub-Associations. Any Sub-Association shall maintain the Common Elements within its Lot or such other site governed by it. If, in the reasonable judgment of the Association, a Sub-Association fails to maintain its Common Elements in good order and repair, and such failure remains uncured for more than thirty (30) days after the Association's delivery of written notice thereof to such Sub-Association, the Association may enter upon such Lot, or other site governed by a Sub-Association, including their Common Elements, perform such maintenance and repairs the Association deems necessary and appropriate, and charge all costs and expenses incurred by the Association in connection therewith to such Sub-Association's members, as a Default Assessment.

Section 7.3. Maintenance of Open Space Parcel 2. The maintenance, repair and upkeep of the trees and landscaping located on Open Space Parcel 2 shall be the responsibility of the Association and shall include, without limitation, maintenance, repair and replacement of sprinkler systems, trees,



vegetation, and other landscaping. Notwithstanding the foregoing, Owners shall be responsible for picking up trash and keeping the Open Space in a neat and clean condition and free of debris. Owners shall be liable for all damages (for example, costs of repair and replacement of landscaping) arising out of the acts or omissions of an Owner in connection with the Open Space. Failure by an Owner to reimburse the Association for the costs of repair and/or replacement of the Open Space shall be deemed a violation of this provision. Violation of this provision by an Owner shall permit the Association after Notice and Hearing, to cure the violation or cause compliance with this provision and to levy and collect a Default Assessment for the costs and expenses of the Association in so doing. In addition, except in the case of negligence by Declarant and/or the Association, an Owner shall indemnify, defend and hold harmless the Declarant and the Association, from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on any appeal), and causes of action, arising out of or in any way connected with the Open Space. Maintenance of Open Space Parcel 1 is the responsibility of the Town of Pagosa Springs.

ARTICLE 8 ALLOCATED INTERESTS

Section 8.1 Allocated Interests. Allocated Interests means the share of Common Expense and votes in the Association which are allocated to each Lot. Each Lot shall have a vote and Common Expense liability based upon the allocation formula described in Section 8.2 below.

Section 8.2 Determination of Allocated Interest. The Allocated Interest of each Owner, except as specifically provided in this Declaration, shall be based upon a fraction: the numerator of which is the total acreage of the Lot owned by an Owner and the denominator of which is the total acreage of all Lots within the community. The Voting and the Common Expense Allocation for each Lot is shown on the table attached hereto as Exhibit B.

Section 8.3 Reallocations. If any Lots are added to or withdrawn from the common interest community, the Allocated Interests for all Lots after such addition or withdrawal, increase or decrease shall be recalculated and reallocated in accordance with the formula set forth in Section 8.2 above.

ARTICLE 9 RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

All of the Property shall be held, used and enjoyed subject to the following limitations and restrictions.

Section 9.1 Construction of Improvements.

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay access to or from the Property, or any part thereof, to or from any public right-of-way. Staging for the construction, replacement, alteration or expansion of any



Improvement located on a Lot including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Lot approved in advance in writing by the ARC. Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Improvements damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any mechanics', material men's or other professional services liens (as contrasted against consensual monetary liens such construction and/or permanent financing) to stand against any Lot for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner of any Lot encumbered by any such lien or claim of lien, (i) cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, or (ii) give such assurance as would enable a title insurance company to insure over such lien or claim of lien, failing which the Owner of the Lot shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners of Lots, from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work.

(c) Staging for any construction, maintenance, repair, replacement, alteration or expansion performed on any Lot, including the location of any temporary buildings or construction sheds, the storage of building materials and the parking of construction vehicles and equipment, shall be limited to that Lot unless the Owner of such Lot requests and obtains the consent of the ARC and the Owner on whose Lot the staging will occur. Such staging and storage areas shall also be fenced off at the request of ARC.

Section 9.2 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out upon any Lot or Open Space within the Property; nor shall anything be done or placed thereon which is or may become a nuisance or which is or may cause an unreasonable embarrassment, disturbance or annoyance to others.

