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Index in grantee's index under "Sundance Filing No. 1" and "Sundance Homeowners Association" and in the grantor's index under "Sundance Homeowners Association."

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SUNDANCE FILING NO. 1**

FINAL DRAFT

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FINAL DRAFT

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SUNDANCE FILING NO. 1**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sundance ("Declaration") is made effective upon recording.

**RECITALS**

A. The Declaration of Covenants, Conditions and Restrictions for Sundance Filing No. 1 was recorded on June 27, 1985 at Reception No. 00696682, Boulder County Clerk and Recorder (the "Original Declaration") creating the community known as "Sundance Filing 1," which community is governed and operated by the Association.

B. The Original Declaration established a common scheme and plan for the properties subject to it and to those properties conveyed to Owners consistent with the common scheme and plan.

C. The Original Declaration has been amended by amendments and supplements recorded with the Boulder County Clerk and Recorder, including that certain (i) Supplement to and Amendment of Declaration of Covenants, Conditions and Restrictions of Sundance Filing No. 1 and Sundance Filing No. 2, recorded on February 21, 1986 at Reception No. 00743083, with the Boulder County Clerk and Recorder, and (ii) any others of record.

C. Article XIII, Section 13.2 of the Original Declaration, as amended, provides that the Original Declaration may be amended with the vote or approval of at least 75% of the lot owners and 75% of the first mortgagees. However, the Colorado Common Interest Ownership Act ("CCIOA"), Section 217(1)(a), states that any provision in the Declaration that purports to specify an owner approval percentage larger than 67% is declared void as contrary to public policy and, therefore, such amendment is deemed to specify a percentage of 67%.

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

E. The purposes of the amendments in this Amended and Restated Declaration include, but are not limited to the following: to delete declarant rights and responsibilities that are no longer applicable; to update the Original Declaration to comply with current state law; and to update provisions so as to allow the Association to efficiently operate the Community and deal with Community concerns.

F. At least 67% of the lot owners entitled to vote and 75% of the first mortgagees desire to amend the Original Declaration and have approved this Amended and Restated Declaration. Those approving this Declaration have determined it to be reasonable and not burdensome.

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

**ARTICLE 1. NAME AND LOCATION**

**Section 1.1** **Name.** The type of common interest community is a planned community. The planned community's name is Sundance HOA. The Association's name is Sundance Homeowners Association.

**Section 1.2** **Location.** The Community subject to this Declaration and the Act is located in Boulder County, Colorado, as more particularly provided in Exhibit "A" to this Declaration. The Plat relating to the Community is in the records of the Clerk and Recorder of Boulder County, Colorado. The

Plat is incorporated herein by reference as fully as if the same was set forth in its entirety herein.

## ARTICLE 2 DEFINITIONS

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

(a) Act means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as may be amended from time to time, to the extent it applies to communities created prior to July 1, 1992.

(b) Architectural Review Committee or ARC means the "Architectural Review Committee" as more particularly defined and set forth in Article 7.

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

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

(e) Bylaws mean the Amended and Restated Bylaws of Sundance Homeowners Association, as may be further amended from time to time.

(f) Common Area means all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon, but excluding the Lots. Common Area means the same as "common elements", as defined in the Act. The Common Areas include Outlots A, AA, B, C, D, E, F and G as shown on the Plat, and any Improvements located thereon. The Common Areas are subject to certain easements and restrictions as shown on the Plat and other instruments of record.

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

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

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

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

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

(l) Exempt Lots or Exempt Property means Lots 1 through 6, inclusive, according to the Sundance, Filing No. 1 Plat. Unless otherwise specifically provided or agreed, the Exempt Lots are not subject to assessments, charges, and liens created or granted by this Declaration

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

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

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

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

(q) Member means any Owner. The terms "Member" and "Owner" may be used interchangeably. Notwithstanding the foregoing or anything in this Declaration to the contrary, the term "Member" does not include the Owners of Lots 1 through 6, Sundance, Filing No. 1.

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

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

(t) Owner or Lot Owner means the record titleholder of a Lot within the Community, but does not include a Mortgage Holder.

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

(v) Plat means the recorded subdivision plat(s) for Sundance, Filing No. 1 and Sundance Filing No. 2, as amended and supplement from time to time, which plat(s) is a part of this Declaration.

(w) Policies and Procedures mean any instrument, as a part of any of the Governing Documents, and/or separately adopted by the Association, as required under the Act as responsible governance policies, and other policies as may be adopted by the Association. The definition of Policies and Procedures may include Rules and Regulations.

