



## **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CANDLELIGHT RIDGE**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** of Candlelight Ridge (the "Declaration") is made with an effective date of \_\_\_\_\_, 2007, by **Candlelight Ridge Homeowners' Association, Inc.**, a Colorado non-profit corporation (the "Association").

### **RECITALS**

- A. The developer of the Association's community, Candlelight Ridge, L.L.C., a Colorado limited liability company ("Declarant") recorded that certain Declaration of Covenants, Conditions and Restrictions of Candlelight Ridge with the Boulder County Clerk & Recorder's Office on September 5, 2000, at Reception Number 2075826 (the "Original Declaration;" which is incorporated herein by this reference) that governed the "Property" described in the attached Exhibit "A," which is incorporated herein by this reference as well as any additional property annexed thereto or hereto.
- B. The Property is a part of a planned community commonly known as Candlelight Ridge located in the Town of Erie, County of Boulder, and State of Colorado.
- C. The Association now desires to adopt and record this Amended and Restated Declaration (the "Declaration") which shall supersede and replace in its entirety the Original Declaration and which shall govern all of the Property as originally subject to the Original Declaration or annexed thereto or hereto at a later date.

### **DECLARATION**

NOW, THEREFORE, the Association hereby declares that the Original Declaration is null and void and replaced in its entirety with the terms of this Declaration. This Declaration shall (i) run with the land and all parts thereof at law and as an equitable servitude; (ii) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (iii) inure to the benefit of, be binding upon, and be enforceable by the Association, the Declarant as set forth herein and their respective successors in interest; and each Owner, their grantees, heirs and assigns and successors in interest.

## **ARTICLE I**

### **DEFINITIONS**

- 1.1 Definitions. Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings specified below.
- 1.1.1 "Act" means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes ("C.R.S.") 38-33.3-101, et seq., as amended.
- 1.1.2 "Architectural Control Committee" (sometimes referred to as the "Committee") means the committee described in Article 5 of this Declaration.
- 1.1.3 "Articles" means the articles of incorporation of Candlelight Ridge Homeowners Association, Inc., a Colorado non-profit corporation, which were filed in the office of the Secretary of State of the State of Colorado on September 17, 2002, as the same may from time to time be amended.
- 1.1.4 "Assessments" means the Regular Assessments and the Special Assessments.
- 1.1.5 "Association" means Candlelight Ridge Homeowners Association, Inc., a Colorado non-profit corporation described in Article 4 of this Declaration, and its successors.
- 1.1.6 "Association Property" means all real and personal property now or hereafter owned by, or leased to, the Association as Common Elements.
- 1.1.7 "Beneficiary" means a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be.
- 1.1.8 "Board" means the Board of Directors of the Association.
- 1.1.9 "Bylaws" means the Bylaws of the Association that may be adopted by the Board; as such Bylaws may be amended from time to time.
- 1.1.10 "Common Elements" means any portion of the Property together with all improvements thereon owned by the Association for the primary benefit of all Members and the Property as a whole including, without limitation, landscaped tracts for pedestrian access and utilities and detention or retention facilities and other personal and real property now or hereafter owned or controlled by the Association. Common Elements are subject to the terms, limitations, rules and regulations provided in this Declaration and those established by the Board from time to time.
- 1.1.11 "Declarant" means Candlelight Ridge, LLC, a Colorado limited liability company, its successors and assigns.

1.1.12 "Declaration" means this instrument as it may be amended from time to time. The term "Original Declaration" shall mean that certain Declaration of Covenants, Conditions and Restrictions of Candlelight Ridge which was recorded with the Boulder County Clerk & Recorder's Office on September 5, 2000 at Reception Number 2075826

1.1.13 "Developer" means a Person, other than the Declarant, that purchases or owns a portion of the Property for purposes of subdivision, development and/or resale.

1.1.14 "Development Rights" means the rights hereby reserved by the Declarant to (i) add to the Property and make such additional property subject to this Declaration, (ii) create Units and/or Common Elements within the Property; and (iii) further subdivide Units or convert Units into Common Elements.

1.1.15 "First Mortgage" means any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering the Property or a portion thereof recorded in the Records having priority of record over all other recorded liens except liens made superior by statute (such as, for example, general ad valorem tax liens and special assessments, mechanic's liens and the Association's lien for Assessments).

1.1.16 "First Mortgagee" means any Person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such Person under such First Mortgage.

1.1.17 "General Common Allocation" means with respect to each Unit, the fractional number obtained by dividing one by the total number of Units existing from time to time.

1.1.18 "Improvement" means every structure and all appurtenances thereto and portions thereof of every type and kind including but not limited to, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, exterior water softener fixtures or equipment, poles, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone, regular or cable television, or other utilities.

1.1.19 "Map" means a Common Interest Community Map of Candlelight Ridge prepared in accordance with C.R.S. 38-33.3-209, which Map has been recorded, as amended or supplemented from time to time.

1.1.20 "Member" means any Person who is a member of the Association pursuant to Section 4.2.

1.1.21 "Nondeclarant Votes" means the votes determined pursuant to Section 4.2 that are not owned or controlled by Declarant.

1.1.22 "Owner" means a Person or Persons (including Declarant or any Developer), owning a recorded fee simple interest in a Unit from time to time. Such term shall include a contract vendee under an installment land sales contract, but shall not include (i) the vendor under such a contract; or (ii) a Person holding an interest in a Unit merely as security for the performance of an obligation (unless and until such a security holder becomes an owner in fee simple of a Unit).

1.1.23 "Period of Declarant Control" means that period commencing upon recordation of this Declaration and terminating upon the earlier of the following: sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created in Candlelight Ridge to Owners other than the Declarant; two years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or two years after any right to add new units was last exercised. Notwithstanding the foregoing, the Declarant may (i) voluntarily terminate the Period of Declarant Control, which election shall be in the sole discretion of the Declarant; and/or (ii) surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, the Declarant may require, for the duration of the Period of Declarant Control, that those specified actions of the Association or the Board which are described in a recorded instrument executed by the Declarant be approved by the Declarant before they become effective.

1.1.24 "Person" means a natural individual or any other entity with legal right to hold title to real property.

1.1.25 "Plans and Specifications" means any and all documents designed to guide or control the construction of an Improvement including, but not limited to, those indicating size, shape, configuration or materials; all site plans; excavation and grading plans; foundation plans; drainage plans; landscaping and fencing plans; elevation drawings; floor plans; specifications on all building products and construction techniques; samples of exterior colors; plans for utility services and all other documentation or information relevant to the particular Improvement.

1.1.26 "Property" means all of the real property described on attached Exhibit A along with any and all Improvements now in place or hereafter constructed thereon. The Property shall also include all additional property annexed and made subject to the Original Declaration and to this Declaration, whether pursuant to Section 2.2 of this Declaration or otherwise.

1.1.27 "Purchaser" means a person, other than a Declarant or a Developer, who acquires a legal or equitable interest in a unit other than a Security Interest or a leasehold interest of less than forty years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences.

1.1.28 "Records" means the official real property records of the Clerk and Recorder of Boulder County, Colorado; "to Record" means to file for recording in the Records; and "of Record" and "Recorded" means having been recorded in the Records.

1.1.29 "Regular Assessments" means those Assessments levied by the Association pursuant to Section 4.9.

1.1.30 "Restrictions" means (i) this Declaration as amended from time to time; (ii) the Rules from time to time in effect; and (iii) the Articles and Bylaws of the Association from time to time in effect.

1.1.31 "Rules" means the rules adopted by the Board pursuant to Section 4.13.10, as they may be amended from time to time.

1.1.32 "Security Interest" means an interest in real estate or personal property created by contract or conveyance that secures payment or performance of an obligation. The term includes a lien created by a 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.

1.1.33 "Special Declarant Rights" means the rights hereby reserved for the benefit of Declarant to perform the following acts as specified in parts 2 and 3 of the Act and Article 7.7 of this Declaration: to complete improvements indicated on the Map; to exercise any Development Right; to maintain sales offices, management offices, signs advertising and marketing the Property and models; to use easements through the Common Elements for the purpose of making improvements within the Property; to merge or consolidate a common interest community of the same form of ownership; and to appoint or remove any officer of the Association or any member of the Board during the period of Declarant Control. The Declarant can assign, in whole or in part, any Special Declarant Right, pursuant to the provisions of Section 3833.3-304 of the Act.

1.1.34 "Special Assessments" means those Assessments levied by the Association pursuant to Section 4.10.

1.1.35 "Subdivision Plat" means the plat of Candlelight Ridge, Recorded September 1, 2000, in Book 4 at Page 51 under Reception Number 2075349, as the same may be amended from time to time, together with the Correction Affidavit recorded on April 16, 2001, at Reception Number 2138247.

1.1.36 "Unit" means and refers to any plot of land shown upon any recorded Subdivision Plat of the Property, or any portion thereof, with the exception of the Common Elements and public streets, but including all appurtenances and improvements now or hereafter located thereon. Lots pursuant to the Subdivision Plat shall define the Units within Candlelight Ridge.

1.1.37 "Units That May Be Created" shall mean and refer to 94 Units that shall be the maximum number of Units that may be subject to this Declaration.

1.1.38 "Unit Boundary" means real property described in Lot legal descriptions created by the Subdivision Plat.

## ARTICLE 2

### DEVELOPMENT OF THE PROPERTY/ANNEXATION

2.1 **Subdivision and Development by Declarant.** Declarant has subdivided the Property into Units for residential development. Declarant intends to develop some or all of such areas and, at Declarant's option, to designate areas as Common Elements, or for other purposes for the benefit of the Property, in connection with the Subdivision Plat. The Property will be developed pursuant to the Subdivision Plat, as it may be amended or modified from time to time, as a unified planned development community in which the development of, and restrictions upon, each portion thereof will benefit each other portion and the whole thereof.

2.2 **Annexation.** Additional property may be annexed to the Property and subjected to the Declaration from time to time with the consent of seventy-five percent (75%) of the votes in the Association, or during the Period of Declarant Control, with only the consent of the Declarant. Each such annexation shall be effective by Recording an amendment to this Declaration entitled "Declaration of Annexation" in the Records, which document shall provide for annexation to the Declaration of the property described in such document. Any purchaser of a portion of the annexed property is deemed to irrevocably consent to annexation under the purview of this Declaration and to permit development in accordance with the general plan established hereunder.

2.2.1 Upon the Recording of a Declaration of Annexation, the covenants, conditions, and restrictions contained in this Declaration shall apply to the added land in the same manner as it if had been originally subject to this Declaration; and thereafter, the rights, privileges, duties and liabilities of the Persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration. The Declaration of Annexation must comply with C.R.S. Sections 38-33.3-209 and 38-33.3-210 and must contain (i) a reference to this Declaration, which reference shall state the date of Recordation and the recording information related to this Declaration; (ii) a statement that the provisions of this Declaration shall apply to the added land as set forth herein; (iii) an adequate legal description of the added land; (iv) an amendment to the Map or, if such an amendment is not necessary, a new certification of the Map in accordance with C.R.S. Section 38-33.3-209; and (v) during the Period of Declarant Control, Declarant's written consent upon such terms as are acceptable to Declarant in its sole discretion if the added land is not then owned by Declarant.

2.2.2 All provisions of this Declaration including, but not limited to, those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members of the Association, shall apply to annexed property (including, but not limited to, all Units contained therein) immediately upon recording an annexation document with respect thereto in accordance with this Section 2.2. Improvements that are constructed on any property annexed shall be consistent, in terms of quality of construction, with

Improvements constructed on the Property prior to such annexation. Portions of the annexed property are not to be deemed Common Elements unless specifically so designated in the course of development or in a later Declaration of Annexation.

2.3 **Conveyance and Acceptance of Common Elements.** Declarant expressly reserves the right in the course of development of the Property to convey to the Association, and the Association shall accept, certain areas such as open spaces and drainage ways which for any reason are not intended to be developed and/or other property or facilities which are deemed by Declarant to be most suitable as Common Elements of the Association. Prior to transferring ownership of the first Unit in the Property or property which is annexed by Declarant as provided in Section 2.2, as the case may be, to a member of the general public (i.e., not a Developer), Declarant shall convey the Common Elements contained in the Property, or in such annexed property, as appropriate, to the Association. The Association's acceptance of any conveyed Common Elements, improvements thereon, or any other item of real or personal property shall not waive any claims that the Association or its Members, or both, may have with regard to the conveyed property.

## ARTICLE 3

### GENERAL RESTRICTIONS/PERMITTED USES

3.1 **General Restrictions.** All of the Property shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

3.1.1 **Residential Use and Common Elements.** All of the Property (excluding any Common Elements) shall be improved and used for residential use for single-family homes. Any Common Elements may be improved and used for the purpose(s) set forth on the Subdivision Plat for the primary benefit of the Owners and occupants of Units. In addition, Declarant (or the Board if such authority is delegated to it by Declarant) may, in its sole and absolute discretion, as to any specific residential area, permit other Improvements and uses consistent with the zoning and Subdivision Plat then in effect for such specific residential area.

3.1.2 **Improvements and Use.** All Units shall be improved and used as a dwelling or structure ("Improvement") designed to accommodate no more than a single family and its occasional guests. All exterior improvements to a Unit must be reviewed and approved by the Architectural Control Committee, provide for herein.

3.1.3 **Residential Use/Rentals.** No Unit shall be used for any purpose other than single-family residential purposes. No terms of this Declaration shall be construed to prevent the rental of all or any portion of a Unit or Improvement thereon by the Owner thereof for residential purposes, on either a short or long-term basis subject to all the provisions of these Restrictions

No commune or similar type living arrangements shall be permitted anywhere on the Property.

3.1.4 **Unsightly Articles.** No unsightly article shall be permitted to remain on any Unit or any other portion of the Property. Without limiting the generality of the foregoing, trailers, mobile homes, recreation vehicles, graders, trucks, boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment and garden and maintenance equipment shall be kept at all times (except when in actual use) in an enclosed garage or other structure approved in writing by the Architectural Control Committee. Basketball backboards shall be glass, Plexiglas or portable. If portable, the backboard shall be stored in an enclosed structure (approved by the Architectural Control Committee) at all times when not in use. Refuse, garbage and trash shall be kept at all times in a covered container and any such container shall be kept within an enclosed structure. No clotheslines will be allowed. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any portion of the Property; provided, however, that normal household waste can be set out for pickup not more than twelve (12) hours before a scheduled garbage pickup. The Board may adopt and revise Rules which regulate, restrict, or prohibit the existence, storage, use or appearance of items, including but not limited to those items listed above, throughout the Property.

3.1.5 **Antennas/Satellite Dishes**

No exterior radio or television antenna or aerial or other reception/receiver device shall be erected or maintained on the Property except that Satellite antennas and other antennas governed by federal law shall be allowed in accordance with established FCC guidelines regulating the same. Reception Devices for Internet connection will also be permitted. These two types of antennas should be attached to the dwelling in a non-conspicuous location, if possible. The Board may adopt reasonable Rules regarding the installation, use, and screening requirements of antennas, aerials, or satellite dishes.

3.1.6 **Insurance Rates.** Nothing shall be done or kept on or at the Property which will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done or kept on or at the Property which would result in the cancellation of insurance on any Association Property or which would be in violation of any law.

3.1.7 **No Further Subdividing.** No Unit or Common Elements shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof (including the Association) without the prior written approval of the Architectural Control Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Unit or Common Elements and convey any easement or other interest less than the whole, all without the approval of the Architectural Control Committee. Further, nothing contained herein shall be deemed to require the approval of the Architectural Control Committee for the transfer or sale of any Unit, including Improvements thereon or for the granting of any First Mortgage for the sale or transfer of any Unit or pursuant to the terms of any First Mortgage or by way of a deed in lieu of foreclosure thereof. No Owner shall have the right to partition or seek partition of the Common Elements or any Unit.

**3.1.8 Signs and Flags.**

Except to the extent specifically prohibited by applicable law, only the U.S. flag, other national flags, "For Sale" signs, seasonal flags, signs which support the owner's positions on political issues, and flags supporting sporting teams shall be displayed upon the Property. Political signs and flags supporting sporting teams shall be removed the day following the political or sporting event. Notwithstanding the foregoing, the Board may revise these Rules authorizing the display of certain flags and signs upon the Property as specifically set forth in the Rule.

**3.1.9 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any part of the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other property or to its occupants.

Garage doors should be shut when activities in the garage or outdoors on the property are not underway.

The Board may further restrict or regulate the use of Units, Common Elements, and any other portions of the Property through a Rule.

**3.1.10 Repair of Buildings.** No Improvement constructed upon any land within the Property nor any Unit shall be permitted to fall into disrepair, and each such Improvement shall be kept at all times in good condition and repair and adequately painted or otherwise finished. No exterior change to a Unit or Improvement thereon, including but not limited to painting or refinishing, landscaping, installation of windows, security doors, shutters, alteration of driveways, or any other change, as interpreted in the broadest manner possible, shall be permitted without the prior written approval of the Architectural Control Committee.