Section 9.3 No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot or Improvement thereon which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any property within the community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spotlights, searchlights, speakers, horns, whistles, bells or other light or sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the ARC and review and approval from The Town of Pagosa Springs.



Section 9.4 No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any property within the community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

Section 9.5 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment, except when actually in use.

Section 9.6 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any part of the Property except within an enclosed structure or when appropriately screened from view.

Section 9.7 No Temporary Structures. No tent, shack, temporary structure or temporary building shall be placed upon any property within the Community except with the prior written consent of the ARC and following review and approval from The Town of Pagosa Springs. Notwithstanding the foregoing, the ARC may permit the use of temporary structures during construction upon a Lot in accordance with the rules and regulations of the Design Review Criteria.

Section 9.8 Restriction on Antennae, Pipes and Utility Lines. Pipes for water, gas, sewer, drainage or other purposes, and wires, fiber optic and other cables, poles, antennae and other facilities for the transmission or reception of audio, visual or other electromagnetic signals or electricity, and utility meters or other utility facilities shall be kept and maintained underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antenna of any type (including satellite dishes) shall be erected or maintained in the community except that: (a) an Owner may erect an antenna if: (i) such antenna is necessary to carry on the business conducted by the Owner on the Lot; (ii) the ARC gives its consent to the erection of such an antenna in accordance with the provisions of Article 5 hereof; and (iii) if the erection of such antenna is in compliance with all applicable statutes, ordinances and regulations, including applicable zoning ordinances of The Town of Pagosa Springs; and (b) the requirements of this Section shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996, as amended from time to time.

Section 9.9 Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Property so as to be evident to public view, except such signs as may be approved in writing by the ARC and thereafter approved by the Town of Pagosa Springs. A sign advertising a Lot for sale or for lease may be placed on such Lot; provided, however, that standards relating to dimensions, color, style and location of such a sign shall be determined from time to time by the ARC and shall comply with the sign provisions of The Town of Pagosa Springs and with all other applicable statutes, ordinances and regulations.



Section 9.10 Maintenance of Drainage. There shall be no interference with or modification to the established drainage pattern over any Lot within the Property except as approved in writing by the ARC, The Town of Pagosa Springs and in accordance with any master drainage study for the Property. Such approval shall not be granted unless provision is made for adequate alternate drainage in accordance with the recommendations, satisfactory to the ARC, of a Colorado Registered Professional engineer set forth in an engineer's report obtained by the person desiring to interfere with or modify such established drainage pattern, at such person's expense, and submitted by such person to the ARC with the request by such person for such approval. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property has commenced by the builder or other party performing such overall grading, and shall include any established drainage pattern shown on plans, if any, approved by the ARC.

Section 9.11 Compliance with Laws. Nothing shall be done or kept on any property within the Property in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

Section 9.12 Vehicular Parking, Storage and Repairs.

(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat or boat accessories, truck larger than three-quarter (3/4) ton, recreational vehicle or equipment, or commercial vehicle may be parked or stored anywhere in the Property or in the adjacent public street rights-of-way, except in garages, designated parking or storage areas, or except in emergencies or as a temporary expedience. No emergency or temporary parking or storage shall continue for more than twenty-four (24) hours.

(b) No abandoned or inoperable vehicles of any kind shall be stored or parked within the Property or in the adjacent public street rights-of-way, except in garages, designated parking or storage areas or except in emergencies. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, van, trailer, house trailer, camper, recreational vehicle or other device for carrying passengers, goods or equipment which has not been driven under its own propulsion for a period of two weeks or longer, or which does not have installed within it an operable propulsion system; provided, however, that any vehicle belonging to an Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town. If the Association determines that a vehicle is abandoned or inoperable, a written notice describing the vehicle and calling for its removal shall be delivered to the owner of the vehicle if ownership can be reasonably be ascertained, or shall be placed in a conspicuous place on the vehicle if ownership is unknown. If any such inoperable vehicle is not removed within seventy-two hours after such notice is delivered or posted, the Association shall have the right to remove and store the vehicle at the sole expense of its owner, and any Owner determined after Notice and Hearing to be responsible for the vehicle shall be subject to a Default Assessment for the cost of such removal and storage.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, painting or servicing any kind of vehicle shall take place within the Property, except within completely enclosed structures which prevent such activities from being seen or heard from the



street and from adjoining property. This restriction shall not be deemed to prohibit washing and polishing of vehicles.

