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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
STRATTON FLATS MASTER ASSOCIATION**

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
STRATTON FLATS MASTER ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR STRATTON FLATS MASTER ASSOCIATION, INC. (this "**Declaration**") is made as of January, 23, 2009, by Stratton Flats, LLC, a Colorado limited liability company ("**Declarant**").

**Recitals**

- A. Declarant owns the real property located in the Town of Gypsum, Eagle County, Colorado, that is described on Exhibit A attached hereto (the "**Property**").
- B. Declarant desires to create a planned community on the Property pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes Sections 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time (the "**Act**").
- C. Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions set forth in this Declaration.

**Declaration**

In consideration of the foregoing, Declarant hereby declares as follows:

ARTICLE I  
DECLARATION

1.01 Declaration.

Declarant hereby creates a planned community named "Stratton Flats" on the Property and declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration.

1.02 Covenants Running With the Land.

All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, Declarant's Affiliates, the Master Association, the Condominium Association, the Townhome Association, and the Owners (as such terms are defined in Section 2.01) and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

ARTICLE II  
DEFINITIONS

2.01 Basic Definitions.

As used in this Declaration, the following terms shall have the meanings given to them in this Section 2.01, unless the context expressly requires otherwise:

"**Act**" has the meaning given to that term in Recital B.

"**Affiliate**" means any Person that, directly or indirectly, is in control of, is controlled by or is under common control with a Person for whom an affiliate is being determined. For purposes hereof, control of a Person means the power, direct or indirect, to (i) vote twenty percent (20%) or more of the ordinary voting power of such Person, or (ii) direct or cause the direction of the management and policies of such Person whether by contract or otherwise, and either alone or in conjunction with others.

"**Applicable Law**" means any law, rule, regulation, order, decree or other requirement having the force of law and, where applicable, any interpretation thereof by any authority having jurisdiction with respect thereto or charged with the administration thereof.

"**Articles**" means the articles of incorporation of the Master Association, as the same may be amended from time to time.

"**Assessment**" means a General Assessment, a Limited Assessment or a Default Assessment levied pursuant to Article VII.

"**Assessment Lien**" means the lien of the Master Association on a Site described in Section 7.08.

"**Association**" has the meaning given to that term by the Act.

"**Bylaws**" means the bylaws of the Master Association.

"**Common Elements**" means any real estate and any improvements or fixtures located on such real estate that are:

- (i) owned by the Master Association; or
- (ii) owned by a Person other than the Master Association, but in which the Master Association has rights of use, possession and/or maintenance and repair obligations pursuant to (A) this Declaration, or (B) a lease, license, easement or other agreement.

By way of illustration and not limitation, the Common Elements include all roads and street lighting within the Property, certain parking areas, the storm water pond, the irrigation pond and system, the gazebo, tot lot, basketball court and Recreational Vehicle Parking Lot. The term Common Elements includes General Common Elements and Limited Common Elements.

"**Common Expenses**" means:

- (i) any and all costs, expenses and liabilities incurred by or on behalf of the Master Association, including, without limitation, costs, expenses and liabilities for (A) acquiring, owning, leasing, selling, transferring, encumbering, granting easements over, managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements or any other property of

the Master Association; (B) carrying out any of the purposes, and exercising any of the powers, of the Master Association as described in any Master Association Documents, including, without limitation, those purposes and powers described in Section 4.02; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (E) maintaining and enhancing property values within Stratton Flats; (F) taking any action it deems necessary or appropriate to protect the general welfare of Owners and their Guests; (G) regulating and managing Stratton Flats; (H) operating the Master Association; and (I) performing and observing obligations or conditions to be performed or observed by the Master Association under any easement, contract or agreement, including, without limitation, those easements and agreements described on Exhibit B attached hereto; and

(ii) reserves for any such costs, expenses and liabilities.

"**Common Interest Community**" has the meaning given to that term in the Act.

"**Condominium**" has the meaning given to that term in the Act.

"**Condominium Association**" means an Association of a Condominium within Stratton Flats.

"**Condominium Director**" has the meaning given to that term in Section 6.02.

"**Condominium Unit**" means a Unit within the Stratton Flats Condominium.

"**Contractor**" means any Person, including a general contractor and subcontractors, engaged by the developer of the Stratton Flats Planned Community for the construction of the Stratton Flats Planned Community and/or the construction of the residences on the Single Family Lots.

"**CPI**" means the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (1982-84=100), Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the United States Department of Labor. If publication of the CPI is discontinued or published less frequently, then the Master Association shall adopt a substitute index published by a United States governmental body or recognized United States financial institution that reasonably reflects and monitors consumer prices in the United States.

"**CPI Adjustment Factor**" means a fraction, the numerator of which is the CPI available for the month in which the adjustment occurs and the denominator of which is the CPI for the same month in the immediately preceding year.

"**Declarant**" has the meaning given to that term in the introductory paragraph of this Declaration.

\* "**Declarant Control Period**" has the meaning given to that term in Section 6.04. \*

"**Declarant Rights**" means any rights reserved to Declarant under this Declaration or any other Master Association Document, including, without limitation, all Special Declarant Rights.

"**Declaration**" has the meaning given to that term in the introductory paragraph of this Declaration.

"**Default Assessment**" has the meaning given to that term in Section 7.06.

"**Designated Parking Spaces**" has the meaning given to that term in Section 10.15.

"**Design Consultant**" means any Person engaged by the Contractor or the developer of the Stratton Flats Planned Community to assist in the design or construction of any Improvement, including architects, landscape designers, engineers and similar design professionals.

"**Design Review Board**" has the meaning given to that term in Section 8.01.

"**Director**" means a duly elected or appointed member of the Executive Board.

"**Eagle County Records**" means the Office of the Clerk and Recorder for Eagle County, Colorado.

"**Executive Board**" means the board of directors of the Master Association.

"**First Mortgage**" means any Mortgage that is not subordinate to any other lien or encumbrance, except liens for taxes or other liens that are given priority by any Applicable Laws.

"**First Mortgagee**" means a Mortgagee under a First Mortgage.

"**General Assessment**" has the meaning given to that term in Section 7.04.

"**General Common Elements**" means those Common Elements available for use by all Owners and Owner's Guests.

"**Guest**" means any family member, agent, independent contractor, lessee, licensee or invitee of an Owner.

✗ "**Irrigation System**" has the meaning given to that term in Section 4.07. ✗

"**Limited Assessment**" has the meaning given to that term in Section 7.05.

"**Limited Common Element**" means any Common Element designated as such in connection with the Master Association's acquisition of such Common Element or as otherwise permitted by the Act.

"**Majority**" means any percentage greater than fifty percent (50%).

"**Master Association**" means the Stratton Flats Master Association, Inc., a Colorado nonprofit corporation, and its successors and assigns as the association of Owners for Stratton Flats.

"**Master Association Documents**" means this Declaration, the Plat, the Articles, the Bylaws and the Rules and Regulations.

"**Mortgage**" means any mortgage, deed of trust or other document pledging any Site or any interest in a Site as security for payment of a debt or obligation.

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

"**Officer**" means a duly elected or appointed officer of the Master Association.

"**Owner**" means the record holder of legal title to the fee simple interest in any Site or portion thereof. If there is more than one record holder of legal title to a Site, each record holder shall be an Owner. The term Owner includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in any Site.

**"Person"** means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other person or entity recognized as being capable of owning real property under the laws of the State of Colorado.

**"Planned Community"** has the meaning given to that term in the Act.

**"Plat"** means, collectively, the Preliminary Plat of Stratton Flats Planned Unit Development, recorded March 21, 2008 under Reception No. 200806089, Eagle County, Colorado, the Final Plat of Stratton Flats Planned Unit Development, recorded March 21, 2008 under Reception No. 200806090, Eagle County, Colorado, the First Amendment to Final Plat of Stratton Flats Planned Unit Development, recorded January 22, 2009 under Reception No. 200900843, Eagle County, Colorado, and any supplements and/or amendments thereto, and any subsequent plat of any real property that is later made subject to this Declaration.

**"Property"** means:

- (i) the Property; and
- (ii) any real property that is later made subject to this Declaration in accordance with the terms and conditions contained herein or otherwise in accordance with applicable law.

**"Purchaser"** means a Person, other than Declarant or a Successor Declarant, who acquires legal title to the fee simple interest in any Site or portion thereof.

**"Recreational Vehicle Parking Lot"** means that particular parking area to be located on Tract Q as identified on the Plat.

**"Rules and Regulations"** means any instrument adopted by the Master Association or the Design Review Board for the regulation and management of Stratton Flats.

**"Share of Common Expenses"** has the meaning given to that term in Section 7.02.

**"Single-Family Lot"** means any lot designated as such by Declarant in this Declaration, together with any amendments or modifications hereto.

**"Single-Family Director"** has the meaning given to that term in Section 6.02.

**"Site"** means any one of the following parcels of real property that is located within Stratton Flats:

- (i) a Condominium Unit;
- (ii) a Townhome Lot;
- (iii) a Single-Family Lot; or
- (iv) an unplatted parcel of real property that is not within another Common Interest Community, the fee simple interest of which may be conveyed in its entirety to another Person without violating the subdivision regulations of the Town, as in effect from time to time.

Notwithstanding the foregoing, any such parcel of real property owned, held or used in its entirety (A) by the Master Association, (B) as common elements for the Condominium Association or the Townhome

Association, (C) by any governmental or quasi-governmental entity, (D) solely for or in connection with the distribution of electricity, gas, water, sewer, telephone, cable television or any other utility service, or (E) solely for access to or through any property within Stratton Flats, shall not be considered a Site.

**"Special Declarant Rights"** means the rights reserved by Declarant in Article XV.

**"Stratton Flats"** means the planned community created on the Property by this Declaration.

**"Successor Declarant"** means any Person who succeeds to any rights of Declarant hereunder.

**"Supplemental Declaration"** means additional covenants, conditions and restrictions which may be placed on the Property or any portion thereof by one or more instruments recorded in the Eagle County Records prior to the time Declarant transfers or conveys said property to the Master Association or any other Person which further restrict the use, density or design of the applicable property.

**"Townhome Director"** has the meaning given to that term in Section 6.02.

**"Townhome Lot"** means a Unit within Stratton Flats Townhomes.

**"Unit"** has the meaning given to that term in the Act.

#### 2.02 Usage.

Wherever the context of this Declaration so requires:

- (a) references to one gender include all genders;
- (b) words used in the singular shall include the plural and words used in the plural shall include the singular;
- (c) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted under this Declaration;
- (d) the term "including" is not limiting;
- (e) the term "or" has the inclusive meaning represented by the phrase "and/or";
- (f) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Declaration refer to this Declaration as a whole and not to any particular provision of this Declaration;
- (g) Article, Section, clause, paragraph and Exhibit references are to this Declaration unless otherwise specified; and
- (h) references to any agreement, document or instrument (including this Declaration) means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

#### 2.03 Definitions that Reference Statutes.

If a capitalized term used in this Declaration is defined as having the meaning given to that term in a particular Colorado statute, the meaning of that term in this Declaration shall be the meaning given to

that term in the particular Colorado statute as of the date of this Declaration, regardless of any later amendments to that particular Colorado statute.

### ARTICLE III SITES AND COMMON ELEMENTS

#### 3.01 Sites.

Declarant reserves the right to create a maximum of three hundred and thirty-nine (339) Sites within Stratton Flats, as the same may be expanded from time to time.

#### 3.02 Separate Taxation of Sites.

Pursuant to the Act, each Site constitutes a separate parcel of real estate and will be separately assessed and taxed.

#### 3.03 Common Elements.

(a) An Owner may use the Common Elements for their intended purposes subject to the terms and conditions of this Declaration and the Rules and Regulations.

(b) An Owner may grant its rights to use any General Common Elements and any Limited Common Elements appurtenant to the Owner's Site to the Owner's Guests.

(c) Except as expressly provided to the contrary in this Declaration, the allocation of the Limited Common Elements to the Sites may not be altered without the consent of all Owners of the Sites to which the Limited Common Elements are allocated, and then only in accordance with the terms and conditions of the Act.

(d) Except as expressly provided to the contrary in this Declaration, an Owner's right to use the Limited Common Elements allocated to the Owner's Site, if any, may not be partitioned or separated from the Site or any part thereof.

### ARTICLE IV THE MASTER ASSOCIATION

#### 4.01 Formation of the Master Association.

✓ On or before the date on which Declarant first conveys a Site within Stratton Flats to a Purchaser, Declarant shall form the Master Association.

#### 4.02 Purposes and Powers.

(a) The Master Association's purposes are:

(i) to acquire, own, lease, sell, transfer, grant easements over, encumber, manage, operate, insure, improve, repair, replace and maintain the Common Elements and all other property of the Master Association;

(ii) to provide and maintain certain facilities and services to Owners and their Guests, including roads and parking facilities, recreational facilities and services, open space, trails,

paths, sidewalks, irrigation facilities and services, trash removal facilities and services, snow removal services and drainage facilities and services;

(iii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;

(iv) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;

(v) to maintain and enhance property values within Stratton Flats;

(vi) to take any action it deems necessary or appropriate to protect the general welfare of Owners and their Guests;

(vii) to enter into agreements with other Persons, including, without limitation, easements, licenses, leases and other agreements with the Condominium Association, the Towhome Association, and other Associations and governmental and quasi-governmental entities, which provide for the sharing of expenses among the Master Association and such other Persons for improvements, facilities and services that serve the Master Association and such other Persons; and

(viii) to regulate and manage the Master Association.

(b) Unless expressly prohibited by law or any of the Master Association Documents, the Master Association may:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes, including, without limitation, the hiring and terminating of employees, agents and independent contractors;

(ii) exercise any powers conferred by the Act or any Master Association Document;

(iii) exercise all powers that may be exercised in the State of Colorado by nonprofit corporations including, without limitation, the power to borrow money and to secure any such borrowing with the Common Elements and other assets of the Master Association; and

(iv) merge or consolidate with one or more Associations or other Persons.

(c) Without in any way limiting the powers of the Master Association as described in Section 4.02(b), the Master Association may, but is not obligated to:

(i) charge use fees for the use of any Common Elements and for the use of any facilities or services provided by the Master Association;

(ii) make capital improvements to the Common Elements; and

(iii) provide facilities and services itself or contract with private, governmental and/or quasi-governmental Persons to provide facilities and services.



4.03 Master Association Documents.

(a) This Declaration creates the planned community known as Stratton Flats and creates certain covenants, conditions, restrictions, reservations, easements, assessments, charges and liens applicable to Stratton Flats. The Articles create the Master Association. The Bylaws provide for the regulation and management of the Master Association, and the Rules and Regulations provide for the regulation and management of Stratton Flats.

(b) If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

4.04 Books and Records.

(a) The Master Association shall keep as permanent records each of the following:

- (i) minutes of all meetings of Owners and the Executive Board;
- (ii) a record of all actions taken by the Owners or Executive Board by written ballot or written consent in lieu of a meeting;
- (iii) a record of all actions taken by a committee of the Executive Board in place of the Executive Board on behalf of the Master Association; and
- (iv) a record of all waivers of notice of meetings of Owners and waivers of notice of meetings of the Executive Board or any committee of the Executive Board.

(b) The Master Association shall keep a copy of each of the following records at its principal office:

- (i) the Articles;
- (ii) this Declaration;
- (iii) the Bylaws;
- (iv) any resolutions adopted by the Executive Board relating to the characteristics, qualifications, rights, limitations and obligations of Owners;
- (v) the minutes of all Owners' meetings, and records of all action taken by Owners without a meeting, for the past three (3) years;
- (vi) all written communication from the Executive Board to Owners generally as Owners within the past three (3) years;
- (vii) a list of names and business or home addresses of its current Directors and Officers;

(viii) the most recent annual report of the Master Association, if any; and

(ix) all financial audits or reviews of the Master Association during the immediately preceding three (3) years.

(c) Upon request, during normal business hours and under other reasonable circumstances, the Master Association shall allow any Owner, First Mortgagee or their respective agents to inspect current copies of (i) the Articles, the Bylaws, this Declaration and the books, records, budgets and financial statements (including any audits thereof) of the Master Association, (ii) any written communications from the Executive Board to Owners generally during the previous three (3) years, and (iii) lists of the names and addresses of the current Directors and Officers of the Master Association. The Master Association may charge a reasonable fee for copying such materials which may be collected in advance. The fee shall not exceed the Master Association's actual expenses incurred for such copying.

(d) The minutes of any Executive Board or Owners' meeting shall be available for inspection within fifteen (15) days after any such meeting.

(e) The Master Association shall cause to be maintained a record of all Owners, by name and address, which lists the total number of votes each such Owner is entitled to vote.

(f) The books and records of the Master Association shall be subject to an audit (using generally accepted accounting standards) or a review (using statements on standards for accounting and review services) by an independent and qualified person selected by the Executive Board. The Executive Board, in its sole discretion, shall determine whether to conduct an audit or a review. The audit or review report, as the case may be, shall cover the Master Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting. The completed audit or review report, as the case may be, shall be made available to Owners, upon request, not later than thirty (30) days after such audit or review report is completed and approved by the Executive Board.

(g) Notwithstanding Section 4.04(f), an audit shall be required only if both of the following conditions are met:

(i) the Master Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and

(ii) an audit is requested by the vote of thirty-three percent (33%) or more of the Owners.

(h) Notwithstanding Section 4.04(f), a financial review shall be required only if requested by the vote of thirty-three percent (33%) or more of the Owners.

(i) A membership list or any part thereof may not be obtained or used by any person for any purposes unrelated to an Owner's interest as an Owner without prior written consent of the Executive Board.

4.05 Reserved.

4.06 Disclosures to Owners.

(a) Within ninety (90) days after the expiration of the Declarant Control Period the Master Association shall make available to Owners the following information upon reasonable notice by such Owners: (i) the name, address and telephone number of the Master Association; (ii) the name, address and telephone number of the property manager or, if there is no property manager, the Master Association's designated agent; (iii) the name of Stratton Flats; and (iv) the recording date and reception number of this Declaration. If the address of any of the Master Association, designated agent or management company changes, the Master Association shall make updated information available within ninety (90) days after such change.

(b) Pursuant to Section 6.04(f), the Master Association shall make available to Owners the information described therein within the time period required thereby.

4.07

Irrigation System.

The Master Association shall operate and maintain an irrigation system (the "Irrigation System") servicing portions of the Property in accordance with the Subdivision Improvements Agreement recorded March 21, 2008 as Reception No. 200806082, Eagle County, Colorado and that certain Long Term Water Lease Agreement Gypsum/Stratton Flats, LLC dated March 19, 2008 and recorded on March 21, 2008 as Reception No. 200806084, Eagle County, Colorado by and among the Town of Gypsum as lessor and Stratton Flats, LLC as lessee. The Irrigation System, up to and including the individual service connections to a Site, but excluding any other improvements to deliver raw water from any such individual service connection, will be Common Elements owned by the Master Association. When raw water is available through the Irrigation System, such raw water will be used solely by the Master Association and Owners for irrigation uses. The Master Association shall develop a fair and equitable system for apportioning the cost raw water use among the Master Association and the Owners, and each Owner shall be obligated to pay the Master Association any such charges, and shall be subject to all of the rights and obligations contained in Article VII of this Declaration, except that such charges need not be assessed equally to all of the Sites as Assessments. The Declarant shall not have any obligation to provide raw water for the raw water irrigation system, and the Declarant makes no guarantees regarding the supply of raw water. The Declarant expressly reserves the right to perform maintenance and repair of the Irrigation System from time to time, including the seasonal blowing out of water out of the Irrigation System. The Master Association shall have the right to impose limitations on each Owner's water use in accordance with such documents and the Rules and Regulations.

ARTICLE V  
MEMBERSHIP AND VOTING

5.01 Membership.

Every Owner shall be a member of the Master Association, and a Person who is not an Owner may not be a member of the Master Association.

5.02 Voting.

(a) Each Site shall be allocated one (1) vote which may not be separated from the Site. The vote shall be held by the Owner(s) of such Site and may be transferred or encumbered only in connection with the conveyance or encumbrance of the fee simple interest in such Site. Any transfer or encumbrance of any votes in the Master Association, other than as permitted in this Section 5.02(a), shall be null and void and have no force or effect.

(b) Notwithstanding the terms and conditions of Section 5.02(a), an Owner may appoint an agent to vote the votes allocated to such Owner's Site by a duly executed proxy, in such form as the Master Association may reasonably require.

(c) Class voting shall be allowed for the election and removal of Directors but for no other purpose.

(d) Cumulative voting shall not be allowed in the election of Directors or for any other purpose.

(e) Each Site shall be allocated one (1) vote, regardless of the number of Owners of that Site. If the Owners of a Site cannot agree among themselves as to how to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner of a Site casts the vote for that Site, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of that Site, unless an Owner of that Site makes an objection thereto to the Person presiding over the meeting when the votes are cast. If more than one (1) vote is cast for any Site, none of such votes shall be counted and all of such votes shall be deemed null and void.

#### 5.03 Secret Ballots.

When any vote is taken by the Owners for the election of a Director, such election shall be held by secret ballot. In addition, at the discretion of the Executive Board or upon the request of twenty percent (20%) of the Owners who are present at a meeting or represented by proxy, if a quorum has been achieved, any other vote to be taken by the Owners shall be conducted via secret ballot. The results of any vote taken by the Owners shall be counted by a neutral third Person or a committee of volunteers. Such volunteers shall be Owners who are selected or appointed at an open meeting, in a fair manner, by the person presiding during that portion of the meeting. The volunteers shall not be members of the Executive Board and, in the case of a contested election, shall not be candidates for a position on the Executive Board. In announcing the results of any vote taken by secret ballot, no identifying information of Owners participating in such vote shall be disclosed by the Master Association.

### ARTICLE VI EXECUTIVE BOARD

#### 6.01 Powers of the Executive Board.

(a) Except as provided in this Declaration, the Articles and the Bylaws, the Executive Board may act on behalf of the Master Association in all instances.

(b) The Executive Board may not act on behalf of the Master Association to:

(i) amend this Declaration;

(ii) terminate the Master Association, this Declaration or the planned community created by this Declaration;

(iii) elect Directors to the Executive Board, other than to fill a vacancy for the unexpired portion of a Director's term as set forth in Section 6.06; or

(iv) determine the qualifications, powers and duties or terms of office of Directors.

6.02 Number of Directors.

The business and affairs of the Master Association shall be managed by an Executive Board. During the Declarant Control Period, the Executive Board shall consist of three (3) Directors. Upon the conclusion of the Declarant Control Period, the Executive Board shall consist of the following seven (7) Directors:

(a) Two (2) Directors elected by and representing Owners of the Single-Family Lots, one of whom shall be elected by Owners of the Single Family Lots which are subject to recorded deed restrictions which establish such Owners' Single Family Lots as Eagle County Workforce Housing Units, and one of whom shall be elected by Owners of the Single Family Lots which are "free market" and are not subject to either such recorded deed restriction (collectively, the "**Single-Family Directors**");

(b) Two (2) Directors elected by and representing Owners of the Condominium Units, one of whom shall be elected by Owners of the Condominium Units which are subject to recorded deed restrictions which establish such Owners' Condominium Units as Town of Gypsum Restricted Workforce Housing, and one of whom shall be elected by Owners of the Condominium Units which are subject to recorded deed restrictions which establish such Owners' Condominium Units as Eagle County Workforce Housing Units (collectively, the "**Condominium Directors**"); and

(c) Three (3) Directors elected by and representing Owners of the Townhome Lots, one of whom shall be elected by Owners of the Townhome Lots which are subject to recorded deed restrictions which establish such Owners' Townhome Lots as Town of Gypsum Restricted Workforce Housing, one of whom shall be elected by Owners of the Condominium Units which are subject to recorded deed restrictions which establish such Owners' Condominium Units as Eagle County Workforce Housing Units, and one of whom shall be elected by Owners of the Townhome Lots which are "free market" and are not subject to either such recorded deed restriction (collectively, the "**Townhome Directors**").

6.03 Election of Directors.

(a) Subject to the terms and conditions of Sections 6.04 and 6.05, the terms of the Directors shall be staggered.

(i) After the initial election or appointment of Directors upon the conclusion of the Declarant Control Period, the Single-Family Directors will hold office until the election or appointment of their successors at the subsequent annual meeting. Thereafter, the Single-Family Directors will hold office for a term of two (2) years, and the Owners of the Single-Family Lots shall elect the Single-Family Directors at the annual meeting held in years ending in an odd number.

(ii) After the initial election or appointment of Directors, both the Condominium Directors and the Townhome Directors will hold office until the election or appointment of their successors at the annual meeting which occurs one year after the annual meeting described in Section 6.03(a)(i) immediately above. Thereafter, both the Condominium Directors and the Townhome Directors will hold office for a term of two (2) years, and the Owners of the Condominium Units shall elect the Condominium Directors and the Owners of the Townhome Lots shall elect the Townhome Directors at the annual meeting held in years ending in an even number.

6.04 Declarant Control Period.

(a) Subject to the terms and conditions of Sections 6.04(b), (c) and (d), but notwithstanding anything to the contrary contained in this Declaration or in any other Master Association Document, Declarant shall have the exclusive right to appoint and remove all Officers and Directors during the Declarant Control Period. The term "**Declarant Control Period**" means the period commencing on the date on which Declarant forms the Master Association and ending on the earlier of:

\* (i) the date that is sixty (60) days after conveyance to Purchasers of seventy-five percent (75%) of the maximum number of Sites Declarant may create under this Declaration;

\* (ii) the date that is two (2) years after the last conveyance of a Site by Declarant to a Purchaser in the ordinary course of business; or

\* (iii) the date that is two (2) years after any right to add new Sites was last exercised.

(b) Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Master Association or the Executive Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before such actions become effective.

(c) Notwithstanding anything to the contrary contained in Section 6.04(a), not later than sixty (60) days after the conveyance to Purchasers of twenty-five percent (25%) of the maximum number of Sites Declarant may create under this Declaration, at least one (1) Director appointed by Declarant (as selected by Declarant) shall be replaced with a duly qualified Director elected by the Owners of Sites, other than Declarant.

(d) Notwithstanding anything to the contrary contained in Section 6.04(a), during the thirty-day (30-day) period immediately preceding the date on which the Declarant Control Period expires, Owners shall elect a new Executive Board subject to Sections 6.02 and 6.03. Upon termination of the Declarant Control Period the new Executive Board shall take office.

(e) Not later than sixty (60) days after the end of the Declarant Control Period, Declarant shall deliver to the Master Association all property of the Owners and the Master Association then held or controlled by Declarant, including the following:

(i) the original, or a certified copy, of this Declaration and any amendments hereto;

(ii) the Articles of Incorporation, Bylaws, Rules and Regulations, minutes of meetings of the Master Association or Executive Board and any other books and records maintained by Declarant for the Master Association;

(iii) an accounting for Master Association funds and financial statements, beginning on the date the Master Association first received any funds and ending on the date the Declarant Control Period expires, as more particularly described in the Act;

(iv) the funds of the Master Association or control thereover;

(v) all of Declarant's tangible personal property that has been represented by Declarant to be the property of the Master Association, if any, or all of 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 the same;

(vi) a copy, for the nonexclusive use by the Master Association, of any plans and specifications used in the construction of, or improvements to, the Common Elements constructed or installed by Declarant or at Declarant's direction;

(vii) all insurance policies then in force, in which the Owners, the Master Association or Directors and Officers are named as insured persons;

(viii) copies of any certificates of occupancy that may have been issued with respect to the Common Elements;

(ix) any other permits issued by governmental bodies applicable to the Common Elements that are then in force or that were issued within one (1) year prior to the end of the Declarant Control Period;

(x) written warranties, if any, that are still effective of contractors, suppliers, and manufacturers for any Common Elements;

(xi) a roster of Owners and known Mortgagees and their addresses and telephone numbers, if known;

(xii) employment contracts in which the Master Association is a contracting party, if any; and

(xiii) any service contract in which the Master Association is a contracting party or in which the Master Association or the Owners have any obligation to pay a fee to the persons performing the services described in such contract.

(f) Not later than ninety (90) days after the end of the Declarant Control Period and not later than ninety (90) days after the end of each fiscal year thereafter, the Master Association shall make available the following information for review by the Owners:

(i) the date on which the Master Association's fiscal year begins;

(ii) the budget for the current fiscal year;

(iii) a list, by Site type, of all of the Master Association's current General Assessments, Limited Assessments and Default Assessments;

(iv) the Master Association's annual financial statement, which shall include any amounts held in reserve for the previous fiscal year;

(v) the results of the Master Association's most recent available financial audit or review;

(vi) a list of all insurance policies carried by the Master Association, which list shall include carrier name, policy limits, policy deductibles, any additional insureds and the expiration dates for such policies;

(vii) the Bylaws, Articles and Rules and Regulations;

(viii) the minutes of the Executive Board and Owner meetings for the previous fiscal year; and

(ix) the Master Association's "Responsible Governance Policies" required to be adopted pursuant to Section 38-33-209.5 of the Act.

6.05 Removal of Directors.

(a) Directors appointed by Declarant may be removed, with or without cause, solely by Declarant.

(b) Any Single-Family Director elected by Owners of the Single Family Lots which are subject to recorded deed restrictions which establish such Owners' Single Family Lots as Eagle County Workforce Housing Units may be removed, with or without cause, by a vote of not less than sixty-seven percent (67%) of all votes allocated to such deed restricted Single-Family Lots. Any Single-Family Director elected by Owners of "free market" Single Family Lots may be removed, with or without cause, by a vote of not less than sixty-seven percent (67%) of all votes allocated to such "free market" Single-Family Lots.

(c) Any Condominium Director elected by Owners of Condominium Units which are subject to recorded deed restrictions which establish such Owners' Condominium Units as Eagle County Workforce Housing Units may be removed, with or without cause, by a vote of not less than sixty-seven percent (67%) of all votes allocated to such deed restricted Condominium Units. Any Condominium Director elected by Owners of Condominium Units which are Town of Gypsum Restricted Workforce Housing may be removed, with or without cause, by a vote of not less than sixty-seven percent (67%) of all votes allocated to such deed restricted Condominium Units.

(d) Any Townhome Director elected by Owners of Townhome Lots which are subject to recorded deed restrictions which establish such Owners' Townhome Lots as Town of Gypsum Restricted Workforce Housing may be removed, with or without cause, by a vote of not less than sixty-seven percent (67%) of all votes allocated to such deed restricted Townhome Lots. Any Townhome Director elected by Owners of Townhome Lots which are subject to recorded deed restrictions which establish such Owners' Townhome Lots as Eagle County Workforce Housing Units may be removed, with or without cause, by a vote of not less than sixty-seven percent (67%) of all votes allocated to such deed restricted Townhome Lots. Any Townhome Director elected by Owners of "free market" Townhome Lots may be removed, with or without cause, by a vote of not less than sixty-seven percent (67%) of all votes allocated to such "free market" Townhome Lots.

(e) Directors may not be removed, except as provided in Sections 6.05(a) through (d).



6.06 Replacement of Directors.

(a) Vacancies on the Executive Board created by the removal, resignation or death of a Director appointed by Declarant shall be filled by a Director appointed by Declarant.

(b) Except with respect to a Director appointed by Declarant, a vacancy on the Executive Board created by the removal, resignation or death of:

(i) (A) a Single-Family Director elected by Owners of the Single Family Lots which are subject to recorded deed restrictions which establish such Owners' Single Family Lots as Eagle County Workforce Housing Units shall be filled by an election by the Owners of deed restricted Single-Family Lots in accordance with this Article VI; and (B) a Single-Family Director elected by Owners of the "free market" Single Family Lots shall be filled by an election by the Owners of "free market" Single-Family Lots in accordance with this Article VI and;

(ii) (A) a Condominium Director elected by Owners of the Condominium Units which are subject to recorded deed restrictions which establish such Owners' Condominium Units as Eagle County Workforce Housing Units shall be filled by an election by the Owners of deed restricted Condominium Units in accordance with this Article VI; and (B) a Condominium Director elected by Owners of the Condominium Units which are subject to recorded deed restrictions which establish such Owners' Condominium Units as Town of Gypsum Restricted Workforce Housing shall be filled by an election by the Owners of deed restricted Condominium Units in accordance with this Article VI;

(iii) (A) a Townhome Director elected by Owners of the Townhome Lots which are subject to recorded deed restrictions which establish such Owners' Townhome Lots as Eagle County Workforce Housing Units shall be filled by an election by the Owners of deed restricted Townhome Lots in accordance with this Article VI; and (B) a Townhome Director elected by Owners of the Townhome Lots which are subject to recorded deed restrictions which establish such Owners' Townhome Lots as Town of Gypsum Restricted Workforce Housing shall be filled by an election by the Owners of deed restricted Townhome Lots in accordance with this Article VI; and (C) a Townhome Director elected by Owners of the "free market" Townhome Lots shall be filled by an election by the Owners of "free market" Townhome Lots in accordance with this Article VI and;

In the event that any such vacancy is unable to be filled in accordance with the provisions of this Section 6.06(b), such vacancy shall remain unfilled for the remainder of the unexpired term of the Director whose removal, resignation or death created such vacancy.

(c) Any Director elected or appointed pursuant to this Section 6.06 shall hold office for the remainder of the unexpired term of the Director that such Director replaced.

ARTICLE VII  
ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.01 Obligations for Assessments.

(a) Each Owner, by accepting a deed to a Site (regardless of whether it may be expressly stated in such deed), shall be deemed to have covenanted and agreed, to pay to the Master Association all Assessments and other charges that the Master Association is required or permitted to levy or impose on such Owner or such Owner's Site pursuant to this Declaration or any other Master Association Document.

(b) Notwithstanding the definition of the term "Owner":

(i) a Person who acquires a Site in a foreclosure sale shall be personally liable for all Assessments and other charges that the Master Association is required or permitted to levy or impose on that Site or on the Owner of that Site commencing on the date of the foreclosure sale; and

(ii) a Person who acquires a Site by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Master Association is required or permitted to levy or impose on that Site or on the Owner of that Site commencing on the date on which the Owner of the Site executes the deed-in-lieu of foreclosure.

(c) No Owner shall be exempt from liability for any Assessment or other charges levied on such Owner or such Owner's Site by waiving the use or enjoyment of any Common Element or by abandoning a Site against which such Assessments or other charges are made.

(d) Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Site during the period of such Owner's ownership of the Site. If there is more than one Owner of a Site, each Owner shall be jointly and severally liable with the other Owners of the Site for all Assessments and other charges levied on the Site or any Owner of the Site.

(e) Each Assessment or other charge, together with interest thereon and all costs and expenses incurred by the Master Association to collect such Assessment or other charge, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Master Association in connection therewith, may be recovered by a suit for a money judgment by the Master Association without foreclosing or waiving any Assessment Lien securing the same.

(f) The obligation of an Owner to pay Assessments to the Master Association shall not commence until the date that the first Site within Stratton Flats is conveyed to a Purchaser. Notwithstanding anything to the contrary contained in this Declaration, the Master Association and the Common Elements shall be exempt from all Assessments.

7.02 Share of Common Expenses.

(a) The Common Expenses of the Master Association shall be allocated equally among each Site. Accordingly, the Share of Common Expenses allocated to a Site shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Share of Common Expenses} = \frac{1}{(\text{Total Number of Sites})} \times 100$$

(b) If any Sites are added to or withdrawn from Stratton Flats, the Share of the Common Expenses for all Sites shall be adjusted to take into account the increase or decrease.

#### 7.03 Budgets.

(a) Prior to the first levy of an Assessment and, thereafter, on or before November 1 of each year, the Executive Board shall adopt a proposed annual budget for the Master Association for the following year that sets forth:

- (i) the Executive Board's estimate of Common Expenses for the next year;
- (ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through General Assessments;
- (iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Limited Assessments; and
- (iv) the amount of funds the Executive Board proposes to raise through Assessments for the maintenance of reserve funds, as described in Section 7.12.

(b) Within ten (10) days after adopting a proposed annual budget, the Executive Board shall deliver a summary of the proposed annual budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed annual budget. The date of such meeting shall occur within a reasonable time after the delivery of the summary of the proposed annual budget to the Owners. The Executive Board shall provide notice to the Owners of such meeting in accordance with the Bylaws. The proposed annual budget shall not require approval from the Owners and will be deemed ratified by the Owners unless at that meeting at least sixty-seven percent (67%) of all votes within the Master Association vote against the proposed annual budget, whether or not a quorum is present. In the event that the proposed annual budget is not deemed approved by the Owners, the annual budget last proposed by the Executive Board and deemed approved by the Owners shall be deemed renewed for the next year and shall remain in full force and effect until a subsequent budget proposed by the Executive Board is deemed approved by the Owners.

(c) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under Section 7.03(b), the Executive Board may adopt a proposed amendment to the annual budget, and within ten (10) days after adopting a proposed amendment to the annual budget, the Executive Board shall deliver a summary of the proposed amendment to the annual budget to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment to the annual budget. The date of such meeting shall occur within a reasonable time after the delivery of the summary of the proposed amendment to the annual budget to the Owners. The Executive Board shall provide notice to the Owners of such meeting in accordance with the Bylaws. The proposed amendment to the annual budget shall not require approval from the Owners and will be deemed ratified by the Owners unless at that meeting at least sixty-seven percent (67%) of all votes within the Master Association vote against the proposed annual budget, whether or not a quorum is present. In the event that the proposed amendment to the annual budget is not deemed approved by the Owners, the annual budget then in effect shall remain in full force and effect until a subsequent budget, or an amendment to the budget then in effect, proposed by the Executive Board is deemed approved by the Owners.

7.04 General Assessments.

(a) After the Owners ratify an annual budget pursuant to Section 7.03, the Master Association shall levy an assessment for Common Expenses (a "General Assessment") on each Site. The amount of the General Assessment levied against a Site shall equal the product obtained by multiplying:

(i) the amount set forth in the annual budget ratified by the Owners as the amount of Common Expenses to be raised by General Assessments, by

(ii) the Share of Common Expenses allocated to that Site pursuant to Section 7.02.

(b) The Owners shall pay the General Assessments levied against their respective Sites in such periodic installments as may be required by the Master Association.

(c) The failure of the Master Association to levy a General Assessment for any year shall not be deemed a waiver, modification or release of an Owner's liability for the Share of Common Expenses allocated to such Owner's Site.

7.05 Limited Assessments.

(a) The Assessments that the Master Association may levy pursuant to this Section 7.05 are referred to in this Declaration as "**Limited Assessments.**"

(b) Notwithstanding anything to the contrary contained in Section 7.04, if any Common Expense or other charge incurred by the Master Association is attributable to the provision of utility or similar services to one or more but fewer than all of the Sites or Owners, the Master Association may levy an Assessment for such Common Expense or charge against the Owners or Sites to which the service is provided. Further, if any Common Expense or other charge incurred by the Master Association is attributable to the management, operation, construction, maintenance, repair, replacement, alteration or improvement of any Limited Common Element, the Master Association may levy an Assessment for such Common Expense or charge against the Sites to which such Limited Common Element is appurtenant. In any case, all such affected Owners shall pay their share thereof pro rata or in any other equitable proportion as the Master Association reasonably deems appropriate.

(c) Additionally, notwithstanding anything to the contrary contained in Section 7.04, if any Common Expense or other charge incurred by the Master Association is solely attributable to a capital improvement to the Planned Community for a proposed amenity of the Planned Community which is not specifically contemplated herein (as opposed to a Common Expense or other charge incurred by the Master Association with respect to its repair, replacement, and maintenance obligations hereunder), then the Master Association shall levy a Limited Assessment for such Common Expense, and an Owners' pro rata share of such Common Expense shall be an amount equal to the then current assessed valuation of such Owner's Site divided by the then current total assessed valuation of the all of the Sites, with such "assessed valuation" being the assessed value of a Site as determined by the Eagle County Assessor from time to time.

(d) Each Limited Assessment levied against any Site shall be shown on an annual budget, or an amendment to an annual budget ratified by the Owners pursuant to Section 7.03, and shall be paid as and when required by the Master Association.

(e) The failure of the Master Association to levy a Limited Assessment shall not be deemed a waiver, modification, or release of an Owner's liability for the Common Expense for which such Limited Assessment is or would be attributable.

7.06 Default Assessments.

(a) Notwithstanding anything to the contrary contained in this Declaration, if any Common Expense or other expense incurred by the Association is caused by:

(i) the negligence or misconduct of an Owner or an Owner's Guest; or

(ii) a violation of any covenant or condition of a Master Association Document by an Owner or an Owner's Guest, the Master Association may levy an Assessment against such Owner's Site.

Any such Assessment levied by the Master Association and each fine, penalty, fee or other charge imposed upon an Owner for the violation of any covenant or condition of any Master Association Document by an Owner or such Owner's Guest are each referred to herein as a "**Default Assessment**".

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners pursuant to Section 7.03.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Site against which the Master Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Owners of Sites against which Default Assessments have been levied shall pay such Default Assessments when required by the Master Association.

7.07 Assignment of Assessments.

The Master Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Master Association or otherwise.

7.08 Assessment Lien.

(a) The Master Association shall have a lien on each Site for any Assessment levied against that Site and any fines, late charges, penalties, interest, attorneys' fees, disbursements and costs of collection imposed against its Owner under any Master Association Document (the "**Assessment Lien**"). The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the due date set by any valid Master Association acceleration of installment obligations.

(b) An Assessment Lien is prior to all other liens and encumbrances on a Site except:

(i) liens and encumbrances recorded prior to the recordation of this Declaration;

(ii) a First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent, (except to the extent the Act provides otherwise); and

(iii) liens for real estate taxes and other governmental assessments or charges against the Site.

(c) The recording of this Declaration constitutes record notice and perfection of an Assessment Lien on each Site. No further recordation of any claim of any Assessment Lien is required.

(d) An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six (6) years after the full amount of the Assessment secured thereby becomes due.

(e) This Section 7.08 does not prohibit:

(i) actions or suits to recover sums secured by an Assessment Lien; or

(ii) the Master Association from taking a deed in lieu of foreclosure.

(f) In any action by the Master Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Master Association during the pendency of the action to the extent of the Master Association's Assessments.

(g) An Assessment Lien may be foreclosed in like manner as a mortgage on real estate.

#### 7.09 Waiver of Homestead Exemptions.

By acceptance of the deed or other instrument of conveyance of a Site, an Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended, as the same may apply to the Assessment Lien.

#### 7.10 Estoppel Certificates; Notices to Mortgagees.

(a) The Master Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee within fourteen (14) days after the mailing or delivery of written request by such party, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Master Association's registered address, a statement setting forth any or all of the following information as may be requested by such party:

(i) the amount of unpaid Assessments currently levied against the Owner's Site;

(ii) whether, to the knowledge of the Master Association, the Owner or the Owner's Site is in violation of any of the provisions of the Master Association Documents;

(iii) the amount of the Assessments, including installment payments thereof paid by the Owner during the fiscal year in which the request is received;

(iv) the amount of any delinquent Assessments, penalties, interest, attorneys' fees and other charges on the Owner's Site as provided by the Master Association Documents;

(v) whether all insurance requirements established by this Declaration are being satisfied; and

(vi) a listing of each of the Master Association Documents, and amendments thereto, with recording information, if applicable.

If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Master Association shall have no right to assert the priority of its Assessment Lien upon the Site for unpaid Assessments that were due as of the date of the request.

(b) If a First Mortgagee delivers to the Master Association a written request for notice of unpaid Assessments levied against a Site subject to a First Mortgage held by that First Mortgagee, the Master Association shall report to the First Mortgagee any unpaid Assessments levied against such Site that remain unpaid for more than sixty (60) days after the same shall have become due. The First Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such First Mortgagee shall have a lien on the Site for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

#### 7.11 Disputes Regarding Assessments.

The Executive Board shall resolve any dispute or question regarding the imposition, application, determination, administration, payment or collection of any Assessment. Any decision made in that regard shall be final and binding on the Master Association and the Owners.

#### 7.12 Reserve Fund.

(a) The Master Association shall have the right to maintain (i) a capital reserve fund for the repair, restoration and replacement of Common Elements and (ii) a general operating reserve fund.

(b) If the Master Association maintains one or more reserve funds, as provided for in this Section, up to, but not exceeding, ten percent (10%) of all monies received from Common Assessments and Limited Assessments may be retained by the Master Association to maintain such reserve funds. To the extent that Declarant pays any Common Assessments or Limited Assessments, Declarant shall be exempt from any obligation to contribute to such reserve funds and the Master Association shall calculate Declarant's Assessments accordingly.

(c) Upon the sale of a Unit by an Owner, the Master Association shall not be obligated to return to the transferor any funds held in the reserve funds.

**ARTICLE VIII  
DESIGN REVIEW BOARD**

**8.01 Design Review Board.**

(a) The Master Association shall have a design review board (the "**Design Review Board**") consisting of three (3) members appointed by the Declarant.

(b) The purpose of the Design Review Board is limited to reviewing modifications of buildings and landscaping on a Site after the initial development of the Site has occurred.

(c) The Design Review Board shall select its own chairman from its members. The chairman shall be the presiding officer of its meetings. The chairman shall appoint an acting chairman to preside over meetings when the chairman is absent. Meetings shall be held upon call of the chairman of the Design Review Board at the offices of the Master Association or at such other location as the members of the Design Review Board may agree. A majority of members shall constitute a quorum for the transaction of business. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the Design Review Board shall constitute the action of the Design Review Board on any matter before it. Except as set forth herein, the Design Review Board shall operate in accordance with its own rules, which shall be filed with the Master Association when adopted from time to time and maintained in the records of the Master Association and shall be subject to inspection by all Owners and Mortgagees.

(d) Subject to the budget ratified by the Owners pursuant to Section 7.03, the Design Review Board is hereby authorized to: (i) retain the services of one or more consulting architects, landscape architects, urban designers or other professionals to advise and assist the Design Review Board in performing the design review functions described in this Article VIII, and (ii) hire employees for the Master Association to perform the design review functions described in this Article VIII.

(e) Declarant may assign its right to appoint the members of the Design Review Board to the Master Association and thereafter the Executive Board shall appoint the members of the Design Review Board.

**8.02 Design Review Board Approval and Control.**

(a) No Owner may make any modifications to, or allow another Person to make any modifications to, an Owner's Site or to any Common Element that:

(i) result in any earth movement, vegetation removal, paving or other ground covering, or drainage modification;

(ii) subject to Section 8.02(c), physically or cosmetically alter the Site or a Common Element;

(iii) alter on any building, structure or other improvement any exterior signage or any interior signage that is visible from outside the building, structure or improvement; or

(iv) alter any landscaping or exterior furniture, fixtures, equipment or art



within the Property, without the prior written consent of the Design Review Board. By way of illustration and not limitation, physical or cosmetic alterations include (A) painting or illumination of the exterior of a building; (B) displaying of plants or other objects upon balconies, railings, window sills or ledges; (C) planting flowers on a Site; and (D) installation of screen doors, storm doors, or exterior lights.

(b) If the Design Review Board fails to respond to a request for its consent to a modification within thirty (30) days after its receipt of such request, the Design Review Board shall be deemed to have granted its consent to the actions described in such request. The Design Review Board's decisions shall be based upon the desire to maintain uniformity of the exterior appearance of buildings, structures or improvements and landscaping within Stratton Flats or aesthetic principles, as determined by the Design Review Board. The decisions of the Design Review Board shall be conclusive and binding on all interested parties.

(c) Notwithstanding anything to the contrary contained herein, improvements, alterations, modifications, installations, furniture and fixtures that:

(i) are completely within a building, structure or improvement; and

(ii) do not change the exterior appearance of a building, structure or improvement and are not visible from the outside of a building, structure or improvement

may be undertaken without Design Review Board consent, but are subject to all other covenants, conditions and restrictions contained in this Declaration.

(d) Notwithstanding anything to the contrary contained herein, Owners of Single-Family Lots may remove and replace vegetation and perform other activities associated with maintaining a garden in gardening beds established prior to the first conveyance of such Owner's Single-Family Lot to a Purchaser without Design Review Board consent, but such activities remain subject to all other covenants, conditions and restrictions contained in this Declaration.

(e) Notwithstanding anything to the contrary contained herein, no antenna or satellite reception dish of any type designed to service a Unit shall be allowed on the Common Elements, except as may be approved in writing by the Design Review Board. No electrical or other equipment may be operated on the Property that interferes unreasonably with reception of television or other electronic devices. To the greatest extent permitted by law: (i) the Design Review Board shall have the power to regulate and restrict the placement, size and appearance of satellite reception dishes and related connections; and (ii) no Owner shall install, maintain or connect any electrical or electronic equipment or device without the prior written consent of the Design Review Board.

(f) Notwithstanding anything to the contrary contained herein, no shed or other exterior storage unit or temporary structure, trailer, travel trailer, mobile home, camper, motor home, shack or tent or other living unit shall be erected, placed or maintained on the Property, except as authorized by the Design Review Board in an area or lot specifically designated for such use by the Design Review Board or as may be necessary and authorized during construction of buildings, structures or improvements.

(g) Each Owner and Condominium Association shall comply with the Rules and Regulations of the Design Review Board, as the same may be amended from time to time by the Design Review Board.

(h) The Design Review Board or its designated representative may monitor any project it has approved or has the right to approve to the extent it deems appropriate to ensure that the construction or work on such project complies with any and all approved plans and construction procedures. The Design Review Board or its designated representative(s) may enter upon any Site at any reasonable time or times to inspect the progress, work status or completion of any project it has approved or has the right to approve. In addition to the remedies described in Section 8.03, the Design Review Board may withdraw approval of any project and require all activity at such project to be stopped, if deviations from the approved plans or approved construction practices are not corrected or reconciled within twenty-four (24) hours, or such longer period as it deems appropriate, after written notification specifying such deviations are delivered to the Owner or the Master Association.

(i) The Design Review Board may, as a condition to any consent or approval, require an Owner to enter into a written agreement with the Master Association containing such covenants, conditions and restrictions as the Design Review Board deems necessary or appropriate, including, without limitation, posting of bonds to insure compliance, and penalties for failures to comply.

#### 8.03 Enforcement of Restrictions.

If an Owner or the Condominium Association or the Townhome Association violates any term or condition set forth in this Article VIII or in the Rules and Regulations of the Design Review Board, the Design Review Board shall have the following rights and remedies:

(a) The Design Review Board may, by written notice to the Owner or the Condominium Association or the Townhome Association, revoke any approval previously granted to the Owner or the Condominium Association or the Townhome Association or by the Design Review Board, in which event the Owner or the Condominium Association or the Townhome Association shall, upon receipt of such notice, immediately cease any construction, alteration or landscaping covered by the approval so revoked.

(b) The Design Review Board may, but is not obligated to, enter upon the Owner's Site or Condominium Association or Townhome Association property, as appropriate, and cure such violation and charge all costs and expenses incurred by the Design Review Board in connection therewith to such Owner or Condominium Association or Townhome Association, as appropriate, and all such amounts shall accrue interest from the date the Design Review Board makes demand for payment thereof until paid at the lesser of (A) eighteen percent (18%) per annum, or (B) the maximum rate of interest permitted under Applicable Law.

(c) The Design Review Board, on behalf of the Master Association, may sue the Owner or the Condominium Association or the Townhome Association, as appropriate, to enjoin such violation and may require that any alterations, additions, landscaping or other improvements made by the Owner or the Condominium Association or the Townhome Association, as appropriate, in violation of this Article VIII or the Rules and Regulations of the Design Review Board be removed and the property of such Owner or the Condominium Association or the Townhome Association, as appropriate, be restored to substantially the same condition it was in immediately prior to the performance of such alterations, additions, landscaping or other improvements.

(d) The Design Review Board, on behalf of the Master Association, shall have all other rights and remedies available to it under this Declaration, at law or in equity. All rights and remedies of the Design Review Board shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

#### 8.04 Fees.

The Design Review Board may establish reasonable processing and review fees for considering any requests for approvals submitted to it, which fees shall be paid at the time the request for approval is submitted. The Design Review Board may also establish a requirement for the escrowing of funds in an amount sufficient to guarantee completion of any improvement, landscaping or other finish work included as a part of construction plans in compliance with the plans approved by the Design Review Board.

#### 8.05 Lapse of Approval.

Any approval issued by the Design Review Board shall lapse and become void in accordance with the terms and conditions of the Rules and Regulations adopted by the Design Review Board and the terms and conditions of any consents, approvals or permits issued by the Design Review Board.

#### 8.06 Liability.

Neither Declarant, the Design Review Board nor any of their respective officers, directors, employees or agents shall be responsible or liable for any defects, errors or omissions in any plans or specifications submitted, revised or approved under this Article VIII, nor for any defects, errors or omissions in construction pursuant to such plans and specifications. A consent or approval issued by the Design Review Board means only that the Design Review Board believes that the construction, alteration, installation or other work for which the consent or approval was requested complies with the Rules and Regulations adopted by the Design Review Board. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby (a) complies with laws, rules, regulations, ordinances or other requirements of any governmental or quasi-governmental authority, (b) is free from defects, errors or omissions, or (c) lies within the boundaries of any particular Site. No consent, approval or permit issued by the Design Review Board shall relieve Owners or other Persons of their obligations to comply with (x) laws, rules, regulations, ordinances and other requirements of governmental or quasi-governmental authorities, or (y) the Master Association Documents.

#### 8.07 Exempted Property.

Notwithstanding any other provision of this Article VIII to the contrary, all Sites owned by Declarant are exempt, and Declarant at its sole discretion may exempt all or any portion of Sites owned by third-parties, from the provisions of this Article VIII. Any alterations made by, or at the direction of, Declarant or the Association to any building, structure, landscaping or other improvement located within the Property are also exempt from the provisions of this Article VIII.

### ARTICLE IX MAINTENANCE OF COMMON ELEMENTS AND SITES

#### 9.01 Maintenance of Common Elements.

Except as otherwise provided in this Declaration, the Master Association, or its duly designated agent, shall maintain all Common Elements and the improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Elements as it deems necessary or appropriate. In this regard the Master Association may:

- (a) construct, modify, add to, remove, replace, repair or renovate any improvements that are located on, or constitute a part of, any Common Element;

- (b) plant and replace trees, shrubs and other vegetation on any Common Element;
- (c) control noxious weeds in accordance with the requirements of the Town of Gypsum's weed control management plan;
- (d) place, maintain and replace signs upon any Common Element;
- (e) adopt and enforce Rules and Regulations regulating the use of Common Elements; and
- (f) take any other actions that the Master Association deems necessary or appropriate to protect, maintain, operate, manage or regulate the use of Common Elements.

In addition, the Association, or its duly designated agent, shall ensure that all Common Elements are sufficiently maintained to assure year round access for emergency equipment.

9.02 Maintenance of Sites and Condominium Association and Townhome Association Common Elements.

(a) Each Owner shall, at such Owner's sole cost and expense, maintain such Owner's Site and the improvements and landscaping located thereon, or constituting a part thereof, in good order and repair and in compliance with the Rules and Regulations applicable thereto.

(b) The Condominium Association and the Townhome Association, respectively, shall, at the Condominium Association's and the Townhome Association's sole cost and expense, maintain the Condominium Association's and the Townhome Association's Common Elements and the improvements and landscaping located thereon or constituting a part thereof in good order and repair and in compliance with the Rules and Regulations applicable thereto; provided however, that the Condominium Association and/or the Townhome Association may contract with the Master Association for the Master Association's performance of some or all of such required maintenance.

(c) The Master Association shall maintain the landscaping of the front yard areas of the Single Family Lots.

(d) The Condominium Association and the Townhome Association, or the Owner of a Site, as applicable, shall, at the Condominium Association's, the Townhome Association's or Owner's, as applicable, sole cost and expense, be responsible for all snow and ice removal/maintenance with respect to the roofs of all improvements located thereon. The Condominium Association, the Townhome Association, and Owner shall indemnify and hold harmless Declarant, the Master Association, and their respective Affiliates, shareholders, members, partners, agents, officers, directors, employees, contractors, successors and assigns of, from and against any and all losses, damages, costs, expenses or liabilities related to or arising in connection with, any claims, actions, causes of action, liability, suits or demands resulting from, or associated with, any snow or ice shedding from any such roof.

(e) If, in the reasonable judgment of the Master Association, an Owner fails to maintain its Site or the improvements or landscaping located thereon, or the Condominium Association or the Townhome Association fails to maintain its common elements or the improvements and landscaping located thereon or constituting a part thereof, as required herein, and such failure remains uncured for more than thirty (30) days after the Master Association's delivery of written notice thereof to such Owner or the Condominium Association or the Townhome Association, the Master Association may enter upon such Site or such Condominium Association's common elements, as appropriate, and perform such maintenance

or repair as the Master Association deems necessary or advisable and charge all costs and expenses incurred by the Master Association in connection therewith to such Owner or the Condominium Association's or Townhome Association's members as a Default Assessment.

(f) The Master Association may, without notice, make emergency repairs to and maintain any Site or improvement located thereon, or the Condominium Association's or the Townhome Association's common elements or the improvements and landscaping located thereon or constituting a part thereof, as may, in its judgment, be necessary for the safety of any Person or to prevent damage to any other property. The cost of such maintenance and repair shall be charged to the Owner of the Site or the Condominium Association's or the Townhome Association's members as a Default Assessment.

#### 9.03 Design Review Board.

The rights and obligations of the Master Association and the Owners under this Article IX are subject to the rights of the Design Review Board and Design Review Board Rules and Regulations. Any alterations made by, or at the direction of, Declarant to any building or landscaping located within the Property are also exempt from the provisions of this Article IX.

### ARTICLE X COVENANTS, CONDITIONS AND RESTRICTIONS

#### 10.01 Applicability of Covenants, Conditions and Restrictions.

Except as otherwise provided herein, the covenants, conditions and restrictions set forth in this Article X shall apply to all of the Property.

#### 10.02 Land Use Restrictions.

In addition to the covenants, conditions and restrictions found in this Article X, the Master Association, all Owners, the Condominium Association, and the Townhome Association, shall comply with the following:

(a) all applicable covenants, conditions and restrictions set forth in this Declaration and any Supplemental Declarations for Stratton Flats or any portion thereof recorded in the Eagle County Records; and

(b) any and all applicable protective covenants, easements, reservations and restrictions of record.

#### 10.03 Master Association Documents.

Except as otherwise provided herein, each Owner, the Condominium Association, and the Townhome Association, shall comply with all provisions of the Master Association Documents that apply to such Owner, such Owner's Sites, the Condominium Association and/or the Townhome Association, or the Condominium Association's or Townhome Association's common elements. Each Owner and the Condominium Association and the Townhome Association shall cause its Guests to comply with all provisions of the Master Association Documents.

10.04 Use of Sites.

(a) Except as otherwise expressly permitted by this Declaration, no Owner of a Site shall conduct any business, profession, occupation or trade from its Site.

(b) Notwithstanding the restrictions set forth in Section 10.04(a):

(i) an Owner may use its Site as its private office, on the condition that the Owner does not invite others to its Site to conduct business; and

(ii) the Master Association and Declarant, during the Declarant Control Period, may use one or more Sites owned or leased by it as a management office, a sales office, a model home or a combined management office and residence for a resident manager, for the Property.

10.05 Leases.

An Owner shall have the right to lease such Owner's Site subject to the terms and conditions set forth in this Section 10.05.

(a) The following restrictions shall apply to all leases:

(i) lease agreements shall be in writing, with a copy delivered to the Master Association, and shall provide that the lease is subject to the terms of this Declaration and the Master Association Documents;

(ii) any such lease shall state that the failure of the lessee to comply with the terms of this Declaration or of any Master Association Documents shall constitute a default for which such lessee shall be liable to Declarant or the Master Association, as applicable, as if such lessee were an Owner;

(iii) in the event of the failure of the lessee to comply with the terms of this Declaration or any Master Association Document, the Owner shall be responsible and liable to Declarant or the Master Association, as applicable, as if the Owner was the party that failed to comply with the terms of this Declaration or the Master Association Document, and at the request of Declarant or the Master Association, the Owner shall, at the Owner's sole cost and expense, terminate the Lease and commence eviction proceedings to evict the lessee from the Site; and

(b) Sites may not be used or sold on a time-share basis.

10.06 Nuisances, Hazardous Activities and Unsightliness.

(a) No Person shall conduct any activity in Stratton Flats that creates a nuisance, as determined by the Executive Board. Without limiting the generality of the foregoing:

(i) no lights shall be emitted that are unreasonably bright or cause unreasonable glare;

(ii) no sound shall be emitted that is unreasonably loud or annoying;

(iii) no gas or electric powered landscaping equipment shall be used between the hours of 6:00 p.m. and 9:00 a.m.; and

(iv) no odor shall be emitted that is unreasonably offensive.

(b) No Person shall conduct any activity in Stratton Flats that is or might be hazardous to any Person or property, as determined by the Executive Board. Without limiting the generality of the foregoing:

(i) no open fires shall be allowed to exist, unless contained in a customary barbecue grill or in a barbecue pit, subject to any restrictions or prohibitions on open fires, if any, set forth in the Master Association Documents and any Condominium Association or Townhome Association documents, if applicable;

(ii) no firearms may be discharged; and

(iii) no hunting or trapping of animals is permitted.

(c) No unsightliness shall be permitted in Stratton Flats. Without limiting the generality of the foregoing:

(i) all exterior mechanical equipment lines, wires, pipes and other facilities shall, whenever possible, either be buried or enclosed; and

(ii) with the exception of garbage collection days, all garbage shall be kept in covered containers and any such container shall be kept within an enclosed structure.

(d) The Master Association shall develop and maintain Rules and Regulations regarding the activities set forth in this Section 10.06 and shall have the power to grant variances from the terms and conditions of this Section from time to time as it deems necessary.

10.07 Recreational Vehicle Parking Lot.

The Master Association owns the Recreational Vehicle Parking Lot which shall be located on a portion of Tract Q as identified on the Plat. The Master Association shall develop and maintain a set of Rules and Regulations that allow for the long-term parking of recreational vehicles such as mobile homes, trailers, detached campers or camper shells, boats, boat trailers or other similar equipment in the Recreational Vehicle Parking Lot within the Property. The Master Association shall have sole discretion in determining the location of the Recreational Vehicle Parking Lot(s), if any. Nothing in this Section shall be understood or construed to assure the presence of, nor grant any Owner any right to use, any Recreational Vehicle Parking Lot.

10.08 Compliance With Laws.

Nothing shall be done or kept within Stratton Flats in violation of any Applicable Law.

10.09 Compliance With Insurance.

Except as may be approved in writing by the Master Association, nothing shall be done or kept within Stratton Flats which may result in an increase in the rates of any insurance, or the cancellation of any insurance, maintained by the Master Association.

10.10 Mineral Exploration.

No portion of the Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

10.11 Wells, Water, Sewage and Drainage.

(a) Except with respect to Declarant, (i) no water wells shall be permitted on any portion of the Property, without the prior written approval of the Master Association, and (ii) all buildings, structures and improvements shall be connected to such water and sewer services as the Master Association may require.

(b) Except with respect to Declarant, no Owner shall interfere with the natural flow of water as it drains onto that Owner's Site from an adjacent Site without the prior consent of the Master Association. Without limiting the generality of the preceding sentence, an Owner shall not (i) construct any ditches, canals, walls or other structures that substantially prevent the natural drainage of water onto that Owner's Site from an adjacent Site and (ii) change the grading of that Owner's Site in order to influence the natural drainage of water across the Site.

10.12 Deliveries, Trash Removal and Other Services.

(a) By acceptance of a deed to a Site, an Owner agrees that all deliveries and all trash removal services and other such services to that Owner or its Site shall be effected in accordance with the Master Association Documents. All trash removal service within Stratton Flats shall be contracted for by the Master Association.

(b) Unless otherwise directed by the Master Association, Owners of all Sites and their Guests shall place all trash, garbage and other waste material in sanitary containers enclosed and screened from public view and protected from disturbance in such places and manners as may be approved pursuant to the Master Association Documents.

(c) Owners shall not, and shall not permit their Guests, to litter on the Property. No burning of trash, garbage or other waste materials will be permitted at the Property.

10.13 Animals.

Subject to declarations for Condominium Associations, and only in accordance with the Rules and Regulations, an Owner may keep up to two (2) domestic dogs and two (2) domestic cats per Site. However, in any event, each of the following shall apply:

(a) All such dogs and cats must be kept within an Owner's Site and shall not be permitted on other portions of the Property unless leashed and under the control of a responsible individual.



(b) No Owner shall allow his dog or cat to run freely off Owner's Site. When the dog or cat of an Owner or the Owner's Guest leaves the Owner's Site, such dog or cat must be leashed and under the control of a responsible individual. Leashes shall be no longer than ten (10) feet.

(c) Dogs and cats must be fed inside an Owner's Site.

(d) Each Owner shall promptly and thoroughly remove all waste left by its dog or cat on the Property.

Additionally, subject to declarations for the Condominium Association or the Townhome Association, and only in accordance with the Rules and Regulations, an Owner may keep, within an Owner's Site, fish, birds, reptiles, amphibians and other animals, if such animals are traditionally kept as household pets. An Owner may not keep animals for commercial breeding purposes.

#### 10.14 Signs.

(a) Subject to Section 10.14(c), no signs whatsoever shall be erected or maintained in Stratton Flats, except:

(i) signs required by law or by legal proceedings;

(ii) any signs erected by the Declarant or the Master Association; and

(iii) such other signs that (A) comply with any sign code adopted under the Design Review Board Rules and Regulations, (B) are approved in advance and in writing pursuant to the Design Review Board Rules and Regulations, and (C) comply with Applicable Law.

(b) Without limiting the generality of Section 10.14(a), no "For Sale" or "For Rent" signs shall be displayed on the exterior or interior (including windows) of a Site unless such sign conforms with the Rules and Regulations.

(c) Notwithstanding anything to the contrary set forth in this Section 10.14, but subject to the limitations of this Section 10.14(c), neither the Design Review Board nor the Master Association shall prohibit any Owner from displaying an American flag, military service flag or political signage in a window of its Site or on the balcony or patio adjacent to such Site. The display of an American flag, military flag or political signage shall be restricted as follows:

(i) An Owner or Owner's Guest may place an American flag in a window of its Site or on the balcony or patio adjacent to such Site without the prior consent of the Master Association or the Design Review Board. No Person shall display any American flag that is larger than 48" in length without the prior consent of the Master Association or the Design Review Board. No flag shall be displayed or hung such a manner as to encroach into the sightline of any other Site.

(ii) An Owner or Owner's Guest may place a military service flag bearing a star denoting the service of such Owner or Guest, or members of such Owner's or Guest's immediate family, in the active or reserve military service of the United States during a time of war or armed conflict on the inside of any window or door of the Owner's Site. No such flag shall exceed 9" by 16" in size.

(d) Political signs promoting or opposing a candidate for office or a ballot issue may be displayed on a Site not earlier than forty-five (45) days prior to the applicable election day and shall be

removed within two (2) days after such election. Not more than one (1) sign per candidate, office or issue may be so displayed on a Site and no such sign shall exceed 36" by 48" in size.

#### 10.15 Vehicles and Parking.

(a) Parking for each Owner will be available on any General Common Element designated for parking, if any (the "**Designated Parking Spaces**").

(b) Any parking space initially designated as a General Common Element may be re-designated by Declarant as a Limited Common Element in accordance with §208(3) and §205(1)(g) of the Act.

(c) For Owners of Single-Family Lots and Townhome Lots, parking will be available in any driveways and garages that may be appurtenant to such Single-Family Lots and Townhome Lots.

(d) An Owner shall not sell, lease or otherwise convey all or any part of the parking rights it has by virtue of its ownership of a Site or its membership in the Master Association (other than in connection with the sale, lease or other conveyance of such Owner's Site).

(e) An Owner of a Site and its Guests shall have the right to park vehicles in the Designated Parking Spaces at any time the Owner and/or its Guests occupy the Site. No Owner of a Site may store a vehicle on the Property, other than inside the garage within the Owner's Site, if any, when neither the Owner nor its Guest is occupying its Site.

(f) No motor vehicle classed by manufacturer rating as exceeding three-quarter ton and no mobile home, trailer, detached camper or camper shell, boat or other similar equipment or vehicle may be kept or parked at the Property for more than forty-eight (48) hours, unless such equipment or vehicle is kept or parked entirely within an Owner's garage, if any, or is kept or parked in accordance with the Rules and Regulations established for the Recreational Vehicle Parking Lot.

(g) No Person shall conduct vehicle repair of any kind, including, but not limited to, engine overhauling or any dismantling of a vehicle, on the Property other than inside the garage within the Owner's Site, if any, without the prior written consent of the Master Association;

(h) No vehicles shall be parked on the Property other than in the driveways and garages of Single-Family Lots and Townhome Lots, Designated Parking Spaces or at such locations as may be designated by the Master Association in accordance with applicable law. The Executive Board may adopt such additional Rules and Regulations regarding parking as the Executive Board deems necessary or advisable.

#### 10.16 Noxious Weeds.

No Owner may allow noxious weeds to grow on their Site. "Noxious weeds" are non-native plant species that have a detrimental effect on local ecosystems. The Executive Board shall maintain an up-to-date list of noxious weeds in accordance with the requirements of the Town of Gypsum's weed control management plan. Such list shall be made available to Owners at the Master Association's principal office or by posting such list in a prominent place within Stratton Flats.

10.17 Declarant's Exemption.

Nothing contained in this Declaration or any other Master Association Document shall be construed to prevent or limit:

- (a) Declarant's exercise or enjoyment of any Declarant Right; or
- (b) the conduct by, Declarant, or its respective Affiliates, employees or agents, as applicable, of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within Stratton Flats.

ARTICLE XI  
EASEMENTS AND RESERVATIONS

11.01 Declarant's Easements.

- (a) Declarant hereby reserves for itself, its Affiliates and Successor Declarant(s) a general easement over, across, through and under the Property to:
  - (i) discharge Declarant's obligations under this Declaration;
  - (ii) exercise any of Declarant's rights under this Declaration; and
  - (iii) make or construct improvements (including as necessary for construction staging) at the Property, any additional property or any other real estate owned by Declarant.
- (b) Declarant hereby reserves to itself, its Affiliates and Successor Declarant(s) the right to:
  - (i) establish from time to time access, utility, drainage and other easements, permits or licenses over, across, through and under the Property for Declarant and other Persons; and
  - (ii) create other reservations, exceptions and exclusions for the benefit of Declarant and other Persons,

on the conditions that (A) the parties benefited by the easement, license, permit, reservation, exception or exclusion must use reasonable efforts to locate any such easement, license, permit, reservation, exception or exclusion to minimize interference with the use of the Property by the Owners to the extent practicable; and (B) if the parties benefited by the easement, license, permit, reservation, exception or exclusion construct or install any improvements on the Property pursuant to the same, the benefited parties shall promptly repair any damage caused to the Property thereby at their sole cost and expense.

(c) In addition, until such time as Declarant adds any additional property to Stratton Flats, and after such time as Declarant withdraws any portion of the Property from Stratton Flats, Declarant and Declarant's Affiliates shall have whatever easements are reasonably necessary or desirable across the Property for access to and utility services for any additional property or the portion of the Property withdrawn from Stratton Flats, as the case may be.

11.02 Owner's Easements Over Common Elements.

(a) Subject to, and in accordance with, the terms and conditions of this Declaration and all other Master Association Documents (including, without limitation, the Rules and Regulations), each Owner shall have a nonexclusive easement over, across and through the Common Elements:

- (i) for ingress to and egress from his Site; and
- (ii) to use and enjoy the Common Elements for their intended purposes.

(b) Each Owner may grant its rights under this Section 11.02 to any Guest of the Owner.

11.03 Utility Easement.

(a) Subject to the terms and conditions of this Declaration and all other Master Association Documents, Declarant hereby reserves for itself and creates for the benefit of any utility or service company or other Person and any special district designated by Declarant a general easement over, across, through and under the Property for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, storm water drains and pipes, gas, snow melt, telephone, electricity, fiber optic, high speed Internet access, cable communication, and any similar public or quasi-public improvements or facilities that service Stratton Flats or any portion thereof or any other buildings designated by Declarant. The Master Association may, but is not obligated to, authorize the release of portions of the general easement created by this Section 11.03 upon the request of any Owner showing good cause therefor.

(b) Pursuant to this easement, a utility or service company or other Person or special district designated by Declarant may install and maintain facilities and equipment on the Property to provide service to any portion of the Property. Any utility or service company or other Person using this general easement shall use its best efforts to install, repair, replace and maintain its lines and systems without unreasonably disturbing the uses of Owners, the Master Association, Declarant and other utility and service companies.

(c) If any utility or service company or other Person furnishing utilities or services to Stratton Flats or any portion thereof requests a specific easement through any Common Element by a separate recordable document, the Master Association shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Property.

11.04 Master Association's Easement.

(a) Declarant hereby grants the Master Association an easement over, across, through and under all of the Property to:

- (i) exercise any right held by the Master Association under this Declaration or any other Master Association Document; and
- (ii) perform any obligation imposed upon the Master Association by this Declaration or any other Master Association Document.

(b) Notwithstanding the foregoing, the Master Association shall not enter upon any Site pursuant to the easement granted under Section 11.04(a) without reasonable prior notice to the Owner of the Site, except in cases of emergency.

11.05 Easement for Encroachments.

Declarant hereby grants an easement to the Condominium Association, the Townhome Association, and Owners for any encroachment of any improvement constructed by Declarant on, across, over, under or through any Common Element or any Site.

11.06 Emergency Access Easement.

Declarant hereby grants a general easement to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

11.07 Recorded Licenses and Easements.

The Property shall be subject to (a) all easements and licenses as shown on any recorded plat or map affecting the Property, and (b) any other easements or licenses of record or of use as of the date of recordation of this Declaration. The recording data for all presently recorded easements and licenses appurtenant to, or included in, some or all of the Property have been set forth on Exhibit B attached hereto. In addition, the Property is subject to all easements created or permitted by this Declaration and the Plat.

ARTICLE XII  
INSURANCE

12.01 Insurance Required to be Obtained by the Master Association.

The Master Association shall obtain and maintain all insurance required to be obtained and maintained by the Master Association under the Act and any additional insurance that the Executive Board deems necessary.

12.02 Adjustments.

Any loss covered by insurance maintained by the Master Association shall be adjusted with the Master Association in accordance with the terms and conditions of the Act. The insurance proceeds payable for any such loss shall be paid in accordance with the terms and conditions of the Act.

ARTICLE XIII  
CASUALTY

13.01 Casualty to Common Elements.

The Master Association shall respond to any damage to, or destruction of, any Common Elements in accordance with the terms and conditions of the Act.

13.02 Casualty to a Site.

To the extent that the Master Association is not obligated to make any such repairs or replacements, each Owner shall be responsible for repairing or replacing any damage to, or destruction of, his Site. If an Owner elects not to repair or replace any such damage or destruction, the Owner shall:

(a) landscape the Site in accordance with plans approved pursuant to the Design Review Board Documents; and

(b) maintain such Site in a neat and attractive condition, free of hazards.

ARTICLE XIV  
CONDEMNATION

14.01 Condemnation of Sites.

If all Sites within Stratton Flats are taken by condemnation or similar proceeding, Stratton Flats and this Declaration shall terminate as of the date of the taking and any condemnation award payable in connection therewith shall be paid to the Master Association and then disbursed by the Master Association in accordance with the terms and conditions of the Act.

14.02 Condemnation of Fewer Than All Sites.

If one or more Sites, but fewer than all Sites, is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Owner of such Sites in accordance with the terms and conditions of the Act.

14.03 Condemnation of Common Elements.

If any Common Element is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Master Association and used by the Master Association:

(a) first, to repair any damage to Common Elements resulting from the condemnation or similar taking; and

(b) second, for any other Common Expenses.

ARTICLE XV  
DECLARANT RIGHTS

15.01 Improvements.

Declarant hereby reserves for itself, its successors and assigns the right to construct any improvements that it deems necessary or appropriate on the Common Elements and on any Sites owned by Declarant.

15.02 Development Rights.

(a) Subject to the provisions of any Applicable Law, Declarant hereby reserves for itself, its successors and assigns:

(i) the right to amend this Declaration to add to Stratton Flats such other additional real estate as permitted pursuant to Section 38-33.3-222 of the Act.

(ii) the right to amend this Declaration to comply with any Applicable Law as well as the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development the Federal Housing Administration, the Department of Veteran's Affairs, the Federal Home Loan Mortgage Corporation, the government National Mortgage Association or the Federal National Mortgage Association.

(iii) the right to place a Supplemental Declaration on: (A) the Property or any portion thereof, (B) any additional property owned by Declarant, or (C) any additional property owned by a Person other than Declarant with the written consent of such Person;

(iv) the right to create up to three hundred and thirty-nine (339) Sites within Stratton Flats;

(v) the right to amend this Declaration to create additional Sites and certain additional Common Elements on all or any portion of the Additional Property or any other real estate that the Declarant may add to Stratton Flats pursuant to Section 15.02(a)(i);

(vi) the right to amend this Declaration to conform to or take advantage of any amendments to the Act or other Applicable Law;

(vii) the right to subdivide any Site owned by Declarant;

(viii) the right to combine any Sites owned by Declarant;

(ix) the right to convert any Site owned by Declarant into Common Elements;

(x) the right to grant and create those rights, easements and reservations described in Article XI; and

(xi) the right to withdraw from Stratton Flats any real estate owned by Declarant and located within the Property, including but not limited to, the right to withdraw a portion of the Property for use as a children's day care facility, to be partially funded with a transfer fee paid to and collected by the Master Association upon the transfer of a Site.

(b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment to this Declaration in accordance with the requirements of the Act.

15.03 Sales Offices and Model Homes.

Declarant hereby reserves for itself, its successors and assigns the right to maintain sales offices, management offices and models within any Site owned by Declarant to and until the last Site is sold by Declarant. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising Stratton Flats on any and all Common Elements.

15.04 Merger.

Declarant hereby reserves for itself and its successors and assigns the right to merge or consolidate the Master Association with one or more Associations or other Persons.

15.05 Exercising Special Declarant Rights.

Declarant may exercise its Special Declarant Rights at any time; provided, however, that its Special Declarant Rights must be exercised, if at all, no later than ninety-nine (99) years following the date of this Declaration. Declarant may exercise its Special Declarant Rights in any order and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights. If Declarant exercises any Special Declarant Right with respect to any portion of the Property or the Additional Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Property or the Additional Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article XV and any other right reserved to Declarant in this Declaration, without the consent of the Master Association or of any of the Owners.

15.06 Interference with Declarant Rights.

Neither the Master Association, nor any Owner may take any action or adopt any Rule or Regulation that interferes with or diminishes any Declarant Right, without Declarant's prior written consent. Any action taken in violation of this Section 15.06 shall be null and void and have no force or effect.

15.07 Rights Transferable.

Declarant may transfer any Declarant Right reserved to it under this Article XV or under any other provision of this Declaration in accordance with the terms and conditions of the Act.

ARTICLE XVI  
ENFORCEMENT AND REMEDIES

16.01 Enforcement.

(a) Each provision of this Declaration with respect to the Master Association or the Common Elements shall be enforceable by any Owner by a proceeding for injunctive relief.

(b) Each provision of this Declaration with respect to an Owner, the Condominium Association, the Townhome Association, or a Site shall be enforceable by the Master Association by:

(i) a proceeding for injunctive relief;



(ii) a suit or action to recover damages; and/or

(iii) in the discretion of the Master Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Guests from the use of any Common Elements and from the participation in any Master Association affairs.

(c) In addition to the rights and remedies described in Section 16.01(b), if an Owner or the Condominium Association or the Townhome Association fails to perform or observe any covenant or condition on such Owner's or the Condominium Association's or the Townhome Association's part to be performed or observed under this Declaration or any other Master Association Document, the Master Association shall have the following rights and remedies:

(i) The Master Association may, but is not obligated to, cure such failure to comply at the Owner's or Condominium Association's or Townhome Association's sole cost and expense. If the Master Association cures any such failure to comply, the Owner or Condominium Association or Townhome Association shall pay to the Master Association the amount of all costs incurred by the Master Association in connection therewith within thirty (30) days after the Owner or Condominium Association or Townhome Association receives written notice of a Default Assessment therefor from the Master Association.

(ii) The Master Association may fine the Owner or Condominium Association or Townhome Association, as a Default Assessment, an amount not to exceed one hundred dollars (\$100) per day that such violation remains uncured for each violation. The one hundred dollars (\$100) per day maximum fine shall be increased on January 1 of each year by an amount equal to the maximum fine for the prior calendar year multiplied by the CPI Adjustment Factor. The Owner or Condominium Association or Townhome Association shall pay any such fine to the Master Association within thirty (30) days after the Owner or the Condominium Association or the Townhome Association receives written notice of a Default Assessment therefor from the Master Association.

(iii) With respect to an Owner's failure to pay an installment of any Assessment, the Master Association may accelerate the due date for the payment of the full amount of the Assessment.

(iv) With respect to any Person's failure to follow the requirements of any Rules and Regulations promulgated by the Master Association that govern parking within Stratton Flats, the Master Association or its agents or contractors, as appropriate, shall have the right to tow vehicles in accordance with the Rules and Regulations.

(v) The Master Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(d) Notwithstanding anything to the contrary contained in this Declaration, any sums paid to the Master Association by an Owner shall be applied in the following order: first, to costs incurred by the Master Association to collect outstanding unpaid sums due to the Master Association, second to satisfy any outstanding Default Assessments or other fines, third, to satisfy any outstanding interest accrued on any assessed but unpaid Assessments and fourth, to satisfy any assessed but unpaid Assessments other than Default Assessments.

(e) All rights and remedies of the Master Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

(f) The Master Association may adopt such Rules and Regulations as the Executive Board deems necessary or appropriate to administer and enforce the terms and conditions of this Declaration and the other Master Association Documents.

(g) Each applicable provision of this Declaration with respect to the Master Association, an Owner, the Condominium Association, the Townhome Association, or a Site shall be enforceable by Declarant by:

- (i) a proceeding for injunctive relief;
- (ii) a suit or action to recover damages; or
- (iii) any other right or remedy available under this Declaration, at law or in equity.

In addition to the foregoing rights and remedies, if the Master Association or an Owner or the Condominium Association or the Townhome Association fails to perform or observe any covenant or condition in this Declaration or any other Master Association Document, the Master Association's, such Owner's or the Condominium Association's or the Townhome Association's part to be performed or observed under this Declaration or any other Master Association Document, which covenant or condition is intended to benefit the Declarant, the Declarant may, but is not obligated to, cure such failure to comply at the Master Association's, Owner's or Condominium Association's sole cost and expense. If Declarant cures any such failure to comply, the Master Association, Owner or Condominium Association shall pay to Declarant the amount of all costs incurred by Declarant in connection therewith within thirty (30) days after the Master Association, Owner, the Condominium Association, or the Townhome Association receives written notice thereof from Declarant.

All rights and remedies of Declarant shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

#### 16.02 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Master Association Document, the prevailing party shall be entitled to recover from the nonprevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

#### 16.03 Interest.

If an Owner or Condominium Association fails to pay to the Master Association any Assessment or other amount due to the Master Association as and when the same becomes due, the Owner or Condominium Association shall pay to the Master Association interest on such unpaid amount at the rate of eighteen percent (18%) per annum, or such other rate as the Executive Board may establish from time to time (not to exceed twenty-one percent (21%)), from the due date of such unpaid amount until the date paid.

#### 16.04 Right to Notice and Hearing.

Whenever the Master Association Documents require that an action be taken after "notice and hearing," the following procedure shall be observed. The party proposing to take the action (such as the

Executive Board or a committee or officer of the Master Association) shall give notice of the proposed action to all Owners whose interest the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be delivered personally or mailed not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected Owner shall have the right, personally or by representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected Owner shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and hearing shall have the right to appeal to the Executive Board from a decision of a proposing party other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. Executive Board shall conduct a hearing within forty-five (45) days thereafter, giving the same notice and observing the same procedures as were required for the original hearing. All decisions of the Executive Board shall be final and binding.

16.05 Waiver.

Failure by Declarant, the Master Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or any other Master Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

ARTICLE XVII  
TERM AND AMENDMENTS

17.01 Term.

The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until this Declaration is terminated pursuant to Section 17.02.

17.02 Termination.

(a) The Owners may terminate Stratton Flats and this Declaration by an eighty percent (80%) or greater vote of all votes in the Master Association. If the necessary votes are obtained, the agreement of the Owners to terminate Stratton Flats and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the terms and conditions of the Act. Upon recordation of the termination agreement in the Eagle County Records, Stratton Flats shall be terminated, this Declaration shall have no further force or effect, and the Master Association shall be dissolved.

(b) Notwithstanding the foregoing, the Owners may not terminate Stratton Flats or this Declaration during the Declarant Control Period, without the Declarant's prior written consent, which consent Declarant may withhold in its discretion.

(c) Notwithstanding the foregoing, a termination of Stratton Flats or this Declaration shall not release the Property from any Declarant Rights or from the easements, covenants, conditions and restrictions set forth in Articles XI and XV hereof, and the Declarant Rights and such easements, covenants, conditions and restrictions shall survive the termination of this Declaration, unless Declarant consents to the release thereof in writing.

17.03 Amendments.

(a) Except for provisions of this Declaration regarding the rights and obligations of Declarant or Declarant's Affiliates, which may not be amended without Declarant's prior written consent, Owners may amend any provision of this Declaration at any time by a sixty-seven percent (67%) or greater vote of all votes in the Master Association. If the necessary votes are obtained, the Master Association shall cause to be recorded in the Eagle County Records an amendment to this Declaration in accordance with the terms and conditions of the Act. Notwithstanding the foregoing, the Owners may not amend this Declaration during the Declarant Control Period, without the Declarant's prior written consent, which consent Declarant may withhold in its discretion.

(b) In addition to Declarant's other rights to amend this Declaration and the Plat as set forth in this Declaration and the Act, Declarant may, without the approval of the Owners:

(i) amend this Declaration to correct clerical, typographical, technical or other errors; and

(ii) amend this Declaration to comply with any Applicable Law as well as the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development the Federal Housing Administration, the Department of Veteran's Affairs, the Federal Home Loan Mortgage Corporation, the government National Mortgage Association or the Federal National Mortgage Association.

(iii) amend this Declaration or the Plat as otherwise provided by this Declaration or the Act.

ARTICLE XVIII  
ACKNOWLEDGMENTS AND AGREEMENTS REGARDING  
STRATTON FLATS

18.01 Neighboring Properties and Nuisances.

The property neighboring Stratton Flats to the east is zoned to allow for commercial development. The property neighboring Stratton Flats to the south is the Eagle County Municipal Airport. By accepting a deed to a Site (whether or not it is expressly stated in the deed), an Owner acknowledges and agrees that any neighboring commercial development, whether to the east of Stratton Flats or otherwise, and the Eagle County Municipal Airport may create nuisances to Owners and their Guests, including, but not limited to, offensive noises, lighting, odors and increased traffic within Stratton Flats. In addition, during the development of Stratton Flats, construction activities may create certain additional nuisances to Owners and their Guests, including but not limited to, offensive noises, lighting, odors, dust and increased traffic within Stratton Flats.

18.02 Assumption of Risk, Release, Waiver and Hold Harmless.

(a) By accepting a deed to a Site (whether or not it is expressly stated in the deed), an Owner acknowledges, accepts and agrees that:

(i) the location of the Site in Stratton Flats may result in the nuisances, inconveniences, disturbances and other risks described in Section 18.01;

(ii) neither Declarant or the Master Association nor any of their respective Affiliates, employees, agents, invitees, licensees, contractors, successors and assigns shall be responsible or accountable for, or have any liability for any claims, causes of action, losses, damages, costs (including attorneys fees) or expenses for any nuisance, inconvenience, disturbance or other risks described in Section 18.01.

(b) By accepting a deed to a Site (whether or not it is expressly stated in the deed), each Owner agrees to indemnify and hold harmless Declarant and the Master Association and their respective Affiliates, members, managers, agents, officers, directors, employees, contractors, successors and assigns of, from and against any and all losses, damages, costs, expenses or liabilities related to or arising in connection with, any claims, actions, causes of action, liability, suits or demands of or by the Owner or its family members or Guests for any disturbance, inconvenience, noise, nuisance or other risk described in Section 18.01, including without limitation, any of the activities, occurrences, conditions, state of facts, events or situations related thereto.

#### ARTICLE XIX MISCELLANEOUS

##### 19.01 Interpretation of this Declaration.

Except for judicial construction, the Master Association, by its Executive Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Master Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions hereof.

##### 19.02 Exhibits.

All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

##### 19.03 Governing Law.

This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to the conflict of law provisions thereof.

##### 19.04 Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

##### 19.05 Disclaimer of Representations.

Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Planned Community can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subject to this Declaration, or that any such land, regardless of whether it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that if such land is at any time used for a particular use, that such use will continue in effect.

19.06 Reference to Declaration and Deeds.

Deeds to and instruments affecting any Unit or any other part of the Planned Community may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

19.07 Successors and Assigns of Declarant.

Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

19.08 Captions and Titles.

All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

19.09 Governing Law.

This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to the conflict of law provisions thereof.

19.10 Waivers.

No waivers by the Association of any right of the Association shall constitute a waiver by Declarant or the Master Association of any right of Declarant or the Master Association.