(x) Recreational Vehicles means any vehicle which includes living quarters designed for accommodations such as motorhomes, campervans, caravans, fifth-wheel trailers, popup campers and truck campers.

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

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

(aa) Rules and Regulations means any instrument adopted by the Association, as allowed for under this Declaration and the Act, for the regulation and management of the Community,

Residents, Common Area and/or Lots, including any amendments or revisions.

**[NOTE: This article sets forth definitions used in this Amended and Restated Declaration.]**

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

**Section 3.1** **Mission Statement.** The Association and the Governing Documents exist to maintain common property and assets and to ensure the property values of Lots are sustained in the Sundance HOA Community. Other goals are to help promote harmonious community living, preserve the common scheme and design, and create a sense of fairness and equity among Members. These covenants have been designed to encourage voluntary compliance versus legal enforcement by the Association or other Owners; provided, however, that nothing in this Section will operate as a waiver of the Association's or Owners' rights to enforce the covenants by any permissible means. By fostering positive interaction with one another and working collaboratively on common issues and concerns, the Community will strive to maintain property values and assets.

**[NOTE: This section has been added. There is no requirement for a mission statement. If you prefer to delete this section, please let us know.]**

**Section 3.2** **Membership.** Except as otherwise provided herein, every Person who is a record Owner of a fee interest in any Lot subject to this Declaration is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot is the sole qualification for membership. No Owner, whether one or more Persons, will have more than one membership per Lot owned. Membership does not include Persons who hold an interest as security for the performance of an obligation, but granting a security interest will not terminate the Owner's membership.

(a) **Voting.** The Owner(s) is entitled to one vote per Lot. When more than one Person holds an ownership interest in any Lot, the vote for the Lot will be exercised as those Owners determine among themselves, otherwise the Lot's vote will be suspended if more than one Person seeks to exercise it.

(b) **Common Expenses.** Except as provided elsewhere in the Governing Documents, the amount of all Common Expenses will be assessed equally among all Lots.

(c) **Lots 1 through 6 Not Members.** Notwithstanding any other provision of this Declaration, the Owners of the Exempt Lots are not members of the Association and do not have any voting rights.

**[NOTE: This section is similar to Article IV, Section 4.4 and 4.5 of the current Declaration, and incorporates the basic right of owners to vote. Additional provisions regarding voting are addressed in the Amended and Restated Bylaws.]**

**ARTICLE 4. EASEMENTS AND COMMON AREA**

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

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

(b) the Association's right to dedicate or transfer all or any portion of the Common Areas subject to approval of Owners holding 67% of the total Association vote; and



(c) the Association's right to change the use of portions of the Common Areas or to close portions of the Common Areas.

(d) Any Owner may delegate right to use and enjoy the Common Areas and facilities located thereon to the members of his family, or other Residents and guests. If the Lot is leased, the Owner will be deemed to have delegated these rights to the Residents of his Lot.

**[NOTE: This section is similar to Section 3.1 of the current Declaration.]**

**Section 4.2 Easement for Entry.** The Association has an easement to enter onto Lots, but not the Residences on the Lots, to exercise rights and perform obligations as set forth in this Declaration, provided that exercise of this easement does not unreasonably interfere with or impair the use of any improvements constructed on a Lot, and will be exercised only after reasonable notice, of not less than 24 hours to the Owner, except in cases of emergency, in which case notice is not required.

**[NOTE: This section updates Article VIII, Section 8.6 of the current Declaration to allow for the Association to gain access to a lot, but not the residences on the lots.]**

**Section 4.3 Special Easements.** Due to the style of improvements constructed on the Lots, certain Residences are located on or so near the Lot line that the Residences' roof overhang may actually encroach upon an adjoining Lot or Lots so as to make entry upon the adjoining Lot or Lots necessary for the maintenance or repair of such Residence. In this event, an easement is deemed to exist for the existence of such overhand and for the maintenance, repair, replacement, and reconstruction of such Resident which encroaches or is located on or near its property line. Said easement or easements (a) will be over and across the Lot or Lots immediately adjoining the Lots upon which such Residence is so located, (b) will extend the full depth of the adjoining Lot or Lots, and (c) will extend into so much of the adjoining Lot or Lots as may be necessary to provide the Owner of such Residence so located within an easement or such width that, when added to the space line between the Residence and its property line, such easement will be 10 feet in width; provided, however, that such Owner shall immediately repair, and be liable for any damage caused by any failure to immediately repair any damage to such Lot or the Resident or other property resulting from the exercise of this easement. Construction of any structure is prohibited within these easements unless otherwise approved in writing by the ARC. Such easements will not be considered or deemed to be encumbrances upon such adjoining Lot for title, merchantability or conveyance purposes.

**Section 4.4 Utilities.** A blanket easement upon, across, over and under the Lots are shown upon the recorded plat of the Community, and other easements as may be established pursuant to the provisions of this Declaration or as may be granted by the Board of Directors of the Association.

**[NOTE: This section is similar to Article VIII, Section 8.1 of the current Declaration.]**

**Section 4.5 Encroachments.** To the extent an Improvement on a Lot or Common Area encroaches on any other Lot or Common Area, due to the unintentional placement or settling or shifting of the Improvement as constructed, reconstructed, or altered thereon, a valid easement for encroachment, maintenance and use exists for the period of time that the encroachment exists. However, in no event will an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner or the Association.

**[NOTE: This section is similar to Article VIII, Sections 8.3 and 8.3 of the current Declaration. This language is consistent with CCIOA Section 214, which provides that "to the extent that any unit (lot) or common element encroaches on any other unit of common element, a valid easement for the encroachment exists."]**

**Section 4.6 Easements Deemed Created.** All conveyances of property in the Community (including the sale or transfer of Lots) are deemed to grant and reserve the easements



up to the maximum amount permitted by law, is a charge and a continuing lien upon the Lot against which each assessment is made. The Association has authority to record a notice of lien in the county's real property records evidencing the Association's lien. The Association's lien under this article is not subject to the provision of any homestead exemption as allowed under law. The lien has the priority set forth in the Act.

**[NOTE: This section is similar to Article V, Section 5.1 of the current Declaration; it also incorporates the homestead exemption provided for in Section 5.9(e) of the current Declaration.]**

**Section 5.4**        **Payment of Assessments.** Assessments will be paid in the manner and on the dates fixed by the Association. Unless otherwise provided by resolution, the annual assessment will be paid in equal monthly installments due on the first day of each calendar month. No Owner is exempt from liability for or may withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Area, the Association's failure to provide services or perform its obligations, or inconvenience or discomfort arising from the Association's performance of its duties.

**[NOTE: This section is similar to Article V, Section 5.9(a) of the current Declaration.]**

**Section 5.5**        **Individual Assessments.** The Association has the power to levy individual assessments against Lots pursuant to this Section, including:

(a) Any expense or liability the Association incurs as a result of the willful, negligent or wrongful act or an Owner, the Owner's family, guests or other Residents of the Lot, or any breach of the Governing Documents by any of these parties, including fines, may be an assessment against the Lot.

(b) Any expense benefitting fewer than all of the Lots may be assessed equitably against those Lots according to the benefit received as determined by the Association. Except as provided in subsection (a) above, expenses incurred for the maintenance, repair or replacement of the Common Area or other areas of Association maintenance responsibility will not be assessed as an individual assessment. For example, but not by way of limitation, the costs of maintenance, repair or replacement of any fence or fences that is/are adjacent to any Lot(s) and the Common Area(s) will be shared equally between the Association and the Owner(s) of the Lot(s) adjoining such fence as more particularly described in Article 6.

**[NOTE: This section is similar to Article V, Sections 5.2 and Section 5.3 (b) of the current Declaration.]**

**Section 5.6**        **Delinquent Assessments.** All assessments and related charges not paid on or before the due date are delinquent, and the Owner is in default.

(a) If any assessment, fine, or charge is not paid in full within 30 days of the due date, or any later date specified in the Association's collection policy:

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

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

(b) If any assessments, fines or other charges remain unpaid more than 30 days after the due date, the Owner's right to vote will be automatically suspended until all amounts owed are paid in full, and the Association may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Colorado law, including reasonable attorney's fees. Enforcement under this section is not dependent upon or related to other restrictions and/or other actions.

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

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

(e) The Association's lien foreclosure or attempted foreclosure does not preclude the Association from foreclosing its lien again for any subsequent delinquent assessment or related charges. The Association may bid on or purchase any Lot at foreclosure or other legal sale, and acquire and hold, lease, mortgage, convey or otherwise deal with the Lot. If a lien foreclosure action is filed, and an Owner abandons or vacates his Lot, the Association may apply for the appointment of a receiver for the Lot without prior notice to the Owner. The Association's rights are expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent provided under the Act.

**[NOTE: This section incorporates and expands upon Article V, Section 5.9 of the current Declaration to address items not previously addressed such as acceleration, suspension of voting, and application of payments.]**

#### **Section 5.7            Budget and Assessment.**

(a) Prior to the beginning of each fiscal year, the Association will prepare a budget covering the estimated costs of operating the Community during the coming year, including an annual reserve contribution for replacement of improvements that are the Association's responsibility, and establish the annual assessment or installments for the coming year.

(b) The Association's budget may be increased each year by not more than 5% above the budget for the prior year without the vote or approval of the Owners.

(c) If the Association proposes a budget that is more than 5% but less than 10% above than the budget for the prior year, the budget must be approved as follows:

(i) The Association will deliver a summary of the budget to each Owner within 90 days after adopting the budget and set a date for an Association meeting to consider the budget, which meeting will occur within a reasonable time after delivery of the budget summary.

(ii) The budget and the assessment will become effective unless disapproved at a duly called Association meeting by a majority of the total Association vote; provided, however, if a quorum is not obtained at the meeting called to ratify the budget, the budget will become effective even though a vote to disapprove the budget could not be called at this meeting. If the membership disapproves the proposed budget or the Association fails for any reason to determine the budget for the succeeding year, then until a new budget is determined, the budget in effect for the current year will continue.

(d) If the Association proposes a budget that is more than 10% above the budget for the prior year, such budget must be approved by at least 60% of the total Association vote at a duly called meeting or by mail ballot without a meeting as provided for in the Bylaws and Colorado law.

(e) The Association may propose a new budget at any time during the year. The approval procedure set forth in this section for budgets will also apply to a new budget proposed by the Association.

(f) The budget will not operate as a limitation on expenditures by the Association, but is an estimate of Common Expenses on which the Association bases the annual assessments.

**[NOTE: This section is intended to replace and supersede Sections 5.3(c), 5.4, and 5.6 of the current Declaration. The provision addresses “caps” on the Board’s authority to increase the budget/assessments without the vote and/or approval of the owners. However, we have retained the authority of the Board to approved budgets that do not exceed a 5% increase from the previous year. HB 18-1342 allows for this type of exception for communities where an assessment cap exists in the original governing documents.]**

**Section 5.8**      **Special Assessments.** In addition to the annual assessment provided for above, the Association may, at any time, and in addition to any other rights it may have, propose a special assessment against all Owners to meet any unanticipated or unexpected expenses. Any special assessment (except as provided in this Declaration regarding repair or reconstruction of casualty damage to or destruction of all or part of the Community) will become effective upon the affirmative vote of at least 60% of the total Association vote.

**[NOTE: This section revises that provision of Article V, Section 5.5 of the current Declaration regarding special assessments. Under CCIOA, special assessments are levied using the same procedure as for the annual budget. As an alternative, the Association could require the affirmative approval of a certain percentage of owners to approve special assessments; however, the CCIOA “veto” process is preferred because it requires owners who are opposed to actively participate and avoids the situation where assessments cannot be approved as a result of owner apathy.]**

**Section 5.9**      **Statement of Account.** The Association will furnish to an Owner or the Owner’s designee or to a holder of a security interest or its designee a statement setting forth the amount of unpaid assessments then levied against the Owner’s Lot. The Association will deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party within 14 calendar days after the Association’s registered agent receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in the statement, when signed by the Association’s treasurer or managing agent, if any, will bind the Association, the Board, and every Owner as to the person or persons to whom the statement is issued and who rely on it in good faith. The Association may establish a reasonable fee relating to the statement, which may incorporate any fees imposed by a managing agent.

**[NOTE: This provision has been added and is consistent with requirements of CCIOA Section 316, C.R.S. § 38-33.3-316(8).]**

**Section 5.10**      **Surplus Funds and Common Profits.** Common profits from whatever source will be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses will, at the option of the Board of Directors, be: (a) added to the Association’s capital reserve account; (b) distributed to the Owners; or (c) credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Lot.

**[NOTE: This provision has been added pursuant to authority granted to the Association in CCIOA Section 314.]**

**Section 5.11**      **Borrowing.** The Association has the power to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments, subject to the following restrictions and limitations:

(a) Loans to the Association in an amount equal to or less than 30% of the Association’s budgeted income (for year when the loan is closed) must be approved by the affirmative

vote of a majority of the Association vote present and exercised, in person or by proxy at a duly constituted meeting called for that purpose, or by ballot in lieu of a meeting as provided for in the Bylaws.

(b) Loans to the Association in an amount that exceeds 30% of the Association's budgeted income (for the year when the loan is closed) must be approved by at least 60% of the total Association vote at a duly called meeting or by mail ballot without a meeting s provided for the Bylaws.

**[NOTE: This provision has been added. Although the Association's Bylaws provide authority for the Association to obtain a loan, CCIOA Section 302(1)(n) requires that this authority be included in the Declaration. The above-provision gives the Board the authority to assign assessment income (the collateral typically requested by banks for a loan), if borrowing is approved by Owners holding a majority of the Association vote that is present and voting at a meeting or by ballot. This percentage is discretionary. The Board may increase or lower the vote requirement or delete the vote requirement].**

## **ARTICLE 6. MAINTENANCE RESPONSIBILITY**

**Section 6.1** By the Owner. Each Owner is obligated to maintain and keep in good repair all portions of the Owner's Lot and Residence consistent with the Community-Wide Standard. This maintenance responsibility includes, but is not limited to the following:

(a) Improvements. Each Owner is responsible for maintenance, repair and replacement of the property and Improvements located within their Lot boundaries, including the Residence, exterior lighting, decks, patios, driveways, sidewalks (including snow removal), doors, garage doors, windows and painting or staining the exterior surfaces of the Residence and any other approved Improvement on the Lot.

(b) Fences. Except for party fences abutting Common Area (as described in Section 6.2(b) below), each Owner is responsible for the maintenance, repair and replacement of any fencing on his or her Lot. Additionally, Owners are solely responsible for the maintenance, repair and replacement of any fence gates and associated hardware, regardless of whether the fence is a party fence.

(c) Landscaping. Each Owner is required to maintain the landscaping on the Lot in a safe, neat, attractive and well-kept condition, which includes: lawns mowed regularly; hedges, shrubs, and trees pruned and trimmed; adequate watering; replacement of dead, diseased or unsightly vegetation; and regular removal of weeds and debris. Landscaping will not be maintained in any manner that impairs the ability of drivers to have unobstructed views of surrounding or adjacent streets, driveways, or pedestrian sidewalks.

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

(e) Owner Maintenance of Common Areas. Any maintenance or repair performed on or to the Common Areas by an Owner or Resident (including, but not limited to landscaping of Common Areas) will be performed at the Owner's sole expense and the Owner or Resident is not entitled to reimbursement from the Association even if the Association accepts the work. Notwithstanding the foregoing, the requirements of this paragraph do not apply to work performed by Owners or Residents on behalf of the Association with prior approval from the Board.

**[NOTE: This section is updates Article IX of the current Declaration to address owners' maintenance responsibility and standards. The current Declaration does not clearly define owners' maintenance responsibilities.]**

### **Section 6.2** By the Association.

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

(b) Fences Abutting Common Area. Any fence built or located on the dividing line between a Lot or Lots and the Common Area constitutes a common or party fence. In the event that a party fence requires maintenance or repair, such maintenance or repair will be performed by the Association at the equally-shared expense of the Association and the adjoining Lot Owner(s); provided, however, that the Lot Owner is solely responsible for the cost to install, maintain, repair or replace fence gates and associated hardware. Any fence that does not abut or adjoin the Common Area is the exclusive responsibility of the Owner to maintain. The Association, its agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon the adjacent Lot(s) for purposes of common or party fence maintenance and repair, upon reasonable notice to the affected Owner(s).

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

**[NOTE: This section incorporates the obligations set forth in Article IX, Section 9.1 of the current Declaration. It also carries forward the authority of the Association to assess owners for damages to property caused by an owner's or resident's negligence or misconduct, as provided in Sections 5.2 and 5.3(b) of the current declaration.]**

### **Section 6.3            Failure to Maintain**

(a) If the Association determines that any Owner has failed or refused to properly discharge his maintenance, repair, or replacement obligations, as provided in the Governing Documents, then the Association will give the Owner at least two written notices of the Owner's failure or refusal and of the Association's right to provide necessary work at the Owner's sole cost and expense; provided, however, that in the absence of an emergency (as defined in Section 6.3(b) below) the Association will not exercise "self-help" remedies without first obtaining court order authorizing the Association, or its agