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El Paso County Clerk and Recorder:

Index in grantee's index under "Count Pourtales Addition" and "The Count Pourtales Association" and in the grantor's index under "The Count Pourtales Association" and the names of each person executing this Declaration.

**THIRD AMENDED AND RESTATED
COVENANTS OF THE
COUNT POURTALES ADDITION TO BROADMOOR**

THIRD AMENDED AND RESTATED COVENANTS OF THE COUNT POURTALES ADDITION TO BROADMOOR

This Third Amended and Restated Covenants of Count Pourtales Addition to Broadmoor ("Declaration") is made effective upon recording.

RECITALS

A. The undersigned are the Owners of more than half of the total area of a certain tract of land in the County of El Paso, Colorado, known as "Count Pourtales Addition" to Broadmoor, Colorado (exclusive of streets, parks and open spaces), the plat of which was filed for record in the office of the County Clerk and Recorder of said County on the 21st day of July 1926, as instrument Numbered 407456 and recorded in Book Lettered P of Plats on Pages 40 and 41 thereof; and whereas the undersigned desire to subject all property lying in "Count Pourtales Addition" as shown on Exhibit A hereto and by reference made a part hereof, to certain protective restrictions, conditions, covenants and charges, as hereinafter set forth, to the end that harmonious and attractive development of the property may be accomplished, and that the health, comfort, safety, convenience, and general welfare of the Owners and occupants may be promoted and safeguarded; thereby amending and restating as amended those Covenants for such subdivision dated July 21, 1926 and recorded July 21, 1926 in Book 692, beginning at Page 441 of the records of the Clerk and Recorder of El Paso County, Colorado; as Amended and Restated on December 31, 1986, and recorded at Book 5294, beginning at page 507; and as Amended and Restated on November 30, 2006 at Reception No. 206173859 of said records; and

B. The aforesaid Owners and the Count Pourtales Association desire to further amend and restate the Covenants and do hereby approve and adopt these Third Amended and Restated Covenants as of the date on which these Covenants are recorded in the real property records of the Clerk and Recorder of El Paso County, Colorado.

C. Article 20 of the Amended and Restated Declaration provides that the Amended and Restated Declaration may be amended six months prior to the expiration of any 20-year successive extension period by written agreement executed by the Owners of more than half of the total area of the Count Pourtales Addition.

D. This Declaration does not change the allocated interests of the Lots or Home Sites and does not terminate the Community.

E. The Owners of more than half of the total area of the Count Pourtales Addition desire to amend the Amended and Restated Declaration and have approved this Declaration in writing. Those approving this Declaration have determined it to be reasonable and not burdensome.

The Amended and Restated Declaration, as amended, is replaced by this Declaration provided that this does not replace the legal description in the Original Declaration and any supplements or annexations.

ARTICLE 1. NAME AND LOCATION

Section 1.1 **Name**. The type of common interest community is a planned community. The planned community's name is Count Pourtales Addition to Broadmoor. The Association's name is The Count Pourtales Association.

Section 1.2 **Location**. The Community subject to this Declaration and the Act is located in El Paso County, Colorado, as more particularly provided in Exhibit "A" to this Declaration. The Plat relating to the Community is in the records of the Clerk and Recorder of El Paso County, Colorado. The Plat is incorporated herein by reference as fully as if the same was set forth in its entirety herein.

ARTICLE 2. DEFINITIONS

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

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

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

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

(d) Bylaws mean the Bylaws of the Association adopted by the Board of Directors as provided for under the Articles of Incorporation of the Association for the regulation and management of the Association, including any amendments to said instrument.

(e) Common Area means all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon. Common Area means the same as common elements in the Act and is also referred to as "Pourtales Park".

(f) Common Expenses mean the expenses and liabilities incurred or anticipated to be incurred by the Association including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Areas, and for fulfilling any of the Association's powers and duties.

(g) Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing within the Community. This standard may be more specifically determined by the Board of Directors.

(h) Community also known as "Count Pourtales Addition" means all that property described in Exhibit "A." If there is any discrepancy between the description of the property in the Original Declaration, as amended, and Exhibit "A," the description in the Original Declaration will control.

(i) Declaration means this Third Amended and Restated Declaration, as may be amended and supplemented from time to time.

(j) Electronic Record means information created, transmitted, received or stored by electronic means and retrievable in human perceivable form, such as email, web pages, electronic documents, and facsimile transmissions.

(k) Governing Documents mean this Declaration and its exhibits, the Association's Articles of Incorporation, Bylaws, Plat, Rules and Regulations, and Policies and Procedures, all as may be supplemented or amended from time to time.

(l) Home Site shall mean the entirety of a parcel of land within the Count Pourtales Addition that is held with identical ownership interests and includes a Lot or a portion of one or more contiguous Lots that were not designated as a Reserved Tract.

(m) Improvement means every structure and all appurtenances thereto of every type and kind including, but not limited to, buildings, outbuildings, stables, corrals, fixtures, utilities, patios, sports courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, pumps, wells, tanks, solar

collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water sewer, gas, electricity, solar energy, telephone, regular or cable television or other utilities.

(n) Lot means and refers to any of the separately numbered lots or plots shown upon any recorded subdivision Plat of the Community, together with all appurtenances and improvements, with the exception of the Common Area and any public streets or rights-of-way.

(o) Majority means those eligible votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

(p) Member means any Owner. The terms "Member" and "Owner" may be used interchangeably.

(q) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.

(r) Mortgage Holder means the holder of any Mortgage.

(s) Owner means the record titleholder of real property within the Community, but does not include a Mortgage Holder.

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

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

(v) Policies and Procedures mean any instrument, as a part of any of the Governing Documents, and/or separately adopted by the Association. The definition of Policies and Procedures may include Rules and Regulations.

(w) Reserved Tract shall include, individually or collectively, any of the Lots conveyed to the Count Pourtales Association by deed dated 6 July 1956 and specifically designated on Exhibit A as Lots A, B, C, D, E, F, G, H, L and M.

(x) Resident means any Person staying overnight in a Residence for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year, and includes tenants.

(y) Residence means the dwelling unit located on the Lot.

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

ARTICLE 3. ASSOCIATION MEMBERSHIP, ALLOCATION OF VOTES, AND ALLOCATION OF LIABILITY FOR COMMON EXPENSES

Section 3.1 PURPOSE. The Association and the Governing Documents exist to help maintain the property values and assets of the Count Pourtales Association and to help promote harmonious community living.

Section 3.2 Membership. Every Person who is a record Owner of a fee interest in any Home Site subject to this Declaration is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of any Home Site. Ownership of a Home Site is the sole

qualification for membership. No Owner, whether one or more Persons, will have more than one membership per Home Site owned. Membership does not include Persons who hold an interest as security for the performance of an obligation, but granting a security interest will not terminate the Owner's membership.

(a) Voting. Owners are assigned a specific number of undivided voting interest credits as provided in the Bylaws. When more than one Person holds an ownership interest in any Home Site, the vote for the Home Site will be exercised as those Owners determine among themselves, otherwise the Home Site's vote will be suspended if more than one Person seeks to exercise it.

(b) Common Expenses. Except as provided elsewhere in the Governing Documents, the amount of all Common Expenses will be assessed based upon the size of the Home Site as set forth in Article 7 of this Declaration.

ARTICLE 4. EASEMENTS AND COMMON AREA

Section 4.1 Easements for Use and Enjoyment. Owners and Residents have a right and non-exclusive easement of ingress and egress, and use and enjoyment in and to the Common Areas, as provided herein and subject to the Associations Governing Documents and the following provisions:

(a) Any Owner may delegate their right to use and enjoy the Common Areas to the members of his family, or other Residents and guests. If the Home Site is leased, the Owner will be deemed to have delegated these rights to the Residents of his Home Site.;

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

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

Section 4.3 Utilities. A blanket easement for utilities may exist upon, across, over, and under the Lots as shown upon the recorded plat of the Community, including, but not limited to utility easements that are specifically reserved on:

IN BLOCK 1:

The rear 5 feet of each and every Lot and the side 5 feet of each and every Lot.

IN BLOCK 2:

The rear 5 feet of each and every Lot and the side 5 feet of each and every Lot.

IN BLOCK 3:

The rear 5 feet of each and every Lot and the side 5 feet of each and every Lot.

IN BLOCK 4:

The rear 5 feet of each and every Lot and the side 5 feet of each and every Lot.

IN BLOCK 5:

The side 5 feet of each and every Lot.

IN BLOCK 6:

The rear 5 feet of each and every Lot and the side 5 feet of each and every Lot.

IN BLOCK 7:

The rear 10 feet of each and every Lot and the side 5 feet of each and every Lot.

IN BLOCK 8:

Five feet on the South boundary of Lots 1 and N.

Additional utility easements may be established upon the Common Areas pursuant to the provisions of this Declaration or as may be granted by the Board of Directors of the Association.

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

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

ARTICLE 5. RESTRICTIONS ON SUBDIVISION AND CONSOLIDATION

Section 5.1 No Home Site comprised of a single Lot or less than two contiguous Lots may be subdivided. An existing Home Site consisting of two or more contiguous Lots may be subdivided provided that:

- (a) The number of new Home Sites thus created will be no greater than the number of individual Lots that comprised the existing Home Site prior to such subdivision; and
- (b) Such subdivision shall not create any new Home Site that is either less than one complete Lot or less in size than 1.0 acres; and
- (c) All existing Structures located on a Home Site created by such subdivision shall comply with the setback requirements of these Covenants that are applicable to the newly created Home Site; and
- (d) Any such subdivision shall require the prior written approval of the Board of Directors if such subdivision creates any new Home Site consisting of less than one or more complete Lots or otherwise requires replatting of the property.

Section 5.2 In the event two or more contiguous existing Home Sites shall come into common ownership, said existing Home Sites shall not hereafter be treated as a single larger Home Site for the purposes of these Covenants. As further clarification, said Home Sites shall continue to be assessed each as individual Home Sites, and all setback requirements and other restrictions contained in

these Covenants shall continue to be applied independently to each original Home Site as existed prior to coming into common ownership.

ARTICLE 6. SPECIFIC SETBACK REQUIREMENTS FOR SPECIFIC LOTS

Upon the land embraced in Exhibit A, no Structure, Dwelling, porch, eave, overhang projection, or any part thereof, other than fences, perimeter walls, driveways, an open terrace or steps or the usual cornices and architectural details, shall be approved under Article 9 herein for construction nearer to any property line constituting the respective rear, front or side boundary of any Home Site as is enumerated below:

IN BLOCK 1:

Lot 1 not less than 60 feet from Mirada Road and not less than 50 feet from Cheyenne Mountain Boulevard.

Lots 2 and 3 not less than 60 feet from Mirada Road and not less than 50 feet from Lot C.

Lots 4 to 9 inclusive not less than 60 feet from Mirada Road.

Lot 10 not less than 50 feet from West Gate.

Lots 11 to 15 inclusive not less than 40 feet from Cheyenne Mountain Boulevard.

Lot 16 not less than 40 feet from Cheyenne Mountain Boulevard and not less than 50 feet from Lot C.

Lot 17 not less than 50 feet from Cheyenne Mountain Boulevard and not less than 50 feet from Lot C.

Lot 18 not less than 50 feet from Cheyenne Mountain Boulevard.

IN BLOCK 2:

Lot 1 not less than 30 feet from Pourtales Road and 50 feet from West Gate.

Lots 2 to 5 inclusive not less than 30 feet from Pourtales Road.

Lot 6 not less than 30 feet from Pourtales Road and not less than 40 feet from North Gate.

Lots 7, 8 and 9 not less than 40 feet from North Gate and Cheyenne Mountain Boulevard.

Lot 10 not less than 50 feet from West Gate and Cheyenne Mountain Boulevard.

IN BLOCK 3:

Lot 1 not less than 30 feet from Pourtales Road and not less than 40 feet from North Gate.

Lots 2 and 3 not less than 30 feet from Pourtales Road.

Lot 4 not less than 30 feet from Pourtales Road and not less than 50 feet from Cheyenne Mountain Boulevard.

Lots 5, 6, and 7 not less than 50 feet from Cheyenne Mountain Boulevard.

Lot 8 not less than 50 feet from Cheyenne Mountain Boulevard and not less than 40 feet from North Gate.

IN BLOCK 4:

Lot 1 not less than 40 feet from Cheyenne Mountain Boulevard and not less than 40 feet from North Gate.

Lots 2 to 6 inclusive not less than 40 feet from Cheyenne Mountain Boulevard.

Lot 7 not less than 40 feet from Cheyenne Mountain Boulevard and not less than 40 feet from North Gate.

Lots 8 to 10 inclusive not less than 40 feet from North Gate.

IN BLOCK 5:

Lot 1 not less than 60 feet from Cheyenne Mountain Boulevard and not less than 50 feet from Marland Road, and not less than 50 feet from Lot L.

Lot 2 not less than 60 feet from Cheyenne Mountain Boulevard and not less than 50 feet from Lot L.

Lot 3 not less than 60 feet from Cheyenne Mountain Boulevard and not less than 50 feet from Lot M, and not less than 50 feet from Lot L.

Lot 4 not less than 60 feet from North Gate and not less than 50 feet from Lot M, and not less than 50 feet from Lot L.

Lots 5 and 6 not less than 60 feet from North Gate and not less than 50 feet from Lot L.

Lot 7 not less than 60 feet from North Gate and not less than 50 feet from Cheyenne Mountain Boulevard and not less than 50 feet from Lot L.

Lots 8 and 9 not less than 50 feet from Cheyenne Mountain Boulevard and not less than 50 feet from Lot L.

Lots 10 to 16 inclusive not less than 50 feet from Crossland Road and not less than 50 feet from Lot L.

IN BLOCK 6:

Lot 1 not less than 50 feet from Crossland Road and not less than 50 feet from Marland Road.

Lots 2 to 5 inclusive not less than 50 feet from Crossland Road.

Lot 6 not less than 50 feet from Marland Road and not less than 50 feet from Crossland Road.

Lots 7 to 11 inclusive not less than 50 feet from Marland Road.

IN BLOCK 7:

Lots 1 to 13 inclusive not less than 50 feet from Marland Road.

IN BLOCK 8:

Lots 1, N and K not less than 50 feet from Cheyenne Mountain Boulevard and Marland Road.

IN EVERY LOT:

For any side Property Line other than those enumerated above, the setback shall not be less than 15 feet. For larger Home Sites where the geometry of the Home Site will permit the planned Structure to be located with larger setbacks, the minimum side Property Line setback shall be increased as follows:

- For Home Sites of 1.0 or more but less than 2.0 acres, the side setback shall not be less than 20 feet.
- For Home Sites of 2.0 or more acres, the side setbacks shall not be less than 25 feet.
- For any rear Property Line other than those enumerated above, the rear setback shall not be less than 15 feet, except that in Block 7 the setback along the East rear Property Line need not be more than 10 feet.

ARTICLE 7. ASSESSMENTS

Section 7.1 Purpose of Assessment. The Association has the power to levy assessments. Assessments for Common Expenses are used to fulfill the Association's obligations pursuant to this Declaration and to promote the common benefit and enjoyment of the Owners and Residents in the Community as may be more specifically defined and authorized from time to time by the Association.

Section 7.2 Annual Assessment. The Board of Directors shall annually review and establish an Annual Assessment fee as necessary to maintain an appropriate reserve fund and to cover the routine and ongoing expenditures necessary to carry out the duties and achieve the purposes of the Association. The Annual Assessment for the membership year 2027 and for each succeeding membership year until changed by the Board of Directors shall be as follows for Home Sites containing no more than one Dwelling:

For any person or persons having a common ownership interest in a Home Site comprising more than one-tenth (0.10) acre but less than one acre of land in the Count Pourtales Addition, \$150.00.

For any person or persons having a common ownership interest in a Home Site comprising one acre or more, but less than two acres of land in the Count Pourtales Addition, \$206.00.

For any person or persons having a common ownership interest in a Home Site comprising two acres or more of land in the Count Pourtales Addition, \$263.00.

For any Home Site with more than one Dwelling, each Dwelling shall have a portion of the Home Site acreage specifically designated as the property associated with said Dwelling, and the Annual Assessment shall be made for each Dwelling unit based on its designated acreage in accordance with the above stated rate schedule. Whenever possible, the designation of acreage shall be consistent with acreage recorded in the El Paso County Tax Assessor's Office.

Section 7.3 Personal Obligation For Assessments. Each Owner covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) individual assessments which are established pursuant to the terms of this Declaration. These amounts are also the personal obligation of the Person who owned the Home Site when the assessment fell due. The personal obligation to pay any past due sums due the Association does not pass to a successor in title unless expressly assumed.

Section 7.4 Lien. All assessments, together with charges, interest, costs, and

reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs and expenses), up to the maximum amount permitted by law, is a charge and a continuing lien upon the Lot and Home Site against which each assessment is made. The Association has authority to record a notice of lien in the county's real property records evidencing the Association's lien. The Association's lien under this article is not subject to the provision of any homestead exemption as allowed under law.

Section 7.5 Payment of Assessments. Assessments will be paid in the manner and on the dates fixed by the Association. No Owner is exempt from liability for or may withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Area, the Association's failure to provide services or perform its obligations, or inconvenience or discomfort arising from the Association's performance of its duties.

Section 7.6 Individual Assessments. The Association has the right to add to any Owner's assessment any amounts expended by the Association for the benefit of any individual Lot, Home Site or resident thereof, including improvement, repair, replacement and maintenance specific to the Lot or Home Site as authorized under the terms of this Declaration; repair, replacement and maintenance of any areas of Association maintenance responsibility caused by the negligent or willful acts of any Owner, Owner's guest, tenant, employee, licensee, or invitee; and all fines and costs assessed against an Owner and the Owner's Lot or Home Site pursuant to the Governing Documents.

Section 7.7 Delinquent Assessments. All assessments and related charges not paid on or before the due date are delinquent, and the Owner is in default.

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

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

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

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

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

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

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

(e) The Association's lien foreclosure or attempted foreclosure does not preclude the Association from foreclosing its lien again for any subsequent delinquent assessment or related charges. The Association may bid on or purchase any Lot or Home Site at foreclosure or other legal sale, and

acquire and hold, lease, mortgage, convey or otherwise deal with the Lot or Home Site. If a lien foreclosure action is filed, and an Owner abandons or vacates his Lot or Home Site, the Association may apply for the appointment of a receiver for the Lot or Home Site without prior notice to the Owner. The Association's rights are expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent provided under the Act.

Section 7.8 Maximum Amount of Annual Assessments for Common Expenses. The annual average common expense liability of each Home Site, exclusive of optional user fees and any insurance premiums paid by the Association, shall not exceed four hundred dollars (\$400.00), as adjusted pursuant to C.R.S. §38-33.3-116(3), so as to always remain exempt from the Colorado Common Interest Ownership Act except for Sections 38-33.3-105 to 38-33.3-107.

Section 7.9 Budget and Assessment. At least 30 days prior to the beginning of each fiscal year, the Association will prepare a budget covering the estimated costs of operating the Community during the coming year, including, at the Board of Director's discretion, an annual reserve contribution, and establish the annual assessment or installments for the coming year but subject to the limitations set forth in Section 7.8 of this Declaration. Written notice of any change in the annual assessment will be sent to each Owner at least 30 days before the start of the assessment year.

(a) Budget Meetings.

(i) The Board of Directors will prepare and approve a budget at least annually but subject to the limitation set forth in Section 7.8 of this Declaration.

(ii) Within 90 days after the Board of Directors adopts the proposed budget, or such longer time as allowed by law, the Board will mail or deliver, including posting on the Association's website (if any), a summary of the budget to all owners, and set a date for a Member meeting (which may also be the annual meeting) to consider the budget.

(iii) Notwithstanding anything to the contrary, the Association's budget and assessments are determined by the Board of Directors but subject to the limitation set forth in Section 7.8 of this Declaration. The proposed budget does not require approval or ratification by the Owners at the meeting of the Board of Directors, nor may Owners vote to veto the proposed budget.

(iv) Following the budget meeting, written notice of any change in the annual assessment will be sent to each Owner.

Section 7.10 Special Assessments. In addition to the annual assessment provided for above, the Association may, at any time, and in addition to any other rights it may have, issue a special assessment against all Owners to meet any unanticipated or unexpected expenses and will become effective upon the affirmative vote of the Board of Directors at a meeting called for such purpose at which a quorum is present.

Section 7.11 Statement of Account. The Association will furnish to an Owner or the Owner's designee or to a holder of a security interest or its designee a statement setting forth the amount of unpaid assessments then levied against the Owner's Lot. The Association will deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party. The Association may establish a reasonable fee relating to the statement, which may incorporate any fees imposed by the Association or a managing agent.

Section 7.12 Surplus Funds and Common Profits. Common profits from whatever source will be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses will, at the option of the Board of Directors, be: (a) added to the Association's capital reserve account; (b) distributed to the Owners; or

(c) credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to their Lot or Home Site.

Section 7.13 Borrowing. The Association has the power to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments but only upon the affirmative vote of a majority of the voting credits present, in person or by proxy, at a duly constituted meeting called for that purpose, or by ballot in lieu of a meeting as provided for in the Bylaws.

ARTICLE 8. MAINTENANCE RESPONSIBILITY

Section 8.1 By the Owner. Each Owner is obligated to maintain and keep in good repair all portions of the Owner's Lot consistent with the Community-Wide Standard. This maintenance responsibility includes, but is not limited to the following:

(a) Improvements. Each Owner is responsible for maintenance, repair and replacement of the property and Improvements located within their Lot boundaries, including but not limited to, exterior lighting, decks, patios, pools, walks, driveways, , garage doors, windows and painting or staining the exterior surfaces of the Residence and any other approved Improvement on the Lot, including but not limited to, fences, corrals, and stables.

(b) Landscaping. Each Owner is required to maintain the landscaping on the Lot in a safe, neat, attractive and well-kept condition, which includes: keeping the Lot and Home Site free of diseased or dead vegetation (including trees), coarse weeds, long grass, loose vegetation and other rank or obnoxious growths or plants. Landscaping will not be maintained in any manner that impairs the ability of drivers to have unobstructed views from the street.

(c) Maintenance of Water Features. Each Owner shall maintain all water features on their Lot (including ponds, fountains, pools, spas, birdbaths and similar Improvements) so as to prevent stagnation. Owners shall not permit any water feature to become a nuisance or safety hazard such as, but not limited to, a breeding site for mosquitoes or to create a condition that may contribute to mosquito-borne disease which constitutes a health concern for the Association.

Each Owner must perform his obligations in a manner that does not unreasonably disturb other Owners and Residents.

Section 8.2 By the Association. The Association will maintain and keep in good repair as a Common Expense the Common Areas of the Community. The foregoing maintenance will be performed consistent with the Community-Wide Standard.

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

Section 8.3 Failure to Maintain. If the Association determines that any Owner has failed or refused to properly discharge his maintenance, repair, or replacement obligations, as provided in the Governing Documents, in addition to the Association's other rights to enforce this Declaration as found in Article 12 of this Declaration, the Association may give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary work at the Owner's sole cost and expense. The notice will describe with reasonable particularity the work the Association deems necessary. The Association has the right, but not the duty or obligation to conduct such necessary maintenance, repair or replacement work.

Unless the Association determines that an emergency exists, the Board of Directors will provide the Owner will have at least ten (10) days to control weeds, grass, and/or other unsightly growth on the Lot or Home Site and 30 days to complete maintenance or repair to the Residence or other Improvements on the Lot or Home Site or such other period of time as the Board determines is reasonable under the circumstances in its sole discretion. If the maintenance or repair of the Residence or other Improvements on the Lot or Home Site cannot reasonably be completed within such time period, the Owner must commence the maintenance, replacement, or repair within 30 days. If the Association determines that: (a) an emergency exists or (b) the Owner has not complied with the Association's demand, the Association may perform the work, then assess the cost of that maintenance, repair, or replacement against the Owner's Lot or Home Site, which cost will become the Owner's personal obligation, a lien against the Lot or Home Site, and collected as provided in this Declaration and the Association's collection policy (if any).

Section 8.4 **Maintenance Standards and Interpretation.** The maintenance standards and enforcement and the interpretation of maintenance obligations under the Governing Documents may vary from one term of the Board to another term of the Board. These variances do not constitute a waiver of any right to adopt and enforce maintenance standards. No decision or interpretation by a prior Board constitutes a binding precedent with respect to subsequent Board decisions or interpretations.

ARTICLE 9. ARCHITECTURAL CONTROLS

Section 9.1 **Architectural Review Committee.** The Architectural Review Committee ("ARC") consists of three or more persons appointed by the Board of Directors, one of whom must be a member of the Board of Directors. The Board of Directors may determine terms of office, fill vacancies, and may remove committee members, with or without cause. If the Board of Directors does not appoint committee members, the Board will serve as the ARC. The ARC may propose design guidelines from time to time, subject to the Board approval.

Section 9.2 **Approval Required.** No Owner will commence, place, erect, materially alter or demolish any Improvement to Property (as defined below) upon any portion of the Count Pourtales Community without prior written approval from the ARC.

Section 9.3 **Improvement to Property.** "Improvement to Property" requiring approval of the ARC, means and includes, without limitation: (a) construction, installation, erection, alteration or expansion of any building, structure or other Improvements, including utility facilities; (b) demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) grading, excavation, filling, or similar disturbances to the land including, without limitation, change of grade, ground level, or drainage pattern; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or plants unless they are diseased or dead; and (e) any change or alteration of any previously approved Improvement to Property by an Owner or Owner's predecessor-in-title, including any change of exterior appearance, color or texture.

Section 9.4 **Application Procedure.** The ARC may require that applications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed Improvement to Property, location and size of driveways, walls, and grading plan, as well as any other materials and information as may be required by the ARC and/or set forth in the Design Guidelines. Applications must be submitted to the ARC for review. Owners submitting applications are responsible for providing documentation to the ARC regarding harmony of external design, effective location and use of existing Improvements and proposed Improvements to Property, preservation of aesthetic beauty and conformity with specifications and purposes generally set forth in the Declaration and the Design Guidelines. The ARC may require submission of additional plans, specifications, samples, or other information prior to approving or disapproving the application. Notwithstanding Section 9.9 below, until the ARC has received all required materials in connection with the application, it may postpone review of any materials submitted for approval. The professional consultant shall review the plans and give a recommendation in writing to the ARC. Fees additional to the professional consultants may be charged by the Association to cover reasonable additional expenses incurred by the Association in the review of

multiple or revised submittals.

Section 9.5 Authority of Association to Engage Consultants. The Board has the authority to select and engage professional consultants to assist in reviewing applications and/or to inspect any of the work performed. The cost of any consultants are to be paid by the submitting Owner, whether or not the application is approved. Prior to incurring consultant costs, the Association will notify the Owner of its belief that review and/or inspections by consultants are necessary. The Owner will then have the right to withdraw the submission. The Association may require payment of costs prior to review.

Section 9.6 Architectural Review Criteria. The ARC will exercise its reasonable judgment with the objective that proposed Improvements to Property conforms to and harmonizes with the existing surroundings, Residences, landscaping and structures. The ARC's approval on matters coming before it will not be unreasonably withheld, and actions taken will not be arbitrary or capricious. Criteria for approval include, but are not limited to: (a) conformity and harmony of exterior appearances with neighboring structures, including design compatibility and scale; (b) color and materials to be used; (c) location on the Lot or Home Site; (d) relation to the natural environment; (e) street visibility; (f) preservation of aesthetic beauty and conformity with the specifications and purposes generally set out in this Declaration and in the Design Guidelines, if any; and (g) any other matter the ARC deems to be relevant or appropriate. The Board or ARC may also consider the effect the proposal will have on the value of the neighboring Lots and Home Sites.

Section 9.7 Reply and Communication. The ARC will respond to Owner's application within 45 days of receipt of the completed application and all information the ARC reasonably requires. If the ARC fails to respond to the application within this time frame, then the applicant may send written notice, via certified mail, to the Association president and the Association's managing agent (if any), that the applicant intends to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within 15 days of receipt of the applicant's notice, the approval will not be required and this article will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this article are satisfied, nothing herein authorizes anyone to construct or maintain any Improvement to Property that is otherwise in violation of the Governing Documents or of any applicable zoning or other laws.

Section 9.8 Commencement of Approved Work. All Improvements to Property approved by the ARC must be commenced within six (6) months from the date of approval. If not commenced within this time, then approval expires, unless the ARC gives a written extension to start the work. At a mutually agreed time, the ARC or its representative is authorized to enter the Lot to inspect the ongoing and completed work. All work must be performed in accordance with the plans as approved by the ARC, including any conditions the ARC imposed.

Section 9.9 Completion of Approved Work.

(a) All work approved by the ARC will be completed within 90 days from the date of commencement, unless the ARC otherwise agrees in writing. All approved Improvements to Property must be completed in their entirety, unless the ARC otherwise agrees in writing.

(b) Any new Residence build approved by the ARC will be completed within eighteen (18) months from the date of commencement, unless the ARC otherwise agrees in writing.

(c) Upon completion, the Owner will give written notice of completion to the ARC. All applicable statute of limitations will be tolled until the Association receives the written notice of completion.

Section 9.10 Reconstruction of Damaged Structures. In the event any approved Improvement constructed prior to the recording date of this Declaration is partially or totally damaged, the Board of Directors may, upon written application, give consideration to the application of the setback and

height restrictions set forth in this Declaration. To the extent it is necessitated by reasonable construction considerations (e.g., foundation footprints), building codes, and/or insurance requirements that affect rebuilding conditions, the requirements contained in Article 6 and 10.17 of this Declaration may be waived or altered by the Board of Directors, but only to the extent that the original Improvement may have been outside said restrictions.

Section 9.11 Notice of Noncompliance. The Board will issue the owner a notice of non-compliance if work is done without prior approval, or is not performed in accordance with the approved application, or is not completed within the required time frame. Within 45 days and at the Owner's sole cost and expense, the Owner must correct items listed in the notice of non-compliance, restore the Lot or Home Site to the condition that existed prior to the commencement of the work, or submit a new application to the ARC for approval.

Section 9.12 Right to Appeal. If the Board is not acting as the Committee, the applicant may appeal the Committee's decision to the Board of Directors by written appeal submitted to the Board within 20 days of the date that the ARC decision or notice is mailed to the Owner. The Board of Directors will review the decision of the ARC and all materials submitted to the ARC pursuant to the criteria set forth in this article and the Design Guidelines. The ARC's decision may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the reversal when the Board concludes that the ARC's decision was not consistent with the criteria set forth in this article and the Design Guidelines, if any. If the Board denies the Owner's appeal, the Owner will have 45 days from the date of notice of the Board's decision to correct the noncompliance. If the Board does not issue its decision on any appeal within 60 days of the submission date, then appeal is deemed denied.

Section 9.13 Limitation of Liability. Neither the Association nor its directors, officers, committee members or agents will bear any responsibility for the design, quality, structural integrity or soundness of approved construction or modifications, nor for compliance with building codes, zoning regulations, and other governmental requirements. The Association, its directors, officers, committee members, and agents are not liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or to modifications to any Lot or Home Site. No lawsuit, action or claim may be brought against any of the foregoing for any injury, damage or loss.

Section 9.14 No Waiver of Future Approvals. The Association's approval of any proposals and applications for any work done or proposed, or in connection with any other matter requiring the Association's approval, is not a waiver of any right to withhold approval as to any similar proposals and applications.

ARTICLE 10. USE RESTRICTIONS

Section 10.1 Owner Responsibility for Compliance. Each Owner is responsible for ensuring that the Owner's family, guests, and Residents comply with all provisions of the Governing Documents. Each Owner and Resident will endeavor to observe and promote the purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, or Residents as a result of the person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner.

Section 10.2 Use of Lots.

(a) Residential /Business Use. There shall only be one Residence on a Home Site. Except as provided below, each Lot or Home Site will be used for private residential purposes only. All Residences and Improvements require the prior written approval of the ARC before Owners may start construction. Unless required by statute no Accessory Dwelling Units are allowed within the Association.

(b) Unless otherwise expressly authorized by statute and subject to its terms and except for recreational use not requiring ingress to the property from within the Count Pourtales Addition

that shall be permitted for specified portions of Block 8, Lots 1 and N, no trade or business of any kind may be conducted in or from a Lot, Home Site, or any part of the Community, except that the Owner residing in the Residence, or the Resident, may conduct ancillary business activities within the Lot or Home Site so long as the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of the Lot or Home Site;

(ii) does not involve visitation of the Lot or Home Site by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a Residence without business activity;

(iii) is legal and conforms to all zoning requirements;

(iv) does not increase traffic in the Community in excess of what would normally be expected for Residences in the Community without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other similar delivery services);

(v) does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(vi) is consistent with the Community's residential character, and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Residents, as determined by the Association; and

(vii) does not result in a materially greater use of Common Area or Association services.

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

Section 10.3 **Leasing.** The Community is intended to be an owner-occupied community. However, any Owner has the right to lease or allow occupancy of a Lot or Home Site upon terms and conditions the Owner deems advisable, subject to restrictions of this Declaration, any other restrictions of record, and the following:

(a) "Leasing" for the purposes of this Declaration is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner, with or without consideration.

(b) Leases will be for or of the entire Lot or Home Site.

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

(d) All leases will be in writing and will provide that the lease is subject to the Governing Documents. Owners are required to provide Residents with copies of the current Declaration and Rules and Regulations.

(e) Each Owner who leases his Lot or Home Site will provide the Association, upon request, a copy of the current lease (lease amount may be redacted) and tenant information, including the

names of all Residents, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

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

(g) All Owners who reside at a place other than the Lot or Home Site will provide to the Association an email address, mailing address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. The Owner is solely responsible to keep this information current.

(h) If a Lot or Home Site is leased or occupied in violation of this section or if the Owner or Resident violates the Governing Documents, the Association will be authorized, in addition to all other available remedies, to levy fines against the Resident and/or Owner, and to suspend all voting and/or recreational facilities use privileges.

Section 10.4 Use of Common Areas.

(a) No Owner or Resident shall use any portion of Common Area for private use.

(b) Pets must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Areas.

(c) No Structures shall be erected or constructed thereon any portion of Common Area.

(d) No motorized wheeled vehicles shall be allowed in Common Area except as authorized by the Board or required by statute.

(e) There will be no obstruction of Common Area, nor will anything be kept, parked, or stored on or removed from any part of the Common Area.

(f) No Owner, Resident or guest shall store or dump any trash debris or dead or loose vegetation or other items thereon any portion of Common Area.

(g) No Owner, Resident or guest shall cut, trim or remove any vegetation from Common Area without written consent of the Board. Owner will bear the expense if approved by the Board.

(h) Owner, Resident or guest shall immediately pick up their pet's waste off of Common Area.

(i) The Association may remove unattended personal property from Common Area.

(j) The Association will not be liable to the Owner of any Lot or Home Site or his Residents, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Areas or for the removal of such property

(k) The Association may adopt additional Rules and Regulations to supplement this section.

Section 10.5 Temporary Structures. No mobile home, house trailer or temporary Improvement of any kind shall be constructed or maintained on any Lot or Home Site. When actual construction of a Residence or other approved Improvement has commenced, the builder may erect or

install a temporary office and tool house. There may be one storage container allowed to be used as such only during the period of such construction.

Section 10.6 Drainage. There will be no interference with the established drainage patterns over any property within the Community, unless adequate provision is made for proper drainage and approved by the ARC. In the event of any such interference where there has been no adequate provision made for proper drainage, the Owner interfering with the established drainage patterns will be liable for any damage resulting from such interference.

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

Section 10.7 Landscaping Requirements. All landscaping is subject to the approval of the ARC. Grass, shrubs and trees will be maintained in an attractive, healthy, live and growing condition, as more particularly provided for in this Declaration. Artificial vegetation of any kind including but not limited to artificial trees, artificial plants, artificial grasses, artificial turf or artificial flowers is prohibited as landscaping materials in all front yards and side yards visible from the street. Artificial vegetation is permitted in rear (back) yards provided that the installation complies with all other applicable provisions of this Declaration including the prior written ARC approval. Any front yard artificial turf installation that received written approval by the Association prior to the effective date of this Declaration shall be "grandfathered" and permitted to remain in place for the duration of its useful life so long as it continues to be maintained in a neat, clean and attractive condition at all times.

Section 10.8 Prohibition of Damage, Hazardous Activities, Nuisance and Noise. Nothing will be done or kept on a Lot, Home Site, or the Community that would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

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

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

Section 10.9 Animals.

(a) No animals except horses (where not otherwise prohibited by law), domesticated birds, fish, cats, dogs, and other small domestic animals kept as household pets shall be kept on any part of the property. No swine, sheep, goats, cows, poultry or other barnyard animals other than horses shall be kept on the property or animals determined in the Association's sole discretion to be dangerous animals.

(b) Horses shall be confined by a fence or corral at all times subject to compliance with City codes and approved by the ARC which includes but not limited to setback requirements applicable to Improvements as set forth herein. No fencing, corral, stable or other horse-related Improvement shall be constructed, installed or modified without prior written approval of the ARC.

(c) Animals shall not be permitted, which make an unreasonable amount of noise or are otherwise a nuisance.

(d) All manure and straw, sawdust or other similar bedding material of horses and other animals shall be regularly removed from all property so as not to cause an insect, odor, or health problem.

(e) Feces left by pets upon Common Area or on Lots or Home Sites within the Community, must be removed promptly by the pet owner or other person responsible for the pet.

(f) Pets must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Areas.

(g) No Owner or Resident may keep, breed or maintain any pet for any commercial purpose.

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

(i) The Association may adopt additional Rules and Regulations to supplement this section.

Section 10.10 Unsightly Articles. No unsightly article will be permitted to remain on any Lot, Home Site, or other portion of the property if it is visible from adjoining property, Common Area, or public or private thoroughfares.

Section 10.11 Refuse and Rubbish.

(a) No lumber, ashes, trash, debris, rubbish, garbage, scrap material, dead or loose vegetation, or other refuse or garbage cans shall be stored, accumulated or deposited on any Lot so as to be visible from any other Home Site or public street, except for the day of any refuse collections.

(b) No one shall use any portion of the Common Areas for storing or dumping any trash, debris or dead or loose vegetation or other items thereon.

(c) During new construction and remodeling activities, the Owner is responsible for ensuring contractors keep the site clean and free of trash and debris. Trash and debris shall be contained in receptacles in a manner to prevent items from blowing into neighboring Lots and Home Sites.

Section 10.12 Vehicles and Parking.

Prohibited Vehicles. The outside parking of motor homes, campers, oversized vehicles and equipment, tractors, trailers, boats or other similar items is prohibited and such vehicles shall not be parked or stored outside on the Lot, Home Site or other portion of the property so as to be visible from any street, Common Area, or neighboring property. No stripped-down, wrecked or inoperable motor vehicle, or part thereof, shall be parked on any street or on any Lot or Home Site. Emergency vehicles,

as defined in the Act, are permitted in the Community. Vehicles used for maintenance, repair, construction and similar for work on a Homeowner's Lot or Home Site may be permitted to be stored on a Home Site during the duration of a project with the prior approved by the ARC and subject to the Association's Rules and Regulations. Mobile homes and recreational vehicles may be temporarily parked at a Residence for up to 72 hours for the purpose of loading or unloading only.

Section 10.13 Vehicle Repair. Except for routine washing and polishing, all maintenance, repair, rebuilding, dismantling, repainting, or servicing of vehicles, trailers, and boats must be performed entirely within a fully enclosed structure that screens the activity from the street and neighboring properties.

Section 10.14 Signs and Flags. The Board may adopt rules, regulations, and policies to regulate the number, size, use, and placement of signs and flags on Lots, Home Sites, and within the Community.

Section 10.15 Antennas and Satellite Dishes. Satellite dishes, antennae or other devices for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation will not be erected, used or maintained by Owners or Residents on any portion of the Common Areas. Homeowners are required to submit to the ARC plans for the installation of said devices for review and approval, subject to the Design Guidelines before installation on their Lot or Home Site.

Section 10.16 No Mining and Drilling. No portion of the Community will 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, 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.

Section 10.17 Height Restrictions. No Improvement (but excluding chimneys on Residences) shall be constructed or altered on the said property with a height in excess of 30 feet as measured from the point where the perimeter of the foundation meets the highest elevation of the existing natural grade. For purposes of this restriction, the existing natural grade shall be taken to mean the natural contour of the Home Site as it existed at the recording date of this Declaration, and before any excavation or addition of fill materials, and any unusual contour of the grade considered by the ARC to be abnormal to a natural grade shall be disregarded as a measurement datum. To facilitate such measurement, a benchmark, subject to the approval in its discretion of the ARC, shall be established and retained on site. Final measurement of as-built heights from this benchmark shall be subject to review and witnessing by a designated agent of the ARC to confirm compliance with the height restrictions established herein.

Approved Improvements existing at the recording date of this Declaration which exceed 30 feet in height as so measured shall be permitted; provided that no Improvement thus exempted from the height limitation shall thereafter be further increased in height.

Section 10.18 Density. The percent of the Home Site area that may be covered by all the footprints of any Improvement other than driveways including, without limitation, detached garages, carports, sheds, gazebos, covered patios and decks, shall not exceed twenty (20) percent of the area of a Home Site bordering only one road or more than twenty-five (25) percent of the area of Home Site bordering two or more adjacent roads.

Section 10.19 Rules and Regulations. The Board of Directors may adopt, amend and repeal rules and regulations concerning and governing the Residences, Lots, Home Sites, and Common Areas to further the provisions of this Declaration and the general plan of development.

ARTICLE 11.

INSURANCE

Section 11.1 Insurance on the Lots and Home Sites. Each Owner should obtain property and liability insurance covering loss, damage or destruction by fire or other casualty to the Improvements, installed or made to their Lot and Home Sites, the other property of that Owner, and any injuries occurring to the persons while on a Lot or Home Site. The Association will not be liable for the failure of any Owner to maintain insurance.

Section 11.2 Insurance to be Carried by the Association. The Association will obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as required by statute. Insurance coverage includes the following and will be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

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

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

(c) Association Fidelity Insurance. The Association will obtain fidelity coverage to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees and others who are responsible for handling the funds of the Association.

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

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

Section 11.3 Miscellaneous Terms Governing Insurance Carried by the Association. The Association will maintain, to the extent reasonably available, insurance policies with the following terms or provisions.

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

(b) All insurance policies will contain waivers of any defense based on invalidity arising from any acts of an Owner.

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

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

Section 11.4 Insurance Premium. Insurance premiums will be a Common Expense included as a part of the Association's annual assessments.

Section 11.5 Managing Agent's Insurance. The managing agent, if any, will maintain insurance for its benefit, and will maintain and submit evidence of coverage to the Association. Insurance will include professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage (unless the Association otherwise provides fidelity coverage).

Section 11.6 Insurance Review. The Board may review the insurance carried by the Association periodically, to determine the amount of insurance required and the service capabilities of the current carrier.

Section 11.7 Claims and Adjustments by the Association. Any loss covered by an Association insurance policy will be adjusted by the Association. The insurance proceeds for a loss will be payable to the Association and not to any holder of a first lien security interest. The Association will hold any insurance proceeds for the repair or restoration of the damaged property. The Association is not entitled to use insurance proceeds for other purposes unless there is a surplus after the damaged property has been completely repaired or restored.

Section 11.8 Duty to Repair. The Association must repair or replace promptly any portion of the Community for which insurance is required under this article that is damaged or destroyed, unless Owners entitled to cast 67% of the total Association vote agree not to rebuild.

Section 11.9 Condemnation and Property Insurance Allocations and Distributions. In the event condemnation proceeds or property insurance proceeds are distributed to the Owners, the distribution will be as the parties with interests and rights are determined or allocated by record and pursuant to statute.

Section 11.10 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, submits a claim under the Association's insurance policies or not, the Association will pay or absorb the deductible amount for any work, repairs or reconstruction for damage to property that is the Association's maintenance responsibility unless the damage is caused by the negligent or willful act or omission of an Owner, the Owner's family, guests, invitees, or trespasser in which case the Association will seek reimbursement of the deductible amount as an individual assessment in compliance with and under the terms of the Declaration.

Section 11.11 Insurance Assessments. If the insurance proceeds are not sufficient to defray the costs of reconstruction and repair for any reason, including the allocation of deductibles, the deductible or additional cost may be a Common Expense or specially assessed against individual(s) Owner(s) benefitting from the reconstruction and repair.

Section 11.12 Damage to or Destruction of Residences on Lots. In the event of damage to or destruction of structures on a Lot or Home Site, the Owner will promptly repair or reconstruct the damaged structure in a manner consistent with the original construction or plans approved in accordance with this Declaration unless the Owner elects not to rebuild in cases of substantial damage or destruction. If the structure is substantially destroyed and the Owner determines not to rebuild or reconstruct, the Owner will promptly clear the Lot and Home Site of all debris and continue to maintain the Lot and Home Site in a neat and attractive condition consistent with this Declaration.

ARTICLE 12.

AUTHORITY AND ENFORCEMENT

Section 12.1

Compliance With and Enforcement of Governing Documents.

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

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

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which will be a lien upon the violator's Lot;

(ii) suspending voting rights;

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

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

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

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

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

(i) exercising self-help in any emergency situation (specifically including, but not limited to, towing vehicles that are in violation of any parking Rules and Regulations); and/or

(ii) instituting any civil action to enjoin any violation or to recover monetary damages or both.

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

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

Section 12.2 Failure to Enforce. The Board will have the discretion to determine whether enforcement action in any particular case will be pursued; provided that the Board will exercise judgment, be reasonable and not be arbitrary and capricious. Notwithstanding the above, no right of action will exist

against the Association for failure of enforcement where: (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so. A decision of the Association not to pursue enforcement action will not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

ARTICLE 13. AMENDMENTS

Except where a higher vote is required for action under any other provision of this Declaration or by statute, in which case such higher vote will be necessary to amend such provision, this Declaration may be amended in whole or in part by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the majority of Owners of the Association's total voting credits currently in good standing.

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

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

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

ARTICLE 14. GENERAL PROVISIONS

SECTION 14.1 Security. The Association may, but will not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her family members, tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and the Association will not have a duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or Residents. It will be each Owner's and Resident's responsibility to protect his or her person and property and all responsibility to provide such security will lie solely with each Owner. The Association will not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

Section 14.2 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate any of its rights or privileges.

Section 14.3 Electronic Records, Notices and Signatures. Notwithstanding any other portion of this Declaration, records, signatures and notices will not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The

relevant provisions of the Bylaws will govern the giving of all notices required by this Declaration.

Section 14.4 Association's Board of Directors Resolves Questions of Construction.

If any doubt or questions shall arise concerning the true intent or meaning of any of this Declaration, the Board of Directors of the Association shall determine the proper construction of the provision in question and may set forth in written instrument duly executed on behalf of the Association, notarized and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect and application of the provision. The definition will thereafter be binding on all Owners so long as it is not arbitrary or capricious.

Section 14.5 Notices. Except as provided otherwise herein, any writing to be given by the Association described in this Declaration, including but not limited to, any communication from the Association to an Owner, shall be sufficiently served if personally or electronically delivered to the Owner, or if posted by First Class U.S. prepaid mail addressed: (a) to the Residence situated on the Home Site owned by that Owner; or (b) if there is no Residence, then to the address furnished by the Owner to the Association; or (c) if the Owner has not furnished an address, then to the most recent address of which the Association has a record.

Section 14.6 Duration. The covenants and restrictions of this Declaration will run with and bind the property perpetually unless otherwise terminated as provided by statute.

Section 14.7 Severability. Invalidity of any one of these covenants or restrictions by judgment or court order or otherwise will in no way affect the application of such provision to other circumstances or affect any other provision(s), which will remain in full force and effect.

Section 14.8 Public in General. The rights and burdens created in this Declaration do not, are not intended to, and will not be construed to create any rights and burdens in or for the benefit of the general public.

Section 14.9 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and do not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article.

Section 14.10 Singular Includes the Plural. Unless the context otherwise requires, the singular includes the plural, and the plural includes the singular, and each gender referral is deemed to include the masculine, feminine and neuter.

Section 14.11 Conflicts. In the event of a conflict between this Declaration and the Articles of Incorporation or Bylaws, this Declaration will control. In the event of a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

IN WITNESS WHEREOF, the undersigned officer of the Count Pourtales Association hereby certifies that this Third Amended and Restated Declaration was adopted by the Owners of the Association or that the District Court of El Paso County has entered an order approving this Third Amended and Restated Declaration.

This _____ day of _____, 2026.

THE COUNT POURTALES ASSOCIATION

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Declaration was acknowledged before me by _____,
_____ of the Association, on this _____ day of _____, 2026.

Notary Public

My commission expires: _____

EXHIBIT "A"

Legal Description of Community

[To be attached]