(d) No vehicle shall be parked on any street or roadway shown on any map of dedication, subdivision plat or similar Recorded instrument unless otherwise expressly provided for in or on such Recorded map of dedication, subdivision plat or similar instrument showing the street or roadway or in a separate Recorded instrument executed by the ARC. No Person may make use of a parking space which use in any way obstructs, interferes with or results in a safety hazard with respect to the streets and/or roadways within the Project or any other Person's parking rights. Without limiting the generality of the foregoing provisions, if the Association determines that a vehicle is parked on a street or roadway where parking is not permitted, the Association may have such vehicle immediately removed and stored at the expense of the Owner who owns the vehicle in question. Such Owner shall be subject to a Default Assessment for such removal and storage to be determined pursuant to Notice and Hearing.

Section 9.13 Household Pets. No animals, livestock, birds, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on any Lot; provided, however, that Owners of Residential Sites may keep a reasonable number of dogs, cats, or other domestic animals which are bona fide household pets, provided that (a) such pets are not kept for any commercial purpose and (b) are not kept in such number or in such manner as to violate any zoning ordinance or other governmental requirements or to create a nuisance. The ARC shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Section, and to take such action or actions as it deems reasonably necessary to correct the violation. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in Article 10 hereof.

Section 9.14 Restrictions on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further divided or subdivided, consolidated or boundaries relocated, without the prior written approval of the Board and subject to review and approval by The Town of Pagosa Springs. Nothing herein shall be deemed to require the approval of the Board for the transfer or sale of any Lot or other parcel of land, including Improvements thereon, to more than one person to be held by them as tenants in common or joint tenants, or for the granting of any Mortgage. No application for approval of a final P.D. site plan, zoning amendment, Lot consolidation, subdivision plat, variance or use permit (or for modification to any of the same) pertaining to any portion of the Property shall be submitted to The Town of Pagosa Springs, Colorado until first approved in writing by the Board.

Section 9.15 Leases. The term "Lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases, whether or not the parties thereto comply with the terms of this Section. A Lot, or any portion thereof, may be leased by its Owner only if the Lease shall provide that the terms of the Lease and the lessee's occupancy of the leased premises shall be subject in all respects



to the provisions of this Declaration and that any failure by the lessee to comply with any of the provisions of this Declaration shall be a default under the Lease. No vacation rentals or short-term rentals of less than 30 days shall be permitted. Live-work units, if leased, must be occupied by the Owner or an employee of the business which is located on the Lot on which the live-work unit is situated.

Section 9.16 Open Space. Open Space Parcel 1 and Open Space Parcel 2 shall be restricted to recreational uses only. No residences or commercial buildings shall be located within the Open Space. Structures such as fencing, gazebos, park benches, picnic tables, playground equipment and other recreational facilities may be located within the Open Space only with the prior approval of the Association Board or ARC, as the case may be.

Section 9.17 Restricted Commercial Uses. All Lots shall be used exclusively for commercial purposes only as permitted by applicable zoning regulations of the Town of Pagosa Springs and only as approved by the Executive Board. Any change in the commercial use of a Lot must be approved by Town of Pagosa Springs. Notwithstanding applicable zoning ordinances, the following commercial uses are NOT permitted anywhere on the Property:

- Retail sales of beer, wine or liquor;
- Cocktail lounge or bar (except that a bar is permitted in connection with a restaurant);
- Sale of recreational and medical marijuana or the growing, testing and manufacture of marijuana and marijuana-related products;
- Sale or display of pornographic materials; adult bookstores, or adult theaters;
- Use, storage, disposal or handling of hazardous substance materials or underground materials or storage tanks (except incidental to a retail or service use of filling stations and further excepting those items customarily sold or handled from time to time in connection with the retail drug, grocery, convenience or department store.)

Section 9.18 Landscaping. An Owner shall cause its Lot to be landscaped within 18 months of the date of purchase of the Lot. Prior to installation of landscaping, the Lot shall be kept free and clear of weeds and debris. Landscaping shall be done in accordance with a landscape plan which has been approved by the ARC and which shall include trees, shrubs, native grasses and berms.

Section 9.19 Association Rules. The Association may, by a majority vote of the Executive Board, adopt, amend and repeal rules and regulations to be known as Rules and Regulations of Harman Park Subdivision. The purpose of the Rules and Regulations shall be to implement, supplement or otherwise carry out the purposes and intentions of this Declaration; provided such Association Rules must be consistent with this Declaration.

Section 9.20 Restrictions on Alienation. A Lot may not be conveyed pursuant to a time-sharing arrangement described in C.R.S. §§38-33-110 to 113 of the CCIOA.



ARTICLE 10 ENFORCEMENT, AMENDMENT AND REVOCATION

Section 10.1 Enforcement. These covenants, conditions and restrictions may be enforced as provided hereinafter by the Association or by separate action by any individual Owner after notification to the Board. In the event that any covenant shall be violated, the offending party shall be notified in writing by any enforcing party according to the Notice and Hearing Procedures as set forth in the Bylaws or Policies and Procedures of the Association. Enforcement may be by any proceeding at law or in equity, and the Association or Owner may seek an order to restrain the violation or recover damages, inclusive of reasonable attorney's fees. Failure by the Association or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter. The Board has the discretion to follow such notification procedures as may be adopted in its Bylaws.

Section 10.2 Amendment. This Declaration may, except as otherwise limited by CCIOA, be amended with 67% or more of the allocated votes of owners in the Association (as described in the voting allocation set forth in Exhibit B). Consent of First Lienors shall not be required; provided, however, that no such amendment may substantively and adversely affect such First Lienor's security interest. Any instrument amending this Declaration shall be duly executed by the President and Secretary of the Association.

Section 10.3 Revocation. This Declaration shall not be revoked unless the Owners representing an aggregate interest of 67% or more of the allocated votes in the Association consent and agree to such revocation by instrument(s) duly recorded.

Section 10.4 Term of Declaration. The term of this Declaration shall be perpetual.

ARTICLE 11 INSURANCE AND FIDELITY BONDS

Section 11.1 Authority to Purchase. All insurance policies relating to the Roads or any other Common Facilities shall be purchased by the Executive Board or its duly authorized agent. The Executive Board shall not be liable for failure to obtain any coverage required by this Article 11 or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs. Notwithstanding the foregoing, if the insurance described in Sections 11.3 and 11.4 below is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or otherwise delivered to all Owners.

Section 11.2 Payment of Insurance Premiums. The deductible, if any, on any insurance policy purchased by the Executive Board may be treated as a Common Expense payable from Annual Assessments or Special Assessments allocable to all of the Lots or to only some of the Lots,



if the claims or damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners) or as an item to be paid from reserves established by the Executive Board.

Section 11.3 Physical Damage Insurance on Road. The Association may obtain insurance for all insurable improvements, if any, on the Roads and any other Common Elements in an amount equal to the full replacement value, (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage), which shall include all building service equipment and the like, common personal property and supplies, and any fixtures or equipment within the Roads or any other Common Elements.

Section 11.4 Liability Insurance. The Association may obtain a comprehensive policy of commercial general liability insurance (including bodily injury, libel, slander, false arrest, and invasion of privacy coverage) and property damage insurance with such limits as the Executive Board may from time to time determine, insuring each member of the Executive Board, the Association, its officers, each Owner and the respective employees, agents and all persons acting as agents of the Association against any liability to the public or the Owners (and their guests, invitees, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance, or use of the Common Elements and any other areas under the control of the Association. The Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the common facilities.

Such comprehensive policy of public liability insurance shall include the following:

- (a) coverage for contractual liability, liability for non-owned and hired automobiles, and, if applicable, host liquor liability, employer's liability, and such other risks as shall customarily be covered with respect to developments similar to Harman Park subdivision in construction, location, and use;
- (b) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured; and
- (c) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to an Owner because of the negligent acts of the Association or another Owner.

The Executive Board shall review the coverage limits at least once every two years, but, generally, the Board shall carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to Harman Park Subdivision and in no event shall such coverage be less than \$1,000,000 for all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than \$2,000,000.

Section 11.5 Fidelity Insurance. Fidelity bonds may be maintained by the Association 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 or administered by the



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Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds shall be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in such an amount as the Board may determine appropriate. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons, serving without compensation from the definition of "employees," or similar terms or expressions. Such bonds shall cover the maximum funds that will be in the custody of the Association or any management agent at any time while the bond is in force, and such coverage will be not less than two months' current assessments plus reserves, as calculated from the current budget of the Association. The maximum deductible amount shall be the lesser of \$5,000 or 1% of the policy face amount.

Section 11.6 Provisions Common to Physical Damage Insurance, Liability Insurance, Fidelity Insurance and Flood Insurance. Any insurance coverage obtained by the Association under the provisions of this Article above shall be subject to the following provisions and limitations:

- (a) The named insured under any such policies shall include the Association, as attorney-in-fact for the use and benefit of the Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under such policies;
- (b) Each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Common Elements, or membership in the Association;
- (c) In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees;
- (d) The policies shall provide that coverage shall not be prejudiced by: (i) any act or neglect of any Owner (including an Owner's family, tenants, servants, agents, invitees, and guests) when such act or neglect is not within the control of the Association; (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control; nor (iii) conduct of any kind on the part of an Owner (including the Owner's family, tenants, servants, agents and guests) or any Director, officer, employer, or Manager of the Association, without prior demand to the Association and a reasonable opportunity to cure the matter;
- (e) The policies shall contain a waiver by the insurer of any right to claim by way of subrogation against the Executive Board, the Association, the Manager, and any Owner and their respective agents, employees, or tenants, and in the case of Owners, members of their households, and of any defenses based upon co-insurance; and
- (f) The policies described in Sections 11.3 and 11.4 above shall provide that any "no other insurance" clause shall expressly exclude individual Owners' policies from its operation so that the



physical damage policy or policies purchased by the Association shall be deemed primary coverage, and any individual owners' policies shall be deemed excess coverage.

Section 11.7 Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and Directors from personal liability in relation to their duties and responsibilities in acting as such officers and Directors on behalf of the Association.

Section 11.8 Workmen's Compensation Insurance. The Association shall obtain workmen's compensation or similar insurance with respect to its employees, if any, in the amounts, and forms as may now or hereafter be required by law.

Section 11.9 Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it deems appropriate with respect to the Association's responsibilities and duties.

Section 11.10 Insurance Obtained by Owners. Each Owner shall have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Owner's personal property. In addition, each Owner may obtain such other and additional insurance coverage on and in relation to his Lot as such Owner concludes to be desirable; provided, however, that no insurance coverage obtained by an Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner shall include a waiver of the particular insurance company's right of subrogation against the Association and other Owners.

ARTICLE 12 DAMAGE OR DESTRUCTION

Section 12.1 The Role of the Association Executive Board. In the event of damage or destruction to all or any part of any Common Elements and any improvements existing thereon, or other property covered by insurance written in the name of the Association (the "Association-Insured Property"), the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property unless any of the provisions of Section 313(9)(a) of CCIOA are met.

Section 12.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.



Section 12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and First Lienors.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 12.5, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 12.5 Disbursement of Funds for Repair and Reconstruction. The insurance held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contribution such Owner made as Special Assessments, the remainder to be divided among the Lots, first to the First Lienors, and then to the Owners, as their interests appear.

ARTICLE 13 CONDEMNATION

Section 13.1 Rights of Owners. When all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 13.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such a taking shall be payable to the Association for the benefit of the Owners and First Lienors and, unless otherwise required under the Act, the award shall be disbursed as follows:



If the taking involves a portion of the General Common Elements on which improvements have been constructed, then, unless within 60 days after such taking, the Owners who represent the affirmative vote of 67% of the Owners, the Association shall restore or replace such Common Elements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Association. If such Common Elements are to be repaired or restored, the provisions in Articles 11 and 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed equally among the Lots, first to the First Lienors and then to the Owners, according to their Allocated Interests described in this Declaration.

Section 13.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate provided that the approval is first obtained of 51% of all First Lienors of Lots (which percentage is measured by votes allocated to such Lots), and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 13.2 above.

ARTICLE 14 EASEMENTS

Section 14.1 Recording Data. The Property and Lots thereon are subject to all easements, and licenses of record in the real property records of Archuleta County and those easements, rights of way and licenses described herein and on the Plat.

Section 14.2 Owner's Easements of Access and Enjoyment. Every Owner shall have, and hereby grants, a perpetual, non-exclusive right and easement in common with all of the other Owners to access and reasonable use and enjoyment of the Common Elements and Roads, subject to reasonable regulation by the Board. The easements granted hereunder are appurtenant to and shall pass with the title to every Lot, subject to the provisions set forth in this Article. Nothing in this Declaration shall be construed as a dedication of the Common Elements or Utility Easements to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any by such authority or utility, absent and express written agreement to that effect. The Common Elements and Utility Easements are private amenities that are for the common use, benefit, and enjoyment of the Owners and their tenants, permitted guests and invitees until and unless the Association grants said Roads or easements to the Town of Pagosa Springs.

Section 14.3 Association's Easement. The Executive Board of the Association an easement over, across, and under each Lot to exercise any right held by the Association under this Declaration. Notwithstanding the foregoing, the Association shall not enter upon any Lot without reasonable prior notice to the Owner except in cases of emergency. All necessary easements are hereby granted to the Association for maintenance and snow removal upon paved areas within the Property.



Section 14.4 Easement for Encroachments. To the extent that any Common Element encroaches on a Lot, a valid easement for the encroachment exists. An easement for encroachment in the Common Elements hereby exists for any overhang of eaves, roofing. This easement does not relieve a Lot Owner of liability in the case of willful misconduct.

Section 14.5 Reservation of Right to Grant Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish, through its Executive Board, utility or other easements, permits or licenses over the Common Elements or Open Space Parcel 2; provided, however, the foregoing is in the best interest of all Owners of the Association and such easements, permits or licenses do not unreasonably interfere with the Lot Owner's ability to access a Lot or conduct commercial purposes therein.

Section 14.6 Easement in Lots for Repairs, Maintenance and Emergencies. All Owners shall permit a right of entry to the Executive Board or any other person authorized by the Executive Board, whether the Owner is present or not, for access through each Lot to all Common Elements, from time to time, as authorized by the Executive Board, whether the Owner is present or not, as may be necessary for the routine maintenance, repair, or replacement of any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Lot. For routine maintenance and non-emergency repairs, entry shall be made only on a regular business day during regular business hours, after service of at least one day's notice in writing to the Owner. In case of emergency, entry shall be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry.

Section 14.7 Reservation of Right to Convey, Grant and Dedicate Roads to Town of Pagosa Springs. The Executive Board is hereby granted the right to negotiate, on such terms and conditions as determined reasonable in the discretion of the Executive Board, the conveyance, grant and dedication of Roads to the Town of Pagosa Springs in exchange for, among other things, the assumption of maintenance, repair and snow plow of said Roads by the Town of Pagosa Springs.

SECTION 15 ALTERNATIVE DISPUTE RESOLUTION

Section 15.1 Alternative Dispute Resolution. The purpose of the Declaration is to establish a harmonious Common Interest Community. Because the prompt, efficient, fair and non-belligerent resolution of any disputes is desirable, any controversy arising out of or relating to the Association Documents, or a breach thereof, or any other dispute between the Association and any Owner shall be resolved as set forth in this Article. This Article 15 shall satisfy the requirement for an alternative dispute resolution (ADR) policy set forth in Act, Section 38-33.3-124(b).

Section 15.2 Prerequisite/Claims. The parties to a dispute shall exhaust all remedies and procedures required by the Association Documents prior to resolving the dispute through this ADR policy. All claims, disputes and other controversies arising out of or relating to the rights, obligations and duties of any Owner, or the Association and its officers and directors under the Association Documents and/or a breach thereof (a "Claim") shall be subject to and resolved by



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submitting the Claim to mediation. Claims shall NOT include any suit by the Association to enforce or collect assessments, any suit involving an imminent threat to the peace, health, or safety of the common interest community, or any suit to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association to enforce the restrictions of this Declaration.

Section 15.3 Direct Communication. If the dispute is not governed by a procedure for resolution as otherwise provided in the Association Documents, the parties to the disagreement shall set forth their respective positions in the dispute in correspondence to one or through one another's legal counsel. The written communication shall describe the nature of the dispute, claim or controversy, including the persons involved, and the legal basis of the dispute, claim or controversy and relief or remedy sought. All disputes, claims or controversies should be initiated within a reasonable time after the dispute, claim or controversy has arisen and in no event shall a dispute, claim or controversy be made after the date when such dispute, claim or controversy would be barred by any applicable statute of limitations. The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the dispute, claim or controversy by good faith negotiation.

Section 15.4 Mediation. If the dispute, claim or controversy cannot be resolved through direct communication of the parties within 30 days after the date the dispute, claim or controversy was submitted to a party, either party may request appointment of a neutral and properly credentialed mediator. With the prior agreement of both parties, the parties shall participate in mediation in good faith until the dispute is resolved or until the mediation terminates. Either party to a mediation may terminate the mediation process without prejudice. If the parties do not settle the dispute, claim or controversy within 60 days after submission of the matter to mediation, the mediator shall issue a notice of termination of the mediation proceedings. Each party shall bear its own costs of mediation, including attorney's fees and each party shall share equally all charges rendered by the mediators and all costs associated with same. The mediation agreement, if one is reached, may be presented to the court as a stipulation.

Section 15.5 Conflicts. This ADR policy is not intended to modify or alter any portion of the Declaration or any "notice and hearing procedure" established for the resolution of covenant violations. If any part of this alternative dispute resolution conflicts with any provision of the Association Documents, the provisions of the Association Documents shall be controlling.

ARTICLE 16 FIRST MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first mortgages recorded against Lots within the Common Interest Community who qualify as an Eligible Mortgagee. To the extent applicable, necessary, or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. "Eligible Mortgagee" means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Lot encumbered by its First Security Interest.



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Section. 16.1 Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

- (a) any material condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Lot in which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee;
- (b) any default in the performance by an individual borrower of any obligation under the Common Interest Community constituent documents not cured within sixty (60) days;
- (c) any lapse, cancellation or material modification of any mandatory insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which would require the consent of a specified mortgage of Eligible Mortgages; and
- (e) any material judgment rendered against the Association.

Section 16.2 Action by Mortgagee. If this Declaration or any Association Documents require the approval of Mortgagees to any action, then, if any Mortgagee fails to respond to any written request for such approval within 30 days after such Mortgage receives notice of the request, such Mortgagee shall be deemed to have approved such request. Notification to Mortgagee shall consist of sending a dated, written notice and copy of any proposed amendment by certified mail to each First Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof.

ARTICLE 17 GENERAL PROVISIONS

Section 17.1 Severability. Invalidation of any one of these covenants by judgment or court decree shall not affect or impair the terms, provisions and conditions of any other covenants contained herein, which covenants shall remain in full force and effect.

Section 17.2 Covenants Running with the Land. All provisions of this Declaration and Exhibits attached hereto and amendments thereof shall be construed as covenants running with the land, and or every part hereof and interest therein, including but not limited to every Lot and appurtenances thereto, and every Owner and occupant of the Property, or any part thereof, or of any interest therein, and his or her heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and Exhibits annexed hereto and any amendments thereof. The subjection of the Property or surrounding properties to zoning laws and regulations shall not then or thereafter cause any provisions of this Declaration to terminate.

