

**NOTICE TO CLOSING AGENTS: THIS IS A FEE-ASSESSED SUBDIVISION.  
CHECK WITH THE HOMEOWNERS ASSOCIATION FOR FEE SCHEDULE.**

**AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
STORYBOOK PATIO HOMES P.D.P.  
(A Common Interest Community)**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR STORYBOOK PATIO HOMES P.D.P. is made and entered into this day of 13 day of August, 2009.

**RECITALS**

A. The Storybook Patio Homes P.D.P. Declaration of Covenants, Conditions and Restrictions was recorded April 27, 2001 at Reception No. 2001-031086 of the Larimer County, Colorado records (“the Original Declaration”).

B. The Original Declaration pertains to a parcel of real property located in the City of Fort Collins, County of Larimer, State of Colorado, legally described on the Plat of Storybook P.D.P. recorded August 18, 1999 at Reception No. 19990074089 of the Larimer County, Colorado records (“the Real Estate”).

C. C.R.S. Section 38-33.3-217(1) provides that any declaration of protective covenants may be amended by a vote of sixty-seven percent (67%) or more of the owners of lots which are subject to the protective covenants. This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Storybook Patio Homes P.D.P. (“this Declaration”) has been approved by the owners of sixty-seven percent (67%) or more of the lots contained within the Real Estate (“the Consenting Owners”).

**ARTICLE I. SUBMISSION OF REAL ESTATE**

The Consenting Owners hereby publish and declare that the Original Declaration shall be and is hereby amended and restated in its entirety and that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions, which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors, and assigns. Upon the recording of this Declaration in the office of the Clerk and Recorder of Larimer County, Colorado, the Original Declaration shall be null and void and of no further force or effect, the same as if the Original

**RECEPTION#: 20090056661, 08/13/2009 at  
04:25:14 PM,  
1 OF 29, R \$146.00 TD Pgs: 0  
Scott Doyle, Larimer County, CO**

  
**Libby, Rogers & Martell, LLC**  
300 S. Homes Street  
Ft. Collins, CO 80521

Declaration had never been recorded and, thereafter, the Original Declaration shall no longer burden the Real Estate in any way or for any purpose, but shall be replaced in its entirety by this Declaration.

## **ARTICLE II. DEFINITIONS**

1. “Act” shall mean and refer to the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101, et seq.).

2. “Allocated Interests” shall mean and refer to the Common Expense Liability and votes in the Association.

3. “Approval” or “Consent” shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

4. “Association” or “Lot Owners’ Association” shall mean and refer to STORYBOOK HOMEOWNERS ASSOCIATION, formerly known as STORYBOOK PATIO HOMES HOMEOWNERS ASSOCIATION (a Colorado nonprofit corporation), its successors and assigns, organized and existing under the laws of the State of Colorado.

5. “Board” shall mean and refer to the Board of Directors of the Association. The term “Board” as used in this Declaration shall have the same meaning as the term “Executive Board” as used in the Act.

6. “Buildings” shall mean and refer to all buildings constructed within the Common Interest Community, which Buildings shall include the Patio Homes.

7. “Bylaws” shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

8. “Common Elements” shall mean and refer to:

Tracts A through F, inclusive, Storybook P.D.P., according to the Plat thereof recorded with the Larimer County Clerk and Recorder at Reception No. 19990074089, City of Fort Collins, County of Larimer, State of Colorado;

and all improvements presently located or subsequently constructed thereon. Common Elements shall also include common mailbox building.

9. “Common Expense Liability” shall mean and refer to the liability for Common Expenses allocated to each Lot pursuant to this Declaration.

10. "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves. These expenses for the operation of the Common Interest Community include, but are not limited to:

(a) Expenses of administering, maintaining, repairing, improving, insuring, or replacing the Common Elements.

(b) Expenses of maintaining, repairing, improving, insuring, and replacing the Buildings.

(c) Expenses of maintaining, repairing, improving, and replacing the Landscaping.

(d) Expenses declared to be Common Expenses by this Declaration.

(e) Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the Common Elements, Buildings, Landscaping, or any other real or personal property acquired or held by the Association.

11. "Common Interest Community" shall mean and refer to the Real Estate.

12. "Declaration" shall mean and refer to this Declaration, including any amendments hereto, and also including, but not limited to, the Plat.

13. "Documents" shall mean and refer to this Declaration, the Plat, and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association, as supplemented or amended from time to time.

14. "Identifying Number" shall mean and refer to a symbol or address that identifies only one (1) Lot in the Common Interest Community.

15. "Insurer" shall mean and refer to any governmental agency or authority that insures or guarantees a Mortgage and that has provided actual written notice of such interest to the Association. Recording of a mortgage, deed of trust, or other Security Interest in the office of the Clerk and Recorder of Larimer County, Colorado, shall not be considered actual written notice to the Association of a Security Interest.

16. "Landscaping" shall mean and refer to all trees, shrubs, grasses, flowers, and other plants and plant materials, decorative rock and other landscape materials on the Lots and Common Elements.

17. "Lots" shall mean and refer to a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries

of which are described in or determined from the Plat. The term “Lot” as used in this Declaration shall have the same meaning as the term “Unit” as used in the Act. The term “Lots” shall not mean or include the Common Elements.

18. “Mortgagee” shall mean and refer to any Person who has a Security Interest in a Lot and who has provided actual written notice of such Security Interest to the Association. Recording of a mortgage, deed of trust, or other Security Interest in the office of the Clerk and Recorder of Larimer County, Colorado, shall not be considered actual written notice to the Association of a Security Interest.

19. “Notice” shall mean and refer to any notice required or desired to be given pursuant to the Documents. Unless otherwise provided in the Documents, all notices shall be in writing and may be personally delivered; mailed, certified mail, return receipt requested; sent by telephone facsimile with a hard copy sent by regular mail; sent by a nationally recognized receipted overnight delivery service, including, by example and not limitation, United Parcel Service, Federal Express, or Airborne Express; or sent by electronic mail. Any such notice shall be deemed given when personally delivered; if mailed, three (3) delivery days after deposit in the United States mail, postage prepaid; if sent by telephone facsimile or electronic mail, on the day sent if sent on a business day during regular business hours (9 a.m. to 5 p.m.) of the recipient, otherwise on the next business day; or if sent by overnight delivery service, one (1) business day after deposit in the custody of the delivery service. The addresses, telephone numbers, and electronic mail addresses for the mailing, transmitting, or delivering of notices shall be as set forth in the books and records of the Association. Notices of a change of address shall be given in the same manner as all other notices as hereinabove provided.

20. “Owner” shall mean and refer to any Person who owns a Lot but does not include a Person having an interest in a Lot solely as security for an obligation. The term “Owner” as used in this Declaration shall have the same meaning as the term “Unit Owner” as used in the Act.

21. “Party Wall” shall mean and refer to a wall dividing two Patio Homes and/or decks and patios on adjacent Lots.

22. “Patio Home” shall mean and refer to a Single Family residential dwelling unit constructed on a Lot, which may be attached to the dwelling unit on the adjacent Lot by a common wall, the two adjacent dwelling units being included within one Building. “Patio Home” shall also mean and include a detached Single Family residential dwelling constructed on a Lot that does not share a common wall with dwelling units on adjacent Lots.

23. “Person” shall mean and refer to a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or combination thereof.

24. "Plat" shall mean and refer to the Plat of Storybook P.D.P., consisting of one (1) page, recorded August 18, 1999, at Reception No. 19990074089 of the Larimer County, Colorado, records and all recorded amendments thereto.

25. "Real Estate" shall mean and refer to the Real Estate described on the Plat.

26. "Residential Use" shall mean and refer to use of a Patio Home as a dwelling by a Single Family.

27. "Rules and Regulations" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

28. "Security Interest" shall mean and refer to an interest in real property created by contract or conveyance which secures payment or performance of an obligation if the Association is given actual written notice of such interest. The term includes a lien created by mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation of which the Association has been given actual written notice. "First Security Interest" shall mean and refer to a Security Interest in a Lot of which the Association has been given actual written notice prior to all other Security Interests, except the Security Interest for real property taxes and assessments made by Larimer County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community. For purposes of this Declaration, the recording of any document or instrument in the office of the Clerk and Recorder of Larimer County, Colorado, shall not be considered actual written notice to the Association of any Security Interest created by the recording of such document or instrument.

29. "Single Family" shall mean and refer to any individual or group of persons related by blood or marriage or any unrelated group of not more than three (3) persons living together in a Patio Home.

30. Unless the context clearly indicates otherwise, other terms defined in the Act shall have the meanings attributable to such terms in the Act.

31. Other terms in this Declaration may be defined in specified provisions contained herein and shall have the meaning assigned by such definition.

### **ARTICLE III. COMMON INTEREST COMMUNITY**

1. **Name.** The name of the Common Interest Community is Storybook.

2. Association. The name of the Association is Storybook Homeowners Association, formerly known as Storybook Patio Homes Homeowners Association.

3. Planned Community. The Common Interest Community is a planned community.

4. County. The name of every county in which any part of the Common Interest Community is situated is Larimer County, Colorado.

5. Legal Description. A legal description of the Real Estate included in the Common Interest Community is set forth on the Plat.

6. Maximum Number of Lots. The maximum number of Lots that may be created within the Common Interest Community is sixty-six (66).

7. Boundaries of Lots. The boundaries of each Lot are set forth on the Plat. The Plat sets forth the Lot's Identifying Number.

8. Allocated Interests. The Common Expense Liability and votes in the Association shall be allocated among the Owners as follows:

(a) Each Owner's share of the Common Expenses shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within the Common Interest Community.

(b) Each Owner shall be entitled to one (1) vote for each Lot owned.

9. Recording Data. All easements and licenses to which the Common Interest Community is presently subject are shown on the Plat.

#### **ARTICLE IV. ASSOCIATION**

1. Purpose. The Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are as follows: (a) to operate the Common Interest Community, in accordance with the Act, as amended; (b) to promote the health, safety, welfare, and common benefit of the residents of the Common Interest Community; (c) to maintain, repair, replace and improve the Common Elements; (d) to maintain, repair, replace, and improve the exterior of the Buildings; (e) to maintain, replace, and improve the Landscaping on the Lots; and (f) to do any and all permitted acts, and to have and exercise any and all powers, rights, and privileges which are granted to a common interest community association under the laws of the State of Colorado, this Declaration, and the Bylaws, Rules and Regulations, and other governing documents of the Association.

2. Voting Rights and Assignment of Votes. The effective date for assigning votes to Lots created pursuant to this Declaration shall be the date on which this Declaration is recorded in the records of the Clerk and Recorder of Larimer County, Colorado.

3. Allocated Interests. The Common Expense Liability and votes in the Association allocated to each Lot are set forth as follows:

(a) The percentage of liability for Common Expenses shall be allocated on the basis of equal liability for each Lot; and

(b) The number of votes in the Association shall be allocated on the basis of one (1) vote for each Lot.

4. Authority. The business and affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by this Declaration and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association, as amended from time to time.

5. Powers. The Association shall have all of the powers and authority permitted pursuant to the Act necessary and proper to manage the business and affairs of the Common Interest Community.

6. Membership. Each and every Owner shall be a Member of the Association. By acquiring title to a Lot, the Owner of the Lot shall be deemed to have consented to become a Member of the Association. Membership in the Association shall be appurtenant to the Lot owned. No Owner of a Lot may transfer such Owner's Membership Interest in the Association, or any right arising therefrom except as appurtenant to the transfer of such Owner's Lot.

7. Board Powers and Duties. The Board may act in all instances on behalf of the Association. The Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include, but not be limited to, the following:

(a) Adopt and amend Bylaws.

(b) Adopt and amend Rules and Regulations.

(c) Adopt and amend budgets for revenues, expenditures, and reserves.

(d) Collect Common Expense assessments from Lot Owners.

(e) Hire and discharge independent contractors, employees, and agents including, but not limited to, a professional manager, managing agent or property management company to manage the business and affairs of the Association.

(f) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Documents in the Association's name, on behalf of the Association.

(g) Make contracts and incur liabilities.

(h) Regulate the use of the Common Elements.

(i) Maintain, repair, replace, and improve the Common Elements, Buildings, and Landscaping within the Common Interest Community; provided, however, there shall be no additions, alterations or improvements of or to the Common Elements requiring an expenditure in excess of Two Thousand Five Hundred Dollars (\$2,500) per expenditure in any one calendar year without the prior approval of a majority of the members of the Association present in person or by proxy at a meeting at which a quorum is present or a majority of a quorum, whichever is greater.

(j) Cause additional improvements to be made as a part of the Common Elements.

(k) Acquire, hold, encumber, and convey in the Association's name any right, title, or interest to real estate or personal property, but the Common Elements may be conveyed or subjected to a Security Interest only pursuant to this Declaration and the Act.

(l) Grant easements for any period of time, including permanent easements, leases, licenses, and concessions through or over the Common Elements, subject to the restrictions and limitations of this Declaration and the Act.

(m) Impose and receive a fee or charge for the use, rental, or operation of the Common Elements and for services provided to Lot Owners.

(n) Impose a reasonable charge for late payment of assessments and levy a reasonable fine for violation of the Documents.

(o) Impose a reasonable charge for the preparation and recordation of supplements or amendments to this Declaration and for statements of unpaid assessments.

(p) Provide for the indemnification of the Association's officers and the Board and maintain directors' and officers' liability insurance.



(q) Assign the Association's right to future income, including the right to receive Common Expense assessments, but only upon approval of the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

(r) Exercise any other powers conferred by the Documents.

(s) Exercise any other power that may be exercised in the state of Colorado by a non-profit corporation.

(t) Exercise any other power necessary and proper for the governance and operation of the Association.

(v) By resolution, establish permanent and standing committees of Members to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees established by the Board must maintain and publish notice of their actions to Lot Owners and the Board. Actions taken by any committee established by the Board may be appealed to the Board by any Lot Owner within forty-five (45) days of publication of a notice of the committee action. If an appeal is made, the committee's action must be ratified, modified, or rejected by the Board at its next regular meeting.

8. Professional Management and Contract Termination Provisions. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon sixty (60) days' prior written notice.

9. Board Limitations. The Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Board or determine their qualifications, powers, and duties or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.

10. Indemnification. To the full extent permitted by law, each officer and member of the Board of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party or in which they may become involved by reason of their being or having been an officer or member of the Board of the Association, or any settlement thereof, whether or not they are an officer or a member of the Board of the Association at the time such expenses are incurred, except in such cases where such officer or member of the Board is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a

settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

#### **ARTICLE V. EASEMENTS**

1. **Encroachments.** A valid easement shall exist for the following encroachments and for the maintenance of the same: (a) in the event that any portion of a Patio Home encroaches upon any other Lot or upon any portion of the Common Elements; or (b) in the event any encroachment shall occur in the future as a result of settling of a Building or repair or restoration of a Building after damage by fire or other casualty or condemnation or eminent domain proceedings. In the event that any one or more of the Buildings are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances, either on the Common Elements or on the Lots, for purposes of marketability of title or other purposes.

2. **Blanket Easement.** There is hereby created a blanket easement upon for the benefit of the Association, across, over, and under all Lots for improving, replacing, repairing, and maintaining the Buildings and Landscaping.

#### **ARTICLE VI. TERMINATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION**

No labor performed or materials furnished and incorporated in a Patio Home with the consent of or at the request of the Owner, his or her agents, contractors, or subcontractors, shall be the basis for filing a lien against the Patio Home of any other Owner not expressly consenting to or requesting the same or against the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners, from and against all liability arising from the claim of any lien against the Patio Home of any other Owner or against the Common Elements for construction performed or for labor, material, services, or other products incorporated in the Owner's Patio Home at such Owner's request. Notwithstanding the foregoing, any Mortgagee of a Lot who shall become the Owner of such Lot pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any other Owner against liability for claims arising prior to the date such Mortgagee becomes an Owner.

#### **ARTICLE VII. RESERVATION FOR ACCESS, MAINTENANCE, REPAIR, AND EMERGENCIES**

1. **Access to Lots.** The Association shall have the irrevocable right, to be exercised by the Association's Board, its employees, contractors and managing agent, to

have access to each Lot from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Buildings or Landscaping or at any hour for making emergency repairs, maintenance, or inspection necessary to prevent damage to a Building.

2. Damage to Patio Home. Damage to the interior of any part of a Patio Home resulting from the maintenance, repair, emergency repair, or replacement of any Building at the insistence of the Association shall be a Common Expense; provided, however, that if the damage to be repaired is caused by negligent or tortuous acts of an Owner, his or her agents, employees, invitees, or tenants, then such Owner shall be responsible and liable for all of such damage, and the cost thereof shall become said Owner's obligation. All damaged improvements shall be restored substantially to the extent reasonably practical to the same condition in which they existed prior to the damage. All maintenance, repairs, and replacement of the Buildings shall be the Common Expense of all of the Owners (unless necessitated by the negligence, misuse, or tortuous act of an Owner, in which case such expense shall be charged to such Owner). However, the Association shall not be obligated to seek redress for damages caused by a negligent Owner, and this covenant shall not abrogate the insurance provisions of this Declaration.

3. Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance or repair of the Common Elements, any improvements located thereon, any Building, or any Landscaping is caused by the willful or negligent act, omission, or misconduct of any Lot Owner or by the willful or negligent act, omission, or misconduct of any member of such Lot Owner's family or by a guest, invitee, employee, agent, contractor, or subcontractor of such Lot Owner or any tenant of a Lot Owner, or member of a tenant's family, the costs of such repair and maintenance shall be the personal obligation of such Lot Owner, and any costs, expenses, and fees incurred by the Association for such maintenance, repair, or reconstruction shall be added to and become a part of the assessment to which such Owner's Lot is subject and shall be a lien against such Owner's Lot as provided in this Declaration. A determination of the willful or negligent act, omission, or misconduct of any Lot Owner or any member of a Lot Owner's family or a guest, invitee, employee, agent, contractor, or subcontractor of any Lot Owner or tenant of a Lot Owner, or member of a tenant's family and the amount of the Lot Owner's liability therefor shall be determined by the Board after notice to the Lot Owner and the right to be heard before the Board in connection therewith.

**ARTICLE VIII. MAINTENANCE AND SERVICE RESPONSIBILITY**

1. Owner.

(a) For maintenance purposes, an Owner shall be responsible for the windows, storm windows, window wells, skylights, doors, storm doors and garage doors; the interior nonsupporting walls, floors, and ceilings of the Patio Home; the materials

such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring, and other materials which make up the finished surfaces of the perimeter walls, ceiling, and floors within the Patio Home. An Owner, however, shall not be deemed to own the pipes, wires, conduits, or systems running through his or her Patio Home which serve the adjacent Patio Home, except as a tenant in common with the Owner of the adjacent Patio Home ("Common Utilities"). Such Common Utilities shall not be disturbed or relocated by an Owner without the prior written consent and approval of the Owner of the adjacent Patio Home. Common Utilities shall be maintained by the Owner of the Patio Homes served by such Common Utilities as such Owners shall agree between themselves.

(b) An Owner shall maintain and keep in repair the interior of his or her own Patio Home, including the fixtures, utility lines, systems and facilities (except the Common Utilities located therein), to the extent current repair shall be necessary in order to avoid damaging another Patio Home. All fixtures, equipment, and utilities installed within the Patio Home and serving such Patio Home, commencing at a point where the fixtures, equipment, and utilities enter the Patio Home, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness of the Building or impair the proper functioning of the Common Utilities.

(c) An Owner shall be responsible for the maintenance, repair, replacement and improvement of all fixtures, such as air conditioning units, located on the exterior of such Owner's Patio Home.

(d) The Owner of each Lot shall be responsible for the maintenance, repair, replacement and improvement of all exterior concrete surfacing on the Lot including, but not limited to, porches, patios, sidewalks and driveways; all decks, landings, stairs and fences located on the exterior of such Owner's Patio Home; rock areas, shrubbery, flower gardens and trees planted or installed by the Owner; and subsistence of the Lot (e.g., the Owner shall fill sinkholes and otherwise maintain the stability of the surface of the Lot).

(e) The Owner of each lot shall be solely responsible for all maintenance, repair, replacement and improvement to the Lot and/or the Patio Home on the Lot as may be necessary or required as a result of any defect in the original design and/or construction of the patio Home or as a result of the improper grading or compaction of the Lot.

2. Association. The Association shall have the duty of maintaining and repairing the Buildings and Landscaping, except to the extent such maintenance is to be performed by individual Owners as provided in Section 1. The Association's maintenance responsibilities shall include spraying, fertilizing, pruning and replacing trees between the sidewalk and the curb; sprinkler maintenance and repair, including

turn-off, turn-on and blowout; park repair and maintenance; snow removal, including walks and entryways. The cost of all maintenance and repair performed by the Association shall be a Common Expense of all of the Owners.

3. Landscaping. The Owner of an unimproved Lot shall be responsible for the initial installation of Landscaping and a sprinkler system on the Lot within ninety (90) days (weather permitting) after substantial completion of construction of a Patio Home on the Lot.

**ARTICLE IX. INSURANCE**

1. To Be Obtained by the Association. The Association shall obtain and maintain at all times, to the extent obtainable at reasonable cost, policies involving standard premium rates established by the Colorado Insurance Commissioner and written with companies licensed to do business in Colorado and having a Best's Insurance Report rating of A & XV or better covering the risks set forth below. The Association shall not obtain any policy where: (1) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against a Mortgagee or Mortgagee's designee; or (2) by the terms of the carrier's charter, by laws or policy, loss payments are contingent upon action by the company's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or Owners from collecting insurance proceeds. The types of coverage to be obtained and risks to be covered are as follows:

(a) Fire Insurance. The Association shall maintain fire insurance with extended coverage and standard all-risk endorsements, which endorsements shall include endorsements for vandalism and malicious mischief. Such policy shall also include an agreed amount endorsement and, if available, an inflation guard endorsement. If requested by a First Mortgagee or an insurer or guarantor of a First Mortgage, such policy shall also include construction code endorsements such as demolition cost endorsement, a contingent liability from operation of building laws endorsement, and an increased cost of construction endorsement. Said casualty insurance shall insure all Buildings, including all of the Patio Homes, any fixtures, equipment, or other property within the Patio Homes which are to be maintained by the Association. All policies shall contain a standard noncontributory mortgage clause in favor of each Mortgagee of a Patio Home which shall provide that the loss, if any, thereunder shall be payable to the Association for the use and benefit of the Owners and Mortgagees as their interests may appear. The Association shall hold any proceeds of insurance in trust for the use and benefit of the Owners and Mortgagees as their interests may appear.

(b) Liability Insurance. The Association shall maintain public liability and property damage insurance in such limits as the Board may from time to time determine but not in an amount less than One Million Dollars (\$1,000,000) per injury, per person, per occurrence, and umbrella liability limits of One Million Dollars (\$1,000,000)

per occurrence covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, and other use of the Common Elements, Buildings, and Landscaping. Said policy shall also contain a “severability of interest” endorsement. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and death of persons in connection with the operation, maintenance, or use of the Common Elements, Buildings, and Landscaping and legal liability arising out of lawsuits related to employment contracts of the Association.

(c) Workers’ Compensation Insurance. The Association shall maintain workers’ compensation and employer’s liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Officers’ and Directors’ Insurance. To the extent such insurance can be obtained at reasonable cost, the Association shall maintain blanket fidelity bonds for all officers, directors, and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. If the managing agent has the responsibility of handling or administering funds of the Association, the managing agent shall be required to maintain fidelity bond coverage for its officers, employees, and agents handling or responsible for funds of or administered on behalf of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the managing agent at any given time during the term of each bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months’ aggregate Common Expense assessments on all Lots plus reserve funds. Such bonds shall contain waivers by the issuers thereof of all defenses based upon the exclusion of persons serving without compensation from the definition of employees or similar terms or expressions. The premiums on all bonds required hereunder, except those maintained by the managing agent, shall be paid by the Association as a Common Expense.

(e) Other Insurance. The Association may obtain insurance against such other risks of a similar or dissimilar nature as shall be deemed appropriate.

2. Requirements of Insurance. All policies of insurance, to the extent obtainable, shall contain waivers of subrogation, and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be cancelled or modified without at least ten (10) days’ prior written notice to all of the insureds, including the Association and all Mortgagees. If requested, duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to all Mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the

insured, as attorney-in-fact for all of the Owners, which policy or policies shall identify the interest of each Owner (Owner's name and Lot number designation) and First Mortgagee. Further, the Association shall require the insurance company or companies providing the insurance coverage described herein to provide each Owner and Mortgagee a certificate of insurance in regard to such Owner's individual Patio Home.

3. Attorney-in-Fact. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, an authorized representative who shall have the exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. All of the Owners hereby irrevocably constitute the Association as their true and lawful attorney-in-fact in their name, place, and stead for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, the execution of all documents, and the performance of all other acts necessary to accomplish such purpose.

4. To Be Obtained by Owners. Each Owner shall maintain public liability insurance in such limits as the Board may from time to time determine to be reasonably necessary but not less than Three Hundred Thousand Dollars (\$300,000) per injury per person per occurrence covering all claims for bodily injury or property damage. Owners may carry other insurance for their benefit and at their expense. All such policies shall be primary coverage, shall contain waiver of subrogation and shall provide that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by any Owner. Insurance coverage on furnishings or other property belonging to an Owner shall be the sole and direct responsibility of the Owner thereof, and the Board, Association, and/or the managing agent of the Association shall have no responsibility therefor.

5. Notice to Mortgagees. In the event that there shall be any damage or destruction to, loss of, or taking of a Patio Home which exceeds Ten Thousand Dollars (\$10,000) or any damage or destruction to, loss of, or taking of the Common Elements which exceeds Fifty Thousand Dollars (\$50,000), notice of such damage, loss, or taking shall be given by the Association to each First Mortgagee of said Patio Home within ten (10) days after the occurrence of such event.

#### **ARTICLE X. DESTRUCTION OR DAMAGE**

1. Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact in the event of the destruction or damage, including the repair, replacement, and improvement of any Building which has been so destroyed or damaged. Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from any Owner or grantor shall constitute

appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney-in-fact in their name, place, and stead, for the purposes herein provided. As attorney-in-fact, the Association, by its president and secretary or other duly authorized officers and agents, shall have full and complete authorization, right, and power to make, execute, and deliver any contract or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days of either such event. At such meeting, a new attorney-in-fact shall be appointed to deal with the destruction or damage of any Building. Said appointment must be approved by the Owners representing more than fifty percent (50%) of the votes in the Association. Repair and reconstruction of the improvements as used in the succeeding paragraphs means restoring the improvements to substantially the same condition in which they existed prior to the damage and all improvements being reconstructed or repaired in conformance with the Common Interest Community's original architectural plan and scheme. The proceeds of any insurance collected shall be available to the Association for the purposes of repair, restoration, reconstruction, or replacement unless the Owners of the Patio Homes included within the Building and First Mortgagees agree not to rebuild.

2. Insurance Proceeds Sufficient for Restoration. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association as attorney-in-fact to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair and restoration of the improvements. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

3. Insurance Proceeds Insufficient for Restoration. If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact using the proceeds of insurance and the proceeds of a special assessment to be made against the Owners of all Lots. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair, replacement, or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his or her Lot. Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association interest at the rate of eighteen percent (18%) per annum on the amount of the assessment and all reasonable attorney's fees incurred in collecting the delinquent assessment.



## **ARTICLE XI. ASSESSMENT FOR COMMON EXPENSES**

1. **Personal Obligation of Owners for Common Expenses.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Common Expense assessments imposed by the Association to meet the estimated Common Expenses.

2. **Purpose of Assessment.** The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Owners; for the improvement and maintenance of the Common Elements; and for the payment of the costs and expenses of maintaining the Buildings and Landscaping within the Common Interest Community.

3. **Amount of Assessment.** The amount of the assessment for the estimated Common Expenses which shall be paid by each Owner shall be determined by dividing the aggregate sum the Association reasonably determines to be paid by all Owners by the total number of Lots within the Common Interest Community, and the Owner of each Lot shall pay his or her proportionate share of such aggregate sum.

4. **Maximum Annual Assessment.** Until January 1 of the year immediately following the date of recording of this Declaration in the office of the Clerk and Recorder of Larimer County, Colorado, the maximum annual assessment shall be Two Thousand Five Hundred Dollars (\$2,500) per Lot.

(a) From and after January 1 of the year immediately following the date of recording of this Declaration in the office of the Clerk and Recorder of Larimer County, Colorado, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index for the Denver/Boulder region (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(b) From and after January 1 of the year immediately following the date of recording of this Declaration in the office of the Clerk and Recorder of Larimer County, Colorado, the maximum annual assessment may be increased above that established by the Consumer Price Index formula for the next succeeding two (2) years, and at the end of each such period of two (2) years, for each succeeding period of two (2) years, provided that any such change shall have the assent of two-thirds (2/3) of the vote's of the Owners who are voting in person or by proxy at a meeting duly called for the purpose of approving such increase. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association participates.

(c) The Board may fix the annual assessment an amount not in excess of the maximum.

5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, payment of any operating deficit and/or unbudgeted cost, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, and the cost of any construction, reconstruction, repair, or replacement of any Building or Landscaping within the Common Interest Community. Except as provided in Article X, Section 3, any such special assessment shall have the assent of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be given to all Owners not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes of the Owners shall constitute quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

8. Record of Receipts and Expenditures. The Association shall keep detailed and accurate records in chronological order of all of its receipts and expenditures, specifying and itemizing the maintenance and repair of the Common Elements, Buildings and Landscaping within the Common Interest Community and any other expenses incurred. Such records shall be available on request for examination by the Lot Owners and others with an interest, such as Mortgagees and prospective Mortgagees.

9. Notice to Security Interest. Upon the request of a holder of a First Security Interest on a Lot, and upon payment of reasonable compensation therefor, the Association shall report to such party any unpaid assessment or other default under the terms of this Declaration which is not cured by the Lot Owner within sixty (60) days after written notice of defaults given by the Association to the Lot Owner.

10. Certificate of Status of Assessments. The Association, upon written request to the Association and upon payment of a reasonable fee, shall furnish to a Lot Owner or such Lot Owner's designee, to a holder of a Security Interest or its designee, or to a closing agent handling the closing of the sale or financing of the Owner's Lot a statement, in recordable form, setting out the amount of the unpaid Common Expense

assessments again the Lot. The statement must be furnished within fourteen (14) days after receipt of the request and is binding on the Association, the Board, and each Lot Owner as of the date of its issuance.

11. Common Expenses Attributable to Fewer Than All Lots. The following Common Expenses may be chargeable to fewer than all Lots:

(a) If a Common Expense is caused by the misconduct of a Lot Owner, the members of such Owner's family, or such Owner's guests, invitees, employees, agents, contractors, subcontractors, or tenants, the Association may assess that expense against that Lot Owner and such Owner's Lot.

(b) Fees, charges, taxes, impositions, late charges, fines, collection costs, and interest charged against a Lot Owner for nonpayment of assessments or violation of the Documents are enforceable as Common Expense assessment as against such Owner's Lot.

## **ARTICLE XII. LIEN FOR NONPAYMENT OF COMMON EXPENSE**

Any assessment, charge, or fee provided for in this Declaration or any monthly or other installment thereof which is not fully paid within ten (10) days after the date due shall bear interest at a rate determined by the Board. In addition, the Board may assess a late charge thereon. Any Owner who fails to pay any assessment, charge, or fee of the Association shall also be obligated to pay to the Association, on demand, all costs and expenses incurred by the Association, including reasonable attorney's fees, in attempting to collect the delinquent amount. The total amount due to the Association, including unpaid assessments, fees, charges, fines, interest, late payment penalties, costs, and attorney's fees, shall constitute a lien on the defaulting Owner's Lot as provided in the Act. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association or any monthly or other installment 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 a delinquent Owner to recover a money judgment for unpaid amounts due to the Association 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. The Association's lien shall be superior to any homestead exemption now existing or hereafter created by any state or federal law.

## **ARTICLE XIII. COMMON ELEMENTS**

1. Rules and Regulations. The Board shall have the right to adopt reasonable Rules and Regulations governing the use of the Common Elements, provided such Rules and Regulations apply to all Owners in a nondiscriminatory manner.

2. Owners' Easements of Enjoyment. Each Lot Owner shall have a right and easement of enjoyment in and to the Common Elements, appurtenant to his or her Lot, subject to the following provisions:

(a) The right of the Association to promulgate and publish reasonable Rules and Regulations as provided in this Declaration.

(b) The right of the Association, acting through the Board, to dedicate or transfer any part of the Common Elements to any public, quasi-public, or cooperative agency, authority, utility, or other entity.

(c) The right of the Association to close or limit use of the Common Elements while maintaining, repairing, or making replacements in the Common Elements.

3. Delegation of Use. A Lot Owner may delegate his or her right of enjoyment to the Common Elements to the members of his or her family, guests, invitees, and tenants subject to the terms and provisions of the Documents.

#### **ARTICLE XIV. USE RESTRICTIONS**

1. Residential Use. Patio Homes shall be used for Single Family residential purposes and such other purposes as may be expressly permitted by this Declaration.

2. Trash Collection. The Association, acting through its Board, shall have the right to require that any trash collection within the Common Interest Community be performed by one company and that trash be collected from all Lots by such company on the same day of each week. The Board shall select the trash company. The Association shall assess the cost of trash collection as a Common Expense. Trash containers shall be placed at the curb and returned to the garage the same day as the trash is picked up. All trash, garbage and other waste shall be kept in sanitary containers out of the view of the surrounding Lot Owners and off the streets so as to present a clean and sanitary appearance at all times within the Common Interest Community.

3. Resubdivision. No Lot may be further subdivided without the approval of the Board. This provision shall not be construed to prohibit or prevent the dedication or conveyance or any portion of a Lot as an easement for public utilities.

4. Restrictions on Leasing. No Lot Owner shall lease his or her Patio Home to any group of people other than a "Single Family" as defined in Article II hereinabove nor shall any lease be for a period of less than thirty (30) days. All such leases shall be in writing and shall contain a covenant by the tenant or tenants that their use and occupancy of the Patio Home pursuant to the terms of the lease are subject to the terms and conditions set forth in this Declaration and that such tenant will abide by the terms contained herein as well as all Rules and Regulations promulgated by the Association.

5. Household Pets. No animals other than dogs, cats, or other household pets, as the same may be defined and determined by the Association, may be kept on a Lot. Dogs, cats, and other household pets shall not be boarded, kept, bred, or maintained for any commercial purposes. Household pets shall be subject to all Rules and Regulations adopted by the Association and all governmental ordinances or laws applicable to the Common Interest Community. Dogs shall at all times be confined by fence, leash, or under voice command. Each Owner of a pet shall be responsible for the prompt clean up and removal of such pet's excrement from his or her Lot and the Common Elements.

6. Use of Common Elements. All use of the Common Elements shall be subject to and governed by the Rules and Regulations adopted by the Association. No damage or waste shall be committed to the Common Elements by Lot Owners, their families, tenants, guests, and invitees.

7. General Prohibition. No use shall be made of an Owner's Lot which will in any manner violate the statutes or rules and regulations of any governmental authority having jurisdiction over the use of the Lot.

8. Nuisance. Nothing shall be done or permitted on any Lot which is or may become a nuisance. No obnoxious or offensive activities or commercial businesses or trades shall be conducted on any Lot, except home occupation as defined and permitted by the applicable zoning resolution of the governmental entity having jurisdiction over the Common Interest Community.

9. Storage of Vehicles. Boats, campers, recreational vehicles, snowmobiles, all-terrain vehicles, trailers, machines, tractors, semi-tractors, tractor trailers, trucks (except standard pickup trucks), and inoperative automobiles shall not be stored, parked, or permitted to remain on any street, Lot, or Common Elements, except within fully enclosed garages. For purposes of this provision, any disassembled or partially disassembled car or other vehicle or any car or other vehicle which has not been moved under its own power for more than one (1) week shall be considered an inoperative automobile subject to the terms of this section.

10. Signs. No sign of any character shall be displayed or placed upon any Lot, with the following exceptions:

(a) One (1) sign per Lot of not more than six (6) square feet in total area advertising a Lot for sale shall be permitted on any Lot.

(b) The Association shall have the right to place a permanent sign at the entrance to the Common Interest Community identifying the Common Interest Community.

(c) Additional signs may be permitted if approved by the Board.

11. Antennae. No antennae or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used, or maintained outdoors on any Lot, whether attached to a Building or structure or otherwise, unless approved by the Board. Antennae may be located in the attic space. Satellite dishes eighteen (18) inches or less are allowed as long as they are either mounted to the owner's roof or deck and are not located on the ground in any way that might interfere with landscape maintenance.

12. Insurance. Nothing shall be done or kept on any Lot which will increase any applicable rate of insurance, without written consent of the Board. No Owner shall permit anything to be done or kept in or on a Lot or on the Common Elements which will result in the cancellation of insurance or an increase in the premium for such insurance.

13. Fencing. Fences along any Lot line or any line between the Lots and the Common Elements will not be allowed.

#### **ARTICLE XV. MORTGAGEE PROTECTION**

1. Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the case of conflict, this Article shall control.

2. Notice of Actions. The Association shall give notice to each Mortgagee and Insurer, as defined in Article II, of (and each Lot Owner hereby consents to and authorizes such notice):

(a) Any 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 Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable.

(b) Any delinquency in the payment of Common Expense assessments owed by a Lot Owner whose Lot is subject to a First Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Mortgagees as set forth in Section 4 of this Article.

(e) Any judgment rendered against the Association.

3. Consent and Notice Required.

(a) Document Changes. Notwithstanding any requirement permitted by this Declaration of the Act, no amendment of any provision of this Declaration pertaining to the matters hereinafter listed by the Association of Lot Owners shall be effective without notice to the Mortgagees and Insurers and the vote of at least sixty-seven percent (67%) of the Lot Owners and until approved by at least fifty-one percent (51%) of the Mortgagees as defined in Article II:

- (i) Voting rights.
- (ii) Assessments, assessment liens, priority of assessment liens.
- (iii) Reserves for maintenance, repair, and replacement of Common Elements, Buildings, or Landscaping.
- (iv) Responsibility for maintenance and repair.
- (v) Redefinitions of boundaries of Lots, except that when boundaries of only adjoining Lots are involved, only those Lot Owners and the Mortgagees holding Security Interests in such Lot or Lots must approve such action.
- (vi) Convertibility of Lots into Common Elements or Common Elements into Lots.
- (vii) Expansion or contraction of the Common Interest Community or the addition, annexation, or withdrawal of property to or from the Common Interest Community.
- (viii) Insurance or fidelity bonds.
- (ix) Leasing of Lots.
- (x) Imposition of any restrictions on a Lot Owner's right to sell or transfer his or her Lot.
- (xi) A decision by the Association to establish self-management when professional management had been required previously by any Mortgagee.
- (xii) A decision by the Association not to restore or repair the Common Elements or Buildings after a hazard damage or partial condemnation.
- (xiii) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation of the Common Elements or Buildings.

(xiv) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions without the notice to Mortgagees and Insurers (as defined in Article II) as required by Section 2 above and approval of at least fifty-one percent (51%) (or the indicated percentage) of the Mortgagees:

(i) Convey or encumber the Common Elements or any portion thereof. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause.)

(ii) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation of the Common Elements and Buildings.

(iii) The granting of any permits, easements, leases, licenses, or concessions through or over the Common Elements (excluding any leases, licenses, or concessions for no more than one (1) year).

(iv) The establishment of self-management when professional management had been required previously by a Mortgagee.

(v) A decision by the Association not to restore or repair the Common Elements or Buildings after a hazard damage or partial condemnation.

(vi) The merger of the Common Interest Community with any other common interest community.

(vii) The assignment of the future income of the Association, including its right to receive Common Expense assessments.

(c) The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the consent of fifty-one percent (51%) of the Mortgagees.

(d) The failure of a Mortgagee or Insurer to object in writing to any proposed addition or amendment within sixty (60) days after notice is given by the Association requesting approval of an addition or amendment to the Declaration shall conclusively constitute approval by the Mortgagee or Insurer of the addition or amendment.



4. Inspection of Books. The Association shall maintain current copies of the Declaration, Bylaws, Rules and Regulations, books and records, and financial statements. The Association shall permit any Mortgagee or Insurer to inspect the books and records of the Association during normal business hours.

5. Financial Statements. The Association shall provide any Mortgagee or Insurer who submits a written request a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association.

6. Enforcement. The provisions of this Article are for the benefit of Mortgages and Insurers and their successors and may be enforced by any of them by any available means at law or in equity.

7. Attendance at Meetings. Any representative of a Mortgagee or Insurer may attend and address any meeting which an Owner may attend.

8. Appointment of Trustee. In the event of damage, destruction, or condemnation of all or a portion of the Common Elements, any Mortgagee may require that such proceeds be payable to a trustee. Such trustee may be required to be a corporate trustee licensed by the State of Colorado. Proceeds will thereafter be distributed pursuant to the Act or pursuant to a condemnation award. Unless otherwise required, the members of the Board, acting by majority vote through the president, may act as trustee.

9. Payment of Delinquent Fees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become, a charge against the Common Elements and may pay overdue premiums on insurance policies to be maintained by the Association, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

## **ARTICLE XVI. ARCHITECTURAL CONTROL**

1. Review. No construction, alteration, addition, modification, exterior decoration, exterior redecoration or reconstruction of any building, fence, wall, structure or other improvement within the Common Interest Community shall be commenced or maintained until the plans and specifications thereof shall have been approved by the Board. The Board shall approve plans and specifications submitted to it only if the Board determines that the construction, alteration or addition contemplated thereby and in the location indicated will comply with this Declaration; will serve to preserve and enhance the value of Lots within the Common Interest Community; and will maintain a harmonious relationship among the Buildings and the overall development of the Common Interest Community. The Board shall consider the quality of workmanship, type of materials and harmony of exterior design with other Buildings located within the Common Interest Community. If the Board fails to approve or disapprove the plans and specifications submitted to it by an Owner of a Lot within thirty (30) days after a

complete submission of all required documents has been made to the Board, then such approval shall not be required; provided, however, that no Building or other structure shall be erected or allowed to remain on any Lot which violates any of the covenants or restrictions contained in this Declaration. The issuance of a building permit for the construction of improvements inconsistent with this Declaration shall not prevent the Association from enforcing the provisions of this Declaration. The approval by the Board of plans and specifications for any work to be done on one Lot shall not be deemed to constitute a waiver of any right to withhold approval or consent to similar plans and specifications subsequently or additionally submitted for approval by the same Owner or by any other Owner. The Board may issue rules setting forth procedures for the submission of plans and specifications for approval and may also issue guidelines setting forth the criteria that the Board will use in considering plans submitted to it for approval. The rules and guidelines may be amended from time to time by the Board.

2. Minimal Standards. All improvements constructed on a Lot shall be of first class or superior materials and shall be constructed in a first class workmanship manner. All roofs shall be of a first quality material as may be accepted by the Board, and in accordance with the established building criteria. Similarly, all brick materials, stone materials and other exterior siding materials shall be of first quality, shall be of such colors and tones as are harmonious with the remainder of the properties as determined by the Board.

3. Landscaping. All shrubs, plants, trees and other Landscaping shall be approved by the Board.

4. Nonliability. No member of the Board shall be liable to the Association or to any Owner or prospective Owner for any loss, damage or injury arising out of or in connection with the performance of the duties of the Board under this Article XVI unless such action constitutes willful misconduct or bad faith on the part of the Board. No approval granted by the Board shall be considered approval of the structural safety or integrity of the improvements to be constructed or conformance of such improvements with building codes, zoning resolutions, subdivision regulations or other governmental rules and regulations applicable to the Common Interest Community.

## ARTICLE XVII. PARTY WALLS

1. General Rules of Law. To the extent not inconsistent with the provisions of this Declaration, the general rules of law in Colorado regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the Party Walls.

2. Maintenance. Each Owner shall be responsible for the reasonable maintenance and care of that portion of the Party Wall located on such Owner's Lot. Neither Owner of a Party Wall shall undertake any work on such Owner's Patio Home

which would jeopardize the soundness or safety of the Party Wall, reduce the value thereof, or impair the easement herein established without the consent of the other Owner.

3. Restoration of Damaged Party Wall. If the Party Wall is destroyed or damaged by fire or other casualty, either Owner may restore it, and the other Owner shall contribute such Owner's proportionate share of the cost of the restoration thereof. Restoration of the damaged Party Wall shall be to substantially the same condition as it existed prior to the damage. Nothing herein contained shall prejudice the right of either Owner to require a larger contribution from the other Owner based upon the negligence or willful acts or omissions of such Owner.

### **ARTICLE XVIII. GENERAL PROVISIONS**

1. Enforcement. Enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such civil action shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such civil action may be prosecuted by an Owner, by the Board, or by the Association. In the event it becomes necessary to commence a civil action to enforce or defend this Declaration, the court shall award to the prevailing party in such civil action, in addition to such damages as the court may deem just and proper, an amount equal to the costs, reasonable attorneys' fees, and costs of collection incurred by the prevailing party in connection with such civil action. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration. For any failure to comply with the provisions of the Documents, the Association, any Owner, or any class of Owners adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorneys' fees and costs incurred as a result of such failure to comply, without the necessity of commencing a civil action. Notwithstanding any other provision of this Declaration, in connection with any claim in which an Owner is alleged to have violated a provision of the Documents and in which the court finds that the Owner prevailed because the owner did not commit the alleged violation:

(a) the court shall award the Owner reasonable attorneys' fees and costs incurred in asserting or defending the claim; and

(b) the court shall not award costs or attorneys' fees to the Association. In addition, the Association shall not allocate to the Owner's account any of the Association's costs or attorneys' fees incurred in asserting or defending the claim.

2. Duration. This Declaration shall run with the land, shall be binding upon all Persons owning Lots and any Persons hereafter acquiring Lots, and shall be in effect in perpetuity unless amended or terminated as provided herein or in the Act.

3. Amendment. This Declaration may be altered or amended at any time by the affirmative vote of the then record Owners of sixty-seven percent (67%) or more of the Lots

4. Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference and in no way define, limit, or prescribe the scope of the Documents or the intent of any provision thereof.

5. Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

6. Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

7. Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and if a provision is declared invalid by judgment or court order, all of the other provisions of the Documents shall continue in full force and effect.

8. Conflict. The Documents are intended to comply with the requirements of the Act. If there is any conflict between the Documents and the provisions of the Act, the provisions of the Act shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.


#### CERTIFICATION

By execution of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Storybook Patio Homes P.D.P., the President of the Association hereby certifies that the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Storybook Patio Homes P.D.P. was adopted by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

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IN WITNESS WHEREOF, LLOYD E. SPAWN as President of the Association has executed this Declaration this 13 day of August, 2009.


STORYBOOK HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation

By:   
Lloyd E. Spawn, President

STATE OF COLORADO )  
)ss:  
COUNTY OF LARIMER )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 13<sup>th</sup> day of August, 2009, by Lloyd E. Spawn, President of STORYBOOK HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation.

Witness my hand and official seal.  
My Commission Expires: 11-9-2012

  
Notary Public