19.11 Notices.

All Owners of each Site shall have one and the same registered mailing address to be used by the Master Association or other Owners for notices, demands, and all other communications regarding the Master Association matters. The Owner or the representative of the Owners of a Site shall furnish such registered address to the secretary of the Master Association within ten (10) days after transfer of title to the Site to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Site or by such persons as are authorized to represent the interests of all Owners of the Site. If no address is registered or if all of the Owners cannot agree, then the address of the Site shall be deemed their registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Site. All notices and demands intended to be served upon the Master Association shall be sent to the following address or such other address as the Master Association may designate from time to time by notice to the Owner(s):

Stratton Flats Master Association, Inc.  
408 Aspen Business Center, Suite 209  
Aspen, Colorado 81611

19.12 Rule Against Perpetuities.

If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violating the rules against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Barack H. Obama, the current President of the United States and George W. Bush, the former President of the United States.

ARTICLE XX  
DISPUTE RESOLUTION

20.01 Procedures for Dispute Resolution.

Any and all (a) claims by an Owner or the Master Association against (i) Declarant or any Affiliate thereof, (ii) a Contractor, or (iii) a Design Consultant (individually, an "**Applicable Party**"); and (b) disputes between or among an Owner or the Master Association and one or more Applicable Parties, including any such claims or disputes arising out of or relating to the design or construction of any portion of the Property (collectively, "**Disputes**") shall be resolved in accordance with the procedures set forth in this Article XX. By accepting a deed to a Site, each Owner agrees that the procedures for resolving Disputes set forth in this Article XX shall be the exclusive procedures and shall provide the exclusive remedy for resolving Disputes and specifically waives any and all other rights or remedies such Owner may have against any Applicable Party at law, in equity or otherwise with respect to all Disputes.

20.02 Dispute Relating to Individual Sites.

For any Dispute that is unique to a single Site, meaning that the circumstances of such Dispute are not shared by any other Owner or the Master Association with respect to another Site or Common Element in the Master Association, the exclusive procedures and remedies for the Owner of such affected Site to pursue such Dispute against the Applicable Parties shall be those procedures set forth in Section 20.04.

20.03 Dispute Relating to General Common Elements or Multiple Sites.

For any Dispute regarding more than one Site or any Common Element, (i) the Master Association shall have the exclusive right to pursue such Dispute on behalf of the Owners and to seek redress against the appropriate Applicable Parties; and (ii) individual Owners shall not be permitted to pursue such Dispute or seek redress against the appropriate Applicable Party on their own behalf or on the behalf of any other Person. In such event, the Master Association shall comply with the procedures set forth in Section 20.04. Notwithstanding the foregoing, the Master Association may not pursue any such Dispute unless, at a special meeting of the Owners held in accordance with the provisions of the Bylaws, more than sixty-seven percent (67%) of all the votes in the Master Association are cast in favor of pursuing such Dispute. In the event that sixty-seven percent (67%) of all of the votes in the Master Association do not vote in favor of so pursuing the Dispute, no Owner shall be entitled to pursue the Dispute or seek redress against any Applicable Party on such Owner's own behalf or on behalf of the Master Association or other Owners. By accepting a deed to a Site, each Owner hereby irrevocably grants to the Master Association a power of attorney to pursue a Dispute in the manner set forth in this Article XX and to settle such Dispute on the Owner's behalf without further consent or action by such Owner.

20.04 Procedure for Dispute Resolution.

In the event that either the Master Association or an Owner (each, a "**Complaining Party**") elects to pursue a Dispute as provided in Sections 20.01, 20.02 or 20.03, as applicable, then the following procedure shall be followed by such party.

(a) The Complaining Party shall first give the Applicable Parties written notice of the Dispute describing in reasonable detail the factual circumstances giving rise to the Dispute (the "**Dispute Notice**"). Within sixty (60) days after receiving a Dispute Notice, those Applicable Parties and the Complaining Party shall meet to inspect, evaluate, investigate and discuss the facts and circumstances giving rise to the Dispute and shall attempt in good faith to resolve the Dispute. Notwithstanding the foregoing, if the Dispute concerns any matter subject to the provisions of the Construction Defect Action Reform Act, Section 13-20-801 *et seq.*, Colorado Revised Statutes, then in lieu of the other requirements of this Section 20.04(a), the Complaining Party shall comply with the notice of claim process described in Section 13-20-803.5 of the Colorado Revised Statutes and the Complaining Parties and the Applicable Parties shall proceed to attempt to resolve the Dispute as provided in Section 13-20-803.5 of the Colorado Revised Statutes.

(b) If the Applicable Parties and the Complaining Party are not able to resolve the Dispute following the applicable negotiation process described in Section 20.04(a), the Dispute shall be submitted to non-binding mediation. Such mediation shall be conducted by the Judicial Arbiter Group ("**JAG**") in Denver, Colorado or any other location mutually acceptable to the Applicable Parties and the Complaining Party, pursuant to the mediation standards established by JAG. Such mediation shall be governed by the laws of the State of Colorado. The parties shall select a mediator and shall conduct and complete the mediation within forty-five (45) days after the date JAG is first contacted by either party. Notwithstanding anything to the contrary set forth herein, the mediator shall not have the authority to impose a settlement on the parties.

(c) In the event that the Complaining Party and the Applicable Parties are not able to resolve the Dispute after the mediation proceedings described herein, the parties shall submit to binding arbitration conducted by JAG in Denver, Colorado, or any other location mutually acceptable to the Applicable Parties and the Complaining Party, pursuant to the provisions of the Colorado Arbitration Act, Colorado Revised Statutes Sections 13-22-201 *et seq.* The arbitration shall be governed by the laws of



the State of Colorado. The arbitrator shall be a neutral and impartial third party and, if the Dispute concerns the design or construction of any portion of the Planned Community, no such arbitrator selected shall have less than six (6) years experience litigating or presiding over disputes based on or related to the design or construction of real property improvements. If the parties cannot agree on an arbitrator to conduct the arbitration, then the Complaining Party and Applicable Parties shall each select one (1) arbitrator and such arbitrators shall then select a third arbitrator. The third arbitrator shall serve as the arbitrator for the arbitration. Judgment upon an award rendered by the arbitrator must be entered by a court having competent jurisdiction. The prevailing party in such arbitration proceeding shall be entitled to recover from the nonprevailing party all of its costs and expenses incurred in connection therewith, including the fees and disbursements of the arbitrator and any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party. All statements or admissions, whether oral or written, made in the course of the arbitration by any Person shall be deemed confidential and shall not be disclosed outside of the arbitration proceedings by any Person receiving such statements or admissions. The decision of the arbitrator shall be final and binding upon the Applicable Party, the Complaining Parties, the Association and all Owners.

20.05 Exclusiveness of Procedures.

Without in any way limiting the provisions of Section 20.03, in the event that the provisions of Section 20.03 shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the provisions of Section 20.02 shall be deemed applicable for the resolution of all Disputes and such determination by the court of competent jurisdiction shall not be construed to vitiate the exclusiveness of this Article XX as the sole procedure for resolving all Disputes against the Applicable Parties.

20.06 Waiver of Consequential and Punitive Damages.

Notwithstanding anything to the contrary set forth in this Declaration, no Applicable Party shall be liable to any Complaining Party for any consequential, incidental, punitive, or indirect damages from, relating to, or otherwise in connection with any Dispute even if such Applicable Party has been advised of the possibility of or could have foreseen such damages. This waiver applies regardless of the form of action, whether in contract, tort, or otherwise. By accepting a deed to a Site, each Owner waives its right and covenants not to assert any constitutional right to trial by jury for any Disputes against an Applicable Party and covenants and agrees that the waiver of jury trial described herein shall be binding upon its successors and assigns and upon all Persons asserting rights or disputes or otherwise acting on such Owner's behalf.

20.07 Construction Defect Action Reform Act.

Except as may be permitted under Applicable Law and as expressly provided for herein, nothing herein shall be interpreted to supersede the provisions of the Construction Defect Action Reform Act, Sections 13-20-801 *et seq.*, Colorado Revised Statutes.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Stratton Flats, LLC, a Colorado limited liability company has hereunto caused its name to be signed by the signature of its duly authorized officer as of the day and year first written above.

DECLARANT:

**STRATTON FLATS, LLC, a Colorado limited liability company**

By: Meritage Development Group, LLC, a Colorado limited liability company, its Manager

By: \_\_\_\_\_

Scott B. Russell, Manager

STATE OF COLORADO )

COUNTY OF Pitkin )

ss.

On this 23<sup>rd</sup> day of January, 2009, before me, personally appeared Scott B. Russell, who acknowledged himself to be the Manager of Meritage Development Group, LLC, a Colorado limited liability company, as the Manager of Stratton Flats, LLC, a Colorado limited liability company, and that he, as such officer being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Witness my hand and official seal.

[SEAL]

Cheryl Heiberger  
Notary Public

My commission expires: 2/24/2012



EXHIBIT A

(Attached to and forming a part of this Declaration of Covenants, Conditions and Restrictions for  
Stratton Flats Master Association)

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL A, AMENDED LEHMANN PARCELS, ACCORDING TO THE "AMENDED EXEMPTION PLAT, LEHMANN PARCELS" FILED JUNE 30, 2006 AT RECEPTION NO. 200617646, COUNTY OF EAGLE, STATE OF COLORADO, AND THE RESUBDIVISION THEREOF ACCORDING TO THE PRELIMINARY PLAT OF STRATTON FLATS PLANNED UNIT DEVELOPMENT, RECORDED MARCH 21, 2008 UNDER RECEPTION NO. 200806089, EAGLE COUNTY, COLORADO, THE FINAL PLAT OF STRATTON FLATS PLANNED UNIT DEVELOPMENT, RECORDED MARCH 21, 2008 UNDER RECEPTION NO. 200806090, EAGLE COUNTY, COLORADO, AND THE FIRST AMENDMENT TO FINAL PLAT OF STRATTON FLATS PLANNED UNIT DEVELOPMENT RECORDED JANUARY 22, 2009 AS RECEPTION NO. 200900843, EAGLE COUNTY, AND ANY SUPPLEMENTS AND/OR AMENDMENTS THERETO.

EXHIBIT B

(Attached to and forming a part of this Declaration of Covenants, Conditions and Restrictions for  
Stratton Flats Master Association)

RECORDED EASEMENTS AND LICENSES

Effect of inclusion of the Property in the Gypsum Fire Protection District as disclosed by Findings, Order and Decree recorded April 29, 1983, in Book 358 at Page 691.

Effect of inclusion of the Property in the Western Eagle County Metropolitan Recreation District as disclosed by Amended Order for Inclusion of Land recorded January 3, 1994, in Book 629 at Page 173.

Deed of Aviation Agreement made by and between Gypsum Airpark, LLC, a Colorado limited liability company, D/B/A Gypsum Commercial Park, the County of Eagle and the Town of Gypsum recorded June 3, 1997, in Book 728 at Page 330.

Plat of Lehmann Parcels filed February 26, 1998, at Reception No. 648253.

Easement and Right of Way for Gas Lines and Related Appurtenances, as granted by Gypsum Airpark, LLC, D/B/A Gypsum Commercial Park, a Colorado limited liability company to KN Energy, Inc., a Kansas corporation by instrument recorded September 10, 1999, at Reception No. 708260.

Easement and Right of Way for Access, Utility and Public Road Purposes, as granted by Ernst Lehmann to Town of Gypsum by instrument recorded July 17, 2001, at Reception no. 762354.

Easement and Right of Way for Electric Line and Related Appurtenances, as granted by Gypsum Airpark, LLC to Holy Cross Energy by instrument recorded August 23, 2001, at Reception No. 765572.

Easement and Right of Way for Electric Line and Related Appurtenances, as granted by Ernst Lehmann to Holy Cross Energy by instrument recorded August 23, 2001, at Reception No. 765573.

Annexation Agreement with the Town of Gypsum recorded June 30, 2006 at Reception No. 200617643 and first amendment thereto recorded March 21, 2008 at Reception No. 200806081.

Town of Gypsum Ordinance No. 2006-05 (zoning and sketch plan) recorded June 30, 2006 at Reception No. 200617644.

Plat of Amended Lehmann Parcels, according to the "Amended Exemption Plat Lehmann Parcels" filed June 30, 2006 at Reception No. 200617646.

Deed of Avigation Easement recorded June 30, 2006 at Reception No. 200617647.

Subdivision Improvements Agreement recorded March 21, 2008 under Reception No. 200806082.

Planned Unit Development Guide recorded March 21, 2008 at Reception No. 200806083.

Dry-Up Covenant recorded March 21, 2008 at Reception No. 200806085.

Long Term Water Lease Agreement recorded March 21, 2008 at Reception No. 200806084.

Trench, Conduit and Vault Agreement recorded August 13, 2008 as Reception No. 200817162.

Stratton Flats Housing Plan and Development Assistance Agreement recorded August 15, 2008 at Reception No. 200817301.

Preliminary Plat of Stratton Flats Planned Unit Development recorded March 21, 2008 at Reception No. 200806089.

Final Plat of Stratton Flats Planned Unit Development recorded March 21, 2008 at Reception No. 200806090.

Frst Amendment to Final Plat of Stratton Flats Planned Unit Development recorded January 22, 2009 at Reception No. 200900843.