**3.1.11 Improvements and Alterations.** There shall be no construction (other than repairs pursuant to Section 3.1.10 above which bring a Unit or Improvement into compliance with the terms of the Restrictions), excavation, alteration that in any way alters the exterior appearance of any Improvement, or removal of any Improvement without the prior approval of the Architectural Control Committee.

**3.1.12 Violation of Restrictions.** If any Owner or Developer or their respective family, guests, licensees, lessees, invitees, agents or employees, violates these Restrictions, the Board may invoke any one or more of the following remedies: (i) impose a fine upon such Developer or Owner for each violation; (ii) cause the violation to be cured and charge the cost thereof to such Developer or Owner; and (iii) obtain injunctive relief against the continuance of such violation. Before invoking any such remedy, the Board shall give such Developer or Owner notice (as provided in Section 7.2) except that the Board may immediately suspend the right to use any Common Elements and/or facility by any Developer or Owner and their respective family, guests, licensees, lessees, and

invitees without notice for any period during which any Assessment owed by such Developer or Owner is past due and unpaid.

3.1.13 **Drainage.** There shall be no interference with the established drainage patterns over any property within the Property unless adequate provision is made for proper drainage and, unless reviewed and approved by a licensed civil engineer and the Architectural Control Committee.

In the event of any such interference where there has been no adequate provision made for proper drainage, regardless of whether the interference has been approved by a licensed civil engineer and the Architectural Control Committee, the Developer or the Owner interfering with the established drainage patterns shall be liable for any damage resulting from such interference.

3.1.14 **No Hazardous Activities.** No activities shall be conducted on the Property and no Improvements shall be constructed on the Property that are, or might be, unsafe or hazardous to any person or property. No violation of any law, ordinance, rule, regulation or code of any governmental or quasi-governmental body having jurisdiction over the Property shall be allowed. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended. Exterior Barbeque units and fire pits must conform to Town of Erie and Mountain View Fire Protection District requirements.

The board shall have final authority and jurisdiction regarding compliance with this rule.

3.1.15 **Ancillary Structures.** No tent or shack or other temporary building, improvement or structure shall be placed upon the Property, except that the following structures may be maintained with the prior approval of the Architectural Control Committee: temporary structures necessary and appropriate for sales activities; office space for marketing personnel; temporary restrooms; structures and trailers used by architects, builders and foremen for storage of tools, materials and equipment during actual construction.

Temporary personal storage containers (e.g. PODS) for a residence are allowed provided that they do not remain on the property for more than thirty (30) days.

No permanent structures such as gazebos, storage sheds or utility sheds will be permitted unless they are consistent with and fully conform to the overall architectural design of the residence and are approved by the Architectural Control Committee.

3.1.16 **No Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth; provided, however, that Declarant or the Association may, by appropriate written

permit, grant, license, or easement agreement, allow the drilling of wells and the installation of infiltration galleries for the extraction of water.

3.1.17 **Vehicles.** In addition to the provisions of Section 3.1.4, the existence, use and storage of all vehicles, including, but not limited to, gliders, trucks, automobiles, graders, boats, tractors, pickups, mobile homes, trailers, buses, campers, recreational vehicles, bicycles, motorcycles, motor scooters, wagons, sleighs and snowmobiles, may be subject to Rules promulgated by the Board that may prohibit or limit the use thereof within specified parts of the Property and upon the public and private streets within the Association's community. These Rules may also provide parking and storage regulations. Parking of emergency service vehicles shall be allowed to the extent that such parking is specifically authorized by applicable law.

3.1.18 **Construction Activities.** Declarant, Developer or any Owner upon the Property shall not construe this Declaration as prohibiting reasonable construction activity as would be customarily incident to the use of the Property as a single-family home residential community, provided that when completed, all Improvements shall in all ways conform to this Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities so long as such construction is (i) pursued to completion with reasonable diligence; (ii) in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto; and (iii) conforms to usual construction practices in the area. However, loud music, mud tracked on the roadways and blowing trash and debris are not permitted and must be remedied immediately. In the event of any dispute relating to whether construction-related activities or Improvements constitutes a nuisance or otherwise violate the Restrictions, a temporary waiver of the applicable provision including, but not limited to, any provision prohibiting temporary structures, may be granted by the Architectural Control Committee; provided that such waiver shall be limited to a reasonable period for such construction, and which waiver shall toll all applicable statutes of limitations accordingly. Such waiver by the Architectural Control Committee must be granted in writing, but need not be recorded or in recordable form. No construction activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment by any Owner or his family of the Owner's Lot.

3.1.19 **Fencing.** The Association may construct certain entryways, fences, fence pillars or walls on or within the Property. No Owner shall modify, repair, replace, paint or otherwise obstruct any such entryways, fence, fence pillars or walls without the prior written approval of the Architectural Control Committee.

The design and location of all fences within Units shall be subject to the approval of the Architectural Control Committee. Fencing within the Association's community shall be of metal construction and have the appearance of wrought-iron in a style, construction method, appearance and location as approved in writing by the Architectural Control Committee. Color must be black or dark brown. Documentation which is submitted to

the Architectural Control Committee for approval must clearly define the construction of the proposed fence, either by a drawing or a photograph of a typical installation.

Side yard fencing must terminate at the rear corners of all residences.

The Board may further restrict or regulate the installation, existence, maintenance, use and appearance of fences upon the Units, the Common Elements, and upon any other portions of the Property through a Rule.

3.1.20 **Animals.** No animals, livestock, poultry or bees of any kind shall be raised, bred, kept or boarded in or on the Property. A reasonable number of household pets may be allowed on the Units, subject, however, to Rules adopted by the Board and amended from time to time. The Board specifically reserves the right to adopt and amend Rules restricting the keeping of animals upon the Units and the Common Elements.

3.1.21 **Mail Boxes.** All mailboxes shall be constructed and set by the Declarant or Developer pursuant to a plan approved for the Property by Declarant.

3.1.22 **Construction and Architectural Provisions.**

All architectural plans, including site plans and landscaping plans, elevations, sections, roofing samples and color samples, etc., must be submitted to the Architectural Control Committee for their review. The Architectural Control Committee reserves the right to conduct a final inspection of the dwelling structure to ensure that building was completed according to the approved plans.

3.1.22.1 **Exterior Surfaces.** Exterior surfaces will be generally of natural materials that blend and are compatible with the natural landscape as approved by the Architectural Control Committee. Exterior finishes can consist of brick, stone masonry veneer, stucco (natural or synthetic), and wood siding not to exceed fifty (50) percent of the surface area of any one side of a home and not to exceed 50% of all of the sides of a home in total. Brick, stone or stucco must be used on at least fifty (50) percent of the residence, plus full brick, stone or stucco on all walkout levels; such percentage to be measured on all planes less window and door openings.

All detached garages must have full brick, stone, or stucco exteriors and must be approved by the Architectural Control Committee.

3.1.22.2 **Roofs.** All roofs shall be of a shake medium butt material, of a color and texture as approved by the Architectural Control Committee. Forty-year dimensional shingles with Z ridge or duraridge or tile will also be allowed, subject to approval by the Architectural Control Committee. No maximum or minimum pitch is specified hereby but is subject to approval by the Architectural Control Committee based upon the visual impact of the roof on the Unit or on neighboring Units.

3.1.22.3 **Dwelling and Size.** Each primary dwelling constructed on a Unit shall be comprised of a minimum of 1,950 square feet for a single story "ranch style" dwelling and 2,500 square feet for a multi-story dwelling (with the first story of a multi-story dwelling above ground level to be comprised of at least 1,350 square feet with such minimum square footage to be exclusive of any garages, patios, basements or accessory building). Each residence shall have at least a three-car garage and shall be of a size at least large enough to completely cover three standard sized passenger automobiles. All detached garages must be full brick, stone or stucco and must be approved by the Architectural Control Committee for architectural and lot suitability.

3.1.22.4 **Landscaping.** All landscaping plans must be approved by the Architectural Control Committee prior to installation, such installation to take place within nine (9) months of occupancy of the home. Landscape changes that potentially impact view corridors must have written approval by the Architectural Control Committee.

3.1.22.5 **Setbacks.** Building setbacks vary from lot to lot within the subdivision. Setbacks are governed by (1) the recorded plat for each lot and (2) the restrictions listed on sheet 2 of the Development Plan for the Candlelight Ridge Subdivision recorded on 8-10-2000.

In general, with a few exceptions, the front building setback is to be 20 feet from the property line, side-building setbacks vary from lot to lot, and the rear-building setback is to be 20 feet from the property line when adjacent to open space and 30 feet from the property line when adjacent to other dwelling unit properties.

No primary dwelling shall be constructed any closer than 20 feet to another primary dwelling on an adjacent lot.

3.1.22.6 **Building Envelopes.** Building envelopes are established by the Development Plan for Candlelight Ridge Subdivision, recorded on 8-10-2000, and are approved by the Town of Erie for construction purposes. Any home to be constructed is allowed to be set anywhere in the established building envelope as approved by the Town of Erie.

3.1.22.7 **Height Of Structures.** The acceptable height of homes to be built is determined by the height restriction set by the Development Plan for Candlelight Ridge Subdivision, recorded on 8-10-2000, as defined and enforced by the Town of Erie.

3.1.22.8 **Construction Start.** Construction of a residence must start within twenty-four months after purchase of the property by an Owner, not including Builder-owned properties. The Owner/Developer is responsible for bi-annual weed mowing and quarterly trash removal on the property prior to the start of construction activities.

## ARTICLE 4

### ASSOCIATION

4.1 **Organization.** The Association is a Colorado non-profit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law, the Act, and/or set forth in its Articles and Bylaws or in this Declaration. None of the Articles, Bylaws or any Rules promulgated by the Board shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between the Declaration and the Articles, Bylaws and/or Rules, this Declaration shall control.

4.2 **Membership and Voting.**

4.2.1 **Generally.** Every Owner (including Declarant) shall be a Member of the Association and shall remain a Member for so long as that Person continues to be an Owner. The Association shall have only one class of Members and, subject to Section 4.2.2, each Member shall be entitled to one (1) vote for each Unit owned by such Member. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Unit to which the Membership is attributable. Except as expressly provided in this Article 4, no other voting rights are created by this Declaration.

4.2.2 **Multiple Owners.** When an Owner consists of more than one Person, while each such Person shall be a member of the Association, only one of such co-Owners shall be entitled to exercise the single vote to which the Unit is entitled. Fractional votes shall not be allowed. If only one of the co-Owners of a Unit is present at a meeting of the Association, that co-Owner shall be entitled to cast the single vote allocated to that Unit. If more than one of the co-Owners of a Unit is present, the single vote allocated to that Unit may be cast only in accordance with the agreement of a majority of the co-Owners of such Unit. If any one of the co-Owners of the Unit casts a vote, then it shall be conclusively presumed that the vote was cast in accordance with the agreement of a majority of the co-Owners of such Unit. No change in the membership of a Member shall be effective for voting purposes until the Board receives written notice of the change together with satisfactory evidence of the change.

4.2.3 **Proxies.** Votes allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner in accordance with the Bylaws and applicable law.

4.2.4 **Association Owned Units.** No votes allocated to a Unit owned by the Association may be cast.

4.2.5 **Notice of Meetings.** Notice of meetings must be provided to the Owners in accordance with the Bylaws and applicable law.

4.3 **Board of Directors.** The affairs of the Association shall be governed by a "Board of Directors" (sometimes referred to as the "Board") that may by resolution and subject to applicable law, delegate any portion of its authority to an executive committee or an officer, executive manager or director for the Association. The qualifications and number of directors, the term of office of directors, the manner in which directors shall be elected and the manner in which directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws; provided, however, that the Bylaws shall contain the following provisions:

4.3.1 Subject to Section 4.3.2 of this Section, during the Period of Declarant Control, the Declarant may appoint and remove the officers and members of the Board.

4.3.2 Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created in Candlelight Ridge to Owners other than Declarant, at least one member and not less than twenty-five (25%) of the members of the Board must be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created in Candlelight Ridge to Owners other than Declarant, not less than thirty three and one-third percent (33.3%) of the members of the Board must be elected Owners other than Declarant.

4.3.3 Except as otherwise provided in C.R.S. 38-33.3-220(5), not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of at least three (3) members, at least a majority of who must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall elect the officers. The Board members and officers shall take office upon termination of the Period of Declarant Control.

4.3.4 Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum, as defined in the Bylaws of the Association, is present may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

4.3.5 Board member conflicts of interest shall be handled in accordance with the Association's responsible governance policy regarding conflicts of interest.

4.3.6 Members of the Board shall be entitled to reimbursement for the cost to attend educational meetings and seminars which generally relate to the management, administration and/or upkeep of common interest communities. The Board is entitled to adopt a Rule governing the amount of maximum reimbursement available and the types of educational events that may be attended.

4.4 **Delivery to the Association.** Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant including, without limitation, the following items:

4.4.1 The original or a certified copy of the recorded Declaration as amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records and any rules and regulations which may have been promulgated;

4.4.2 An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefore. The expense of the audit shall not be paid by, or charged to, the Association.

4.4.3 The Association funds or control thereof;

4.4.4 All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties;

4.4.5 A copy of any Plans and Specifications used in the construction of the Improvements in the Property that were completed within two years before the Declaration was recorded;

4.4.6 All insurance policies then in force, in which the Owners, the Association, or its directors and officers are named as insured persons;

4.4.7 Copies of any certificates of occupancy that may have been issued with respect to any Improvements located on a portion of the Common Elements;

4.4.8 Any other permits issued by governmental bodies applicable to Association Property and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

4.4.9 Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective and that relate to Association Property;

4.4.10 A roster of Owners and Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

4.4.11 Employment contracts in which the Association is a contracting party; and

4.4.12 Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person(s) performing the services.

4.5 **Officers.** The Board will select the officers of the Association, which officers may also serve as members of the Board.

4.6 **Articles and Bylaws.** The purposes and powers of the Association and the rights and obligations with respect to Memberships may and shall be amplified by provisions of the Articles and Bylaws of the Association. Such Articles and Bylaws may include any reasonable provisions with respect to corporate matters including provisions with respect to notices, record dates and quorums for meetings of directors and Members, but no such provision may be inconsistent with any provision of this Declaration.

4.7 **Assessments, Fines and Compliance Expenditures.** Each and every Owner of a Unit shall be obligated to pay , jointly and severally, and shall pay to the Association, at least annually or when otherwise due and payable as determined by the Board, (i) Assessments; (ii) reasonable and uniformly applied fines imposed by the Association for violation of the Restrictions and Rules adopted by the Association; and (iii) any "Compliance Expenditures" (as defined below). Each Assessment shall be a separate, distinct and personal debt and obligation of the Owner against whose Unit the same is assessed. All Assessments shall be payable in full without offset for any reason whatsoever. The obligation of each Owner to pay Assessments shall be entirely independent of any obligation of the Association to such Owner or of Declarant or any other Owner to such Owner. No Owner shall be exempt from liability for payment of any Assessment by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made. Any Assessment that is not paid within thirty (30) days after the same becomes due shall be deemed delinquent. If an Assessment is delinquent, the Association may recover all of the following (collectively, the "Compliance Expenditures"):

4.7.1 Reasonable costs incurred by the Association in collecting the delinquent Assessments including without limitation, reasonable attorneys' fees and court costs;

4.7.2 A late charge in an amount determined from time to time by the Board; and,

4.7.3 Interest on (i) the delinquent Assessment and (ii) the cost of collection described in Section 4.7.2, at an annual percentage rate equal to twenty-one percent (21%) per annum, commencing thirty (30) days after the Assessment became due.

4.7.4 Any sums for noncompliance as specified in Section 5.14 herein.

4.8 **Determination of Budgets.** The total amount required to be raised through Assessments shall be determined by the Board of Directors of the Association at least once a year and shall be based upon an annual budget to be approved by the Board of Directors and adopted by the Association annually showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses of the Association, an amount deemed necessary or desirable as a contingency reserve and the total amount required to be raised by Assessments to cover such estimated costs and expenses and contingency reserve. The budget shall cover all costs and expenses expected to be incurred by the Association in performing its functions, or in providing services required or permitted under this Declaration, including but not limited to all expenses required to adequately operate and maintain the Common Elements, insurance and

taxes, in addition to reasonable reserves as the Board deems appropriate. The budget may be revised by the Board as it deems necessary from time to time. Assessments may be raised or lowered by the Board of Directors at any time as required to meet such revised budget. Without limiting the generality of the foregoing, it is expressly understood that the budget (and, accordingly, the Assessments) shall be subject to modification due to the annexation of property to the Property in accordance with the Declaration. Within ninety (90) days after the Board's adoption of any proposed budget for the Association, the Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and shall provide notice of a date for a meeting of the Owners as provided for in the Bylaws to consider ratification of the budget. Unless at that meeting a majority (i.e. more than 50%) of all Owners veto the budget, the budget shall be ratified, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last ratified by the Owners must be continued until such time as a subsequent budget proposed by the Board is not vetoed by the Owners in accordance with the procedure above.

4.9 **Amount of Regular Assessments.** A Regular Assessment is defined for purposes of this Section as that sum which must be levied in the manner and against each individual Unit in order to raise the total amount for which the levy in question is being made. Each individual Regular Assessment shall be equal to each other individual Regular Assessment and, accordingly, each Unit shall be assessed its General Common Allocation, as such allocation is determined by the Board from time to time in accordance with the formula described in Section 1.1.17 herein. The Association may levy a Regular Assessment against each Unit effective upon recordation in the Records of the Map initially creating the applicable Unit. Until the Association levies a Regular Assessment, the Declarant shall pay all expenses of the Association. After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association. In no event, however, shall Declarant have any obligation whatsoever to subsidize or otherwise contribute to a maintenance fund or other contingency reserve to be used to cover future costs and expenses. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the assessment year or other period remaining after said date.

4.10 **Special Assessment.** In addition to the annual Regular Assessment authorized by this Article, the Board of the Association may levy, from time to time, one or more Special Assessments for the purpose of defraying in whole or in part the cost of any construction, restoration, unexpected repair or replacement of a capital improvement or for carrying out the other responsibilities of the Association in accordance with this Declaration. Any such Special Assessments shall be levied against each Unit in accordance with the General Common Allocation as set forth in this Declaration. Each Owner shall pay all Special Assessments assessed against such Owners Unit. The Board shall fix the due date for any Special Assessment.

4.11 **Other Matters Relating to Assessments.** Subject to the foregoing provisions, the Board of Directors shall have the power and authority to determine all matters in connection with Assessments including the power and authority to determine where, when and how Assessments

shall be paid to the Association and each Owner shall be required to comply with all such determinations.

4.12 **Lien for Assessments, Fines and Compliance Expenditures.** The Association shall have a lien against the Unit of each delinquent Owner to secure payment of any Assessment, fine, Compliance Expenditure or other amount due and owing to the Association from the date of levy of the Assessment, fine, Compliance Expenditure or other amount due and owing to the Association. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado. The association shall have the right, but not the obligation, to prepare and record in the Records a "Notice of Lien" which may set forth, among other things, (i) the amount of any Assessment, fine, Compliance Expenditure or other amount due and owing to the Association; (ii) all costs and expenses including reasonable attorney fees incurred in collecting the unpaid amount to the date of recording of such Notice of Lien; (iii) the Unit affected by the lien; and (iv) the name or names last known to the Association, of the Owner or Owners of the Unit. Notwithstanding anything to the contrary contained herein, the following property shall be exempt from the lien for Assessments created herein: all properties dedicated to, and accepted by, a local public authority and the Common Elements. Any such Lien shall have the priority set forth in Section 38-33.3-316 of the Act.

4.13 **Duties and Powers of the Association.** Subject to and in accordance with this Declaration, the Association shall have all of the rights and powers conferred upon it by law, the Act, this Declaration, the Articles and Bylaws. Without limiting the generality of the foregoing, the Association shall have the following powers and shall perform each of the following duties for the benefit of the Members of the Association:

4.13.1 **Assessments.** To determine, levy and collect Assessments.

4.13.2 **Association Property.** Subject to the provisions of C.R.S. 38-33.3-312, to accept, own, convey, lease, encumber, operate and maintain all Association Property (real and personal) that may be conveyed to it by Declarant, acquired by the Association or otherwise assigned the responsibility for maintaining therefore, together with all Improvements of whatever kind and for whatever purpose that may be located in said areas.

4.13.3 **Title to Property Upon Dissolution.** In the event of dissolution of the Association, the Common Elements shall, to the extent permitted by law and where reasonably possible, be conveyed or transferred to an appropriate governmental or quasi-governmental agency or agencies, or to a non-profit corporation, association, trust or other organization, to be used for the common benefit of the Owners for similar purposes for which the Common Elements were held by the Association. To the extent the foregoing is not possible, the Common Elements shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed first for the payment of debts and obligations incurred by the Association and then to the Owners in an equitable manner determined by the Board (which determination will be conclusive) based upon each Owner's pro rata portion of the Property. In the event of dissolution of the Association, maintenance of Common Elements shall become the responsibility of those agencies or individuals in title to the specific property.

4.13.4 **Repair and Maintenance of Association Property.** To maintain in good repair and condition all lands, Improvements, and other Association Property owned, controlled or maintained by the Association.

4.13.5 **Maintenance.** To maintain the entrance, postal, parking areas and Common Elements thereon which shall be installed, or otherwise accepted for maintenance by Declarant and, in addition, to maintain certain designated landscaped areas located along and within certain designated primary public or private rights-of-way and drainage and other easements located on or benefiting the Property.

4.13.6 **Maintenance of Fencing.** To repair, maintain and replace as necessary any fence or pillars that shall be installed, constructed or otherwise accepted for maintenance by the Declarant on or within the Property, which shall include the permanent monument and identification signage (the Association has the right of access to and utilization of utility easements for maintenance of these items).

4.13.7 **Maintenance of Mailboxes.** To repair, maintain and replace as necessary any mailbox within the Property.

4.13.8 **Payment of Taxes.** To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by the Association, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

4.13.9 **Insurance.** To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount, to comply with C.R.S. 38-33.3-313. Notwithstanding the existence of any policy of insurance maintained by the Association, to the extent that any damage to any portion of the Property is caused by the act or omission of an Owner, whether or not negligent, that Owner shall be responsible for and be assessed the cost of repair.

4.13.10 **Rules.** To make, establish and promulgate, and in its discretion to amend or repeal and reenact such rules that are not in contradiction of this Declaration, as it deems proper covering any and all aspects of its functions, including the use and occupancy of the Units and the Common Elements ("Rules"). Without limiting the generality of the foregoing, such Rules may set penalties and fees and establish the regulations governing the operation of Association Property and/or Common Elements, as well as the use of the Units, to the extent not prohibited by the Declaration. The Rules may further restrict, explain, elaborate on, or explain issues that are addressed in this Declaration but only those Rules that expressly conflict with the terms of this Declaration shall be invalid. Each Member shall be entitled to examine such Rules at any time during normal working hours at the principal office of the Association.

4.13.11 **Architectural Control Committee.** To appoint and remove members of the Architectural Control Committee as provided in Section 5.3 hereof. In the event that

there is not a duly constituted and appointed Architectural Control Committee, the Board shall operate as the Architectural Control Committee and shall have all of the rights and obligations of the Architectural Control Committee set forth in the Restrictions.

4.13.12 **Enforcement.** To enforce, on its own behalf and on behalf of all Owners, all of the covenants, conditions and restrictions set forth in this Declaration, under an irrevocable power of attorney (hereby granted) coupled with an interest as beneficiary of said covenants, conditions and restrictions, and as assignee of Declarant, and to perform all other acts, whether or not anywhere expressly authorized, as may be reasonably necessary to enforce any of the provisions of the Restrictions.

4.13.13 **Management Company.** To retain the services of a professional management company to manage some or all of the affairs of the Association provided that (i) such company shall be licensed to do business in the State of Colorado, to the extent required by law; (ii) the term of any contract for such services shall not exceed one (1) year and shall be terminated on thirty (30) days written notice, with or without cause and without the payment of a termination fee; and (iii) each and every management contract made between the Association and a manager or managing agent during the Period of Declarant Control shall terminate absolutely and, in any event, no later than thirty (30) days after the expiration of the Period of Declarant Control.

4.13.14 **Trash Removal.** To retain the services of a trash collection and removal company to serve the Property provided that (i) such company shall be licensed to do business in the State of Colorado, to the extent required by law; (ii) the term of any contract for such services shall not exceed one (1) year and shall be terminated on thirty (30) days written notice, with or without cause and without the payment of a termination fee; and (iii) each and every contract made between the Association and such company during the Period of Declarant Control shall terminate absolutely and, in any event, no later than thirty (30) days after the expiration of the Period of Declarant Control.

4.13.15 **Borrowing.** Subject to the provisions of C.R.S. 38-33.3-312, to borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefore, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecation or other evidences of debt and securities therefore pledging or encumbering the Association's right to receive future Assessment income, the Common Elements, or portions thereof and/or other Association Property.