Section 17.3 Conflict Between Documents. In the event of any conflict between the provisions of this Declaration, or the Articles of Incorporation or the Bylaws of the Association, the



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provisions of the Articles of Incorporation shall control. In the event of any conflict between the Declarations and the Bylaws of the Association, the Declarations shall control. In the event of any conflict between the Declarations and the Plat and plat notes, this Declaration shall be automatically amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of the Plat.

Section 17.4 Waiver. No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver shall be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

Section 17.5 Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally, by US mail or by electronic mail (email). If delivery is made by mail, it shall be deemed to have been delivered three (3) days after a copy of the same has been posted in the United States mail, postage prepaid for first class mail and addressed to the receiving party at the address last given by such party to the Association. If delivery is made by email, it shall be deemed to have been delivered to the receiving party at the email address last given by such party to the Association and upon acknowledgment of receipt of the email. Any notice to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

Section 17.6 No Representations or Warranties. Except as otherwise required by Colorado law, no representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Association or its officers, directors, agents or employees in connection with any portion of the Property, or any improvement thereon, as to its physical condition, zoning, compliance with applicable laws, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof.

Section 17.7 Binding Effect. Owners, lessees, First Lienors, permitted guests and invitees, and their heirs, personal and legal representatives, successors and assigns, or any other person using or occupying the common interest community, shall be bound by, and shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions, and all rules, regulations, policies and procedures and agreements lawfully made by the Association.

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Signature Page
for
Declaration of Restrictive Covenants, Conditions and Restrictions for
Harman Park Subdivision

IN WITNESS WHEREOF, the undersigned President has caused this Amended and Restated Declaration of Restrictive Covenants, Conditions and Restrictions for Harman Park to be executed this day of 12/8, 2015.

Harman Park Owners Association, Inc.

By: _____
Its: President

Bruce Keuning

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

The foregoing instrument was acknowledged before me on 12/08, 2015 by
Bruce D Keuning.

Witness my hand and official seal.

My commission expires March 20, 2017

[Signature]
Notary Public

QING DRANE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134018617
MY COMMISSION EXPIRES MARCH 20, 2017



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The undersigned Secretary of certifies that the Association obtained the requisite number of approvals from Lot Owners necessary for the amendment of this Declaration.


By: Michael R. Heraty
Its: Secretary

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

The foregoing instrument was acknowledged before me on 12/08, 2015 by
Michael R. Heraty.

Witness my hand and official seal.

My commission expires March 20, 2017


Notary Public

QING DRANE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134018617
MY COMMISSION EXPIRES MARCH 20, 2017



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Exhibit A
Description of the Property

The real property subject to this Declaration is comprised of the following Lots contained within Harman Park Subdivision as depicted on the Harman Park Subdivision Final Plat recorded on December 21, 2004 at Reception No. 20412244.

Lot #	
Parcel 1 (Open Space)	3.08
Parcel 2 (Open Space)	0.40
Lot 1	1.34
Lot 2	0.47
D-1X	4.09
D-5	0.61
D-6	0.41
D-7	0.42
D-8	0.49
E	7.23
F	5.00
G	3.86
H-1	0.63
H-3	0.67
H-2	0.71
H-4X	1.59
H-6X	1.03
H-8	<u>0.66</u>
	30.17 acres



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Exhibit B
Allocations Table

Lot #	Share of Common Expenses Based Upon Proportionate Acreage	Allocated Votes
Lot 1	1.34	1.34
Lot 2	0.47	0.47
D-1X	4.09	4.09
D-5	0.61	0.61
D-6	0.41	0.41
D-7	0.42	0.42
D-8	0.49	0.49
E	7.23	7.23
F	5.00	5.00
G	3.86	3.86
H-1	0.63	0.63
H-2	0.71	0.71
H-3	0.67	0.67
H-4X	1.59	1.59
H-6X	1.03	1.03
H-8	<u>0.66</u>	<u>0.66</u>
	26.69 Total Acres	26.69 Total Votes

***Open Space Parcel 1 and Parcel 2 are subject to the terms of this Declaration; however, Parcel 1 and Parcel 2 do not have voting rights or an interest in the Common Expense.**