4.13.16 **Easements.** To accept existing easements and the easements created through the enforcement of this document and to grant easements, leases, licenses and concessions over the Common Elements to serve the Property. The Association shall have the express power to perform all continuing obligations of the Declarant set forth in any pre-existing easement that has been assigned to the Association.

4.13.17 **Assignment.** To assign its' right to future income, including the right to receive Assessments.

4.13.18 **Arbitration.** In the event of a dispute between the Association and an Owner other than a Developer or the Declarant, which does not relate to the collection of assessments, it is hereby agreed that the dispute shall be referred to arbitration as set forth herein. In no way shall this require arbitration of disputes between Owners and Developers or the Declarant, or any other party. The intent of this Section 4.13.18 is to require arbitration for non-assessment disputes affecting an Owner and the Association such as covenant and architectural disputes.

The arbitration shall take place in the State of Colorado. Arbitration shall be demanded by serving written notice by certified mail, return receipt requested. Notice to the lot owner shall be sent to the address of the lot owner at Candlelight Ridge. Notice to the Association shall be sent to its registered agent on record with the Secretary of State.

Upon demand, arbitrators shall be selected as follows: a.) If the amount in dispute is less than \$50,000, a single arbitrator at the Judicial Arbitrator Group (JAG) shall be selected by agreement of the parties, or in the event that the parties cannot agree, JAG will select the arbitrator. b.) If the amount in dispute is more than \$50,000.00, a panel of three arbitrators will be selected. Each party will select one arbitrator, and the arbitrators selected by the parties will select the third member of the panel; provided, however, that the parties may waive this requirement and proceed with a single mutually-agreeable arbitrator. The parties may select arbitrators other than JAG if they choose.

At the earliest date possible after selection, the arbitrator(s) shall confer with the parties, and the arbitrator(s) shall determine whether discovery is warranted, and if so, the amount of discovery appropriate for the dispute. Discovery shall not be permitted in excess of that allowed by the Colorado Rules of Civil Procedure. Any discovery shall be completed within four (4) months of the selection of the arbitrator(s).

The Colorado rules of evidence shall apply. The arbitrator's decision shall be in writing. The arbitrator's decisions shall be final and legally binding, and judgment may be entered thereon. Pre and post judgment interest shall run in accordance with Colorado law. The arbitrator shall be entitled to order that prevailing party's costs, expenses and reasonable attorneys' fees be paid by the other party. If the arbitrator fails to so order, then each party shall be responsible for its equal share of the arbitration fees and costs. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party is entitled to costs of suit, including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.

4.13.19 **Other.** To carry out all duties of the Association set forth in the Restrictions.

4.14 **Non-Liability of Officials.** To the fullest extent permitted by law, neither the Board of Directors, the Architectural Control Committee, or any other committees of the Association or any member thereof, nor any officers, directors, partners, or employees of the Association shall be liable to any Owner, Developer, or to the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of Plans or Specifications (whether or not defective), course of action, act, inaction,

omission, error, negligence, or the like made in good faith and which the Board, or such committees or officers reasonably believed to be within the scope of their respective duties.

4.15 **Indemnification.** To the fullest extent permitted by law, every director, officer, committee member, of the Association, and the Architectural Control Committee shall be and is hereby indemnified by the Association as provided in this Section 4.15. The Association may in the discretion of the Board, indemnify every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, or at the request of, the Association. Any such indemnification pursuant to this Section 4.15 shall be limited to all expenses and liabilities (including, without limitation, all attorneys' fees and court costs) reasonably incurred by or imposed upon such person in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred provided that acts giving rise to the request for indemnification were undertaken in good faith and were not opposed to the Association's best interests and not outside the person's scope of duty at the time the acts were undertaken.

4.16 **Non-Liability for Certain Changes and Amendments.** Neither the Association, nor their successors or assigns shall be liable to, or subject to injunction by, any member or Owner or to one another in the event that any change in zoning of the Property is sought or obtained, or in the event that any subdivision map amendment or change in density shall be sought and obtained including, but not limited to, any change in the Map or in area density among the various Units shown on the Map provided that no material change in the character of the Association's community as a single-family residential community is sought or obtained.

4.17 **Audit.** The Association shall provide a financial statement (which may or may not be audited) for the immediately preceding fiscal year, free of charge to the party so requesting, to any First Mortgagee of a Unit, or any insurer or guarantor of such a First Mortgage, within a reasonable time after written request therefore by any such party. Audits or reviews of the Association's finances shall be as required by applicable law.

4.18 **Association Books and Records.** The Association shall make Available to Owners, First Mortgagees, and insurers or guarantors of any such First Mortgage, current copies of this Declaration, the Articles of Incorporation, Bylaws, Rules, books, records, and financial statements of the Association, as well as any and all other records as required by applicable law and in accordance with the Association's responsible governance policy regarding the maintenance and inspection of records.

4.19 **Termination of Contracts and Leases of Declarant.** The following contracts and leases, if entered into before the Board elected by the Owners pursuant to Section 4.3.3 takes office, may be terminated without penalty by the Association, at any time after the Board elected by the Owners pursuant to Section 4.3.3 takes office, upon not less than ninety (90) days notice to the other party:

4.19.1 Any management contract, employment contract, or lease of recreational or parking areas or facilities;

4.19.2 Any other contract or lease between the Association and Declarant or an affiliate of Declarant; or

4.19.3 Any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing.

This Section does not apply to any lease, the termination of which would terminate the planned community created by this Declaration or reduce its size, unless the real estate subject to that lease was included in the planned community for the purpose of avoiding the right of the Association to terminate a lease under this Section or a proprietary lease, or to any lease containing necessary utilities or storm water improvements required for the completion of the Improvements.

4.20 **Surplus Funds.** Any surplus funds of the Association remaining after payment of, or provision for, expenses, costs, obligations and any prepayment of or provision for reserves shall not be credited to the Owners but shall, instead, be added to any reserve accounts maintained by the Association.

4.21 **Delegation to Master Association.** In accordance with C.R.S. 38-33.3-220, the Association may delegate any of the powers of the Association described in Section 4.13 above to a master association. In such event, upon the termination of the "Period of Declarant Control" (as such term is defined in the applicable master declaration) all members of the Board of Directors of such a master association shall be elected by all members of the executive boards of all common interest communities subject to the applicable master declaration in accordance with, and subject to, the applicable provisions of such master declaration.

4.22 **Legal Fees.** In cases of dispute between a Unit Owner and the Association in any way relating to a Restriction, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees from the other party, unless prohibited by applicable law.

## ARTICLE V

### ARCHITECTURAL APPROVAL

5.1 **Approval of Improvements Required.** The approval of the Architectural Control Committee shall be required for any Improvement to a Unit, except where prior approval of an Improvement to a Unit may be waived or certain Improvements to a Unit may be exempted in writing or under written guidelines or rules promulgated by the Architectural Control Committee.

5.2 **Improvement to a Unit Defined.** "Improvement to a Unit" requiring approval of the Architectural Control Committee shall mean and include, without limitation: (a) the construction, installation, erection, or expansion of any building, structure, or other Improvement, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (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 plants; and (e) in the broadest interpretation possible, any change or alteration of any previously approved or otherwise acceptable Improvement to a Unit, including but not limited to any change of exterior appearance, color or texture. Any grade changes that affect drainage must be reviewed by a civil engineer and the engineer's report must be submitted to the Architectural Control Committee for review and approval.

5.3 **Membership of Committee.** The Architectural Control Committee shall consist of three (3) members, all of who shall be initially appointed by Declarant. Declarant shall have the continuing right to appoint all three (3) members during the Period of Declarant Control. The Association, through its Board, shall have the right to appoint such members after the expiration of the Period of Declarant Control. During the Period of Declarant Control, Declarant shall give the Association written notice of the appointment or removal of any member of the Committee. Members of the Architectural Control Committee may, but shall not necessarily be members of the Association. After expiration of the Period of Declarant Control, members of the Architectural Control Committee to be appointed by the Association shall be appointed by the Board of Directors. Members of the Architectural Control Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board. After the expiration of the Period of Declarant Control, the Board may at any time and from time to time change the authorized number of members of the Architectural Control Committee, but the number of members shall not be less than three (3).

5.4 **Address of the Architectural Control Committee.** The address of the Architectural Control Committee shall be at the principal office of the Association.

5.5 **Submission of Plans.** Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Architectural Control Committee at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Architectural Control Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Applicant shall be entitled to receive a receipt for the materials submitted. The Architectural Control Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Architectural Control Committee of all required materials in connection with the proposed Improvement to Property, the Architectural Control Committee may postpone review of any materials submitted for approval.

5.6 **Criteria for Approval.** The Architectural Control Committee may approve any proposed Improvement to Property if it deems, in its reasonable discretion, that the improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Property as to a whole; and will not detract from the beauty, wholesomeness, and attractiveness of the Property or the enjoyment thereof by Owners and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the

Association. The Architectural Control Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Committee may deem appropriate.

**5.7 Decision of Committee.** Any decision of the Architectural Control Committee shall be made within thirty (30) days after receipt by the Architectural Control Committee of all materials required by the Architectural Control Committee, unless such time period is extended by mutual agreement. The decision of the Architectural Control Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Architectural Control Committee. If the Architectural Control Committee does not act within thirty (30) days, the applicant will submit a request for action to the Architectural Control Committee via certified mail. If there is no response from the Architectural Control Committee within fifteen (15) days of its receipt of the certified mail request for a decision, the Improvements are deemed approved.

If a request submitted to the Architectural Control Committee is denied, the Applicant may appeal such decision to the Board of Directors within thirty (30) days of the date the Architectural Control Committee decision is mailed to the Applicant. The Board of Directors shall be prohibited to hear the appeal of an Applicant unless the appeal is received within the thirty (30) day time period. If an appeal is timely filed, the Board of Directors shall cause the Architectural Control Committee to deliver all plans and specifications of the proposed Improvement, together with the decision of the Architectural Control Committee, to the Secretary of the Board. The Board of Directors then shall have a reasonable period of time, not to exceed sixty (60) days, to render its decision on the appeal. If there is no response from the Board of Directors within sixty (60) days of its receipt of the appeal, the Improvements are deemed approved.

**5.8 Prosecution of Work After Approval.** After approval of any proposed Improvement to a Unit, the proposed Improvement to a Unit shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to a Unit, any materials submitted to the Architectural Control Committee in connection with the proposed Improvement to a Unit, and any conditions imposed by the Architectural Control Committee. Failure to complete the proposed Improvement to a Unit within twelve (12) months after the date of approval or such shorter period as specified in writing by the Architectural Control Committee at the time of approval, or to complete the Improvement to a Unit in accordance with the description and materials furnished to, and to conditions imposed by, the Architectural Control Committee, shall constitute noncompliance with the requirements for approval of Improvements to Unit.

**5.9 Notice of Completion.** Upon completion of the Improvement to Unit, the Applicant shall give written Notice of Completion to the Architectural Control Committee. Until the date of receipt of such notice of completion, the Architectural Control Committee shall not be deemed to have notice of completion of such Improvement to a Unit.

**5.10 Inspection of Work.** The Architectural Control Committee or its duly authorized representative shall have the right to inspect any Improvement to a Unit prior to, during, or after completion, provided that the right of inspection shall terminate thirty (30) days after the

Architectural Control Committee shall have received a Notice of Completion from Applicant.

5.11 **Notice of Noncompliance.** If, as a result of inspections or otherwise, the Architectural Control Committee finds that any Improvement to a Unit has been done without obtaining the approval of the Architectural Control Committee or was not done in complete conformity with the description and materials furnished to, and any conditions imposed by, the Architectural Control Committee or was not completed within twelve (12) months after the date of approval by the Architectural Control Committee or such shorter period as specified in writing by the Architectural Control Committee, the Architectural Control Committee shall notify the Board of the particulars of the noncompliance. The Board shall then determine the appropriate action necessary to correct the noncompliance and notify the Applicant accordingly.

5.12 **Failure of Committee to Act After Completion.** If, for any reason other than the Applicant's act or neglect, the Board fails to notify the Applicant of any noncompliance within sixty (60) days after receipt by the Architectural Control Committee of written Notice of Completion from the Applicant, the Improvement to a Unit shall be deemed in compliance if the Improvement to a Unit was, in fact, completed as of the date of Notice of Completion.

5.13 **Appeal to Board of Directors of Finding of Noncompliance.** If the Board gives any notice of noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Architectural Control Committee within thirty (30) days after receipt of the notice of noncompliance by the Applicant. The Board of Directors shall hear the matter in accordance with the provisions of the Bylaws for Notice of Hearing, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

5.14 **Correction of Noncompliance.** If the Board of Directors 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 of receipt by the Applicant of the ruling of the Board of Directors or such other period as designated by the Board. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the real property on which the noncompliance exists, may enter upon such property and remove the noncomplying improvement to a Unit, or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith. If the Applicant or Owner does not promptly repay such expenses to the Association, the Board may levy a Compliance Expenditure, as defined in Section 4.7 of this Declaration, against the Owner of the Unit for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration. The Applicant and Owner, if different, shall have no claim for damages or otherwise on account of the entry upon the property and removal of the non-complying Improvement to a Unit. Notwithstanding anything in this Declaration to the contrary, the Board has the authority to commence a lawsuit to compel the Owner's compliance with the terms of the Restrictions at any time and without regard to any required notices and waiting periods set forth in this Declaration.

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

5.16 **Meetings of Committee.** The Architectural Control Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Control Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Architectural Control Committee, except the granting of approval to any Improvement to a Unit. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the Architectural Control Committee shall constitute action of the Architectural Control Committee.

5.17 **Records of Actions.** The Architectural Control Committee shall report in writing to the Board of Directors all final action of the Architectural Control Committee, and the Board shall keep a permanent record of such reported action.

5.18 **Estoppel Certificates.** The Board of Directors shall, upon the reasonable request of any interested Person and after confirming any necessary facts with the Architectural Control Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to a Unit or with respect to whether any Improvement to a Unit is made in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on said certificates with respect to all matters set forth therein.

5.19 **Nonliability of Committee Action.** There shall be no liability imposed on the Architectural Control Committee, any member of the Architectural Control Committee, any Committee Representative, the Association, any member of the Board of Directors, or Declarant for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Architectural Control Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Architectural Control Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to a Unit be deemed approval of the Improvement to a Unit from the standpoint of safety, whether structural or otherwise, or conformance with building codes, or grading and drainage, or other governmental laws or regulations.

5.20 **Construction Period Exception.** During the course of actual construction of any permitted structure or Improvement to a Unit, and provided construction is proceeding with due diligence, the Architectural Control Committee 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 that, during the course of any such construction 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.

5.21 **Easement for Encroachments.** If any portion of the Improvements constructed by Declarant or a Developer located on a Unit or the Common Elements encroaches upon a Unit or the Common Elements, as applicable, including any encroachments arising or resulting from the repair or reconstruction of such an Improvement, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such encroachment. The easement does not relieve an Owner of liability in case of willful misconduct nor relieve Declarant or any other person of liability for failure to adhere to the Map.

5.22 **Maintenance Easement.** An easement is hereby granted to the Association, its officers, agents, employees, and assigns upon, across, over, in and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

5.23 **Utilities.** There is hereby created a blanket easement upon, across, over, and under the Common Elements for utilities and the installation, replacement, repair, and maintenance of utilities including, but not limited to, water, sewer, gas, telephones, electricity and cable television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment, appurtenances on the Property and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, and television wires, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Common Elements and without restricting or nullifying the terms hereof; provided, however, that such right and authority shall cease and terminate upon conveyance by Declarant of the last Unit to the first Owner thereof (other than Declarant). The easement provided for in this Section 5.23 shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Property.

5.24 **Rights of Declarant Incident to Construction.** An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress and egress over, in, upon, under and across the Common Elements and including, but not limited to, the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's construction on the Property.

5.25 **Easements Deemed Created.** All conveyances of portions of the Property (including Units) hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 5, even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

## ARTICLE 6

### AMENDMENT

6.1 **Amendment.** Subject to the provisions of Section 6.2, any amendment to this Declaration that would terminate the Declaration shall require the affirmative vote or written consent of the Members to whom at least sixty-seven percent (67%) of the votes in the Association are allocated. Further, any termination of this Declaration and the planned community created hereby must be in accordance with C.R.S. 38-33.3-218. Except as provided in the foregoing, and subject to Section 6.2, this Declaration may be amended by the affirmative vote or written consent of the Members to whom at least sixty-seven percent (67%) of the votes in the Association are allocated. Notwithstanding the foregoing, no amendment may create or increase Special Declarant Rights, increase the number of Units, or change the boundaries of any Unit or the allocated interests of a Unit or the uses to which any Unit is restricted without the unanimous consent of the Unit owners. Notwithstanding the foregoing, Declarant shall have the unilateral right during the Period of Declarant Control to amend this Declaration for any of the following matters:

6.1.1 changing a Common Element to a Limited Common Element as that term is defined in the Act;

6.1.2 recording new plats or new certification of plats or maps pursuant to C.R. S. 38-33.3-209(6);

6.1.3 to exercise any development rights established by the Declaration;

6.1.4 to add unspecified real estate to the Declaration;

6.1.5 to correct typographical or clerical errors.

6.1.6 An amendment to this Declaration shall be effective only upon the occurrence of all of the following events:

6.1.6.1 The amendment shall have been reduced to a writing, which writing shall have been approved (by an affirmative vote or written consent) by the applicable required percentage of Members and, if applicable, Declarant and the First Mortgagees;

6.1.6.2 A written certificate executed and acknowledged by the president or any vice president of the Association, shall be attached to the written amendment which shall state that such amendment was approved by the applicable required percentage of Members, Declarant and by all First Mortgagees, if any, who are required to approve such amendment pursuant to Section 6.2; and

6.1.6.3 The approved written amendment described in Section 6.1.6.1, and including the certificate described in Section 6.1.6.2 shall be Recorded in the Records.

6.1.7 It will be a presumption subsequent to the Recording of an Amendment to this Declaration pursuant to Section 6.1.6.2 that all votes and consents required to pass the same pursuant to this Declaration were duly obtained (at a duly called meeting of the Association, in the case of votes). Such presumption may be rebutted by an action commenced within one (1) year from the date the amendment is Recorded; in the absence of any such action, such presumption shall thereafter become conclusive.

6.1.8 Except to the extent expressly permitted or required by the Act, no amendment made to this Declaration may create or increase Special Declarant Rights, increase the number of Units, or change the boundaries of any Unit or the allocated interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners.

6.2 **First Mortgagee Approval.** Except to the extent otherwise provided herein, the prior written consent of at least a majority (i.e. more than 50%) of the votes of the registered First Mortgagees (based upon one vote for each Unit encumbered by a First Mortgage) must be obtained to add or amend any provision of this Declaration, the Articles, or Bylaws of the Association, which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) Assessments or Assessment liens; (iii) any provisions which are for the express benefit of First Mortgagees; or (iv) any action to terminate this Declaration. Nothing contained in this Section 6.2 may operate to (a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Board; or (b) prevent the Association or the Board commencing, intervening in, or settling any solicitation or proceeding; or (c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds pursuant to C.R.S. 38-33.3-313.

6.3 **Expenses.** All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of the Association; provided, however, that if the particular amendment is required as a result of the Declarant's exercise of its Special Declarant Rights, then all such expenses shall be the sole responsibility of the Declarant.

## ARTICLE 7

### MISCELLANEOUS

7.1 **Term.** This Declaration, including all of the covenants, conditions and restrictions contained herein, shall run with and bind the Property unless and until it is terminated and extinguished by a written instrument approved by the Members to whom at least ninety percent (90%) of the votes in the Association are allocated and recorded in the Records or is modified pursuant to Article VI above.

7.2 **Notices.** Each Owner and First Mortgagee shall register his or its mailing address with the Association, and all notices, demands and statements shall be sent by regular United States Mail, first-class postage prepaid, addressed to the Owner or First Mortgagee at such registered mailing address.

All notices to Declarant shall be sent by first-class postage, prepaid, to the following address:

Candlelight Ridge HOA, LLC  
c/o Classic Property Management  
2525 Arapahoe Avenue  
Suite E4-322  
Boulder, CO 80302

until such address is changed by the Association.

7.3 **Severability.** In the event that any portion of this declaration shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

7.4 **Condemnation.**

7.4.1 In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Elements or any part thereof or any interest therein, with a value (including loss of value to the balance of the Common Elements and improvements thereof), as reasonably determined by the Association in excess of Ten Thousand Dollars (\$10,000.00), the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Elements or improvement thereon sought to be so condemned, to all First Mortgagees, all Members and to the Declarant. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements, and agreements with a condemning authority for acquisition of the Common Elements or part thereof, but the Association shall not enter into any such proceedings, settlement, or agreements, pursuant to which the Common Elements or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein, is relinquished, without giving all First Mortgagees, all Members and Declarant at least fifteen (15) days prior written notice thereof.

7.4.2 In the event, following such proceedings, or under threat thereof, that there is a taking in condemnation or by eminent domain or by private purchase in lieu thereof, of all of the Common Elements or a portion thereof or any interest therein, the award made for such taking or the price paid shall be paid to the Association, and shall be used by the Association for the purposes of repairing, maintaining, and replacing Association Properties as determined by the Board. Provided, however, that in the event the Board determines that it is not in the best interest of the Association to so apply any such proceeds, the Board may direct that the Association disburse the net proceeds of any such award or sale to the Owners, the Owner of each Unit receiving one (1) equal share,

provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on his Unit in the order of the priority of such liens or encumbrances. No provision of this Declaration or any other document relating to the Property shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation award or price in lieu thereof for losses or taking of Units, Common Elements, or any combination thereof.

7.4.3 If a Unit is acquired by eminent domain or part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must include compensation to the Owner for that Unit and its allocated interests whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's allocated interests are automatically re-allocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking. Any remnant of a Unit remaining after part of a Unit is taken under this Section 7.4.3 is thereafter a Common Elements.

7.4.4 Except as provided in Section 7.4.3, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Unit whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides that Unit's allocated interests shall not be modified; and

7.4.5 If part of the Common Elements is acquired by eminent domain, that portion of any award attributable to the Common Elements taken must be paid to the Association. For the purposes of acquisition of a part of the Common Elements, service of process on the Association shall constitute sufficient notice to all Owners, and service of process on each individual Owner shall not be necessary.

7.4.6 The court decree shall be recorded in every county in which any portion of the Property is located.

7.4.7 The reallocations of allocated interests pursuant to this Section shall be confirmed by an amendment to the Declaration prepared, executed, and Recorded by the Association.

7.5 **Governing Law.** This Declaration shall be governed by, and construed under, the laws of the State of Colorado in existence as of the date of Recording of this Declaration in the Records.

7.6 **Exhibits.** All exhibits and riders attached to this Declaration shall be deemed incorporated herein by this reference.

7.7 **Development Rights and Special Declarant Rights.** The Declarant expressly reserves the Development Rights and the other Special Declarant Rights for the maximum time limit allowed by law. Unless sooner terminated by a recorded instrument signed by the Declarant, any Development Right or Special Declarant Right may be exercised by the Declarant, for the period

of time specified in the Act. The Declarant shall exercise such Development Rights and Special Declarant Rights in accordance with the provisions of the Act including, without limitation, C.R.S. 38-33.3-210.

7.8 **Registration of First Mortgagees.** Whenever this Declaration permits or requires that a First Mortgagee receive notice, such requirement of notice shall be waived if the First Mortgagee has failed to register its name and proper address with the Association for the purpose of such notices as provided in Section 7.2. The Association shall maintain, as part of its books and records, a list of the First Mortgagees who have registered in order to receive any notices that are permitted or required to be given to First Mortgagees under this Declaration.

7.9 **Approval by First Mortgagees.** Whenever this Declaration requires the approval of First Mortgagees, only those First Mortgagees who have registered need be included in the request for approval and in any determination of whether the applicable percentage of First Mortgagees have approved any intended action. Any First Mortgagee registered and mailed a request for approval, but who fails to respond within sixty (60) days to a request for approval, will be deemed to have approved the intended action.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH AFFECTS YOUR LEGAL RIGHTS AND MAY BE ENFORCED BY THE PARTIES.**

**IN WITNESS WHEREOF**, the Association has executed this Amended and Restated Declaration on \_\_\_\_\_ 2007, with an effective date as of the day and year first above written.

**ASSOCIATION:**

**Candlelight Ridge Homeowners' Association, Inc.**  
a Colorado non-profit company

BY : \_\_\_\_\_

Its : \_\_\_\_\_

STATE OF COLORADO

ss.

COUNTY OF \_\_\_\_\_

The above and foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_ as \_\_\_\_\_ of Candlelight Ridge Homeowners' Association, Inc.

My commission expires : \_\_\_\_\_

Notary Public : \_\_\_\_\_

**DECLARANT:**

**Candlelight Ridge. L.L.C.**  
a Colorado limited liability company

BY : \_\_\_\_\_

Its : \_\_\_\_\_

STATE OF COLORADO

ss.

COUNTY OF \_\_\_\_\_

The above and foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_ as \_\_\_\_\_ of Candlelight Ridge L.L.C.

My commission expires : \_\_\_\_\_

Notary Public : \_\_\_\_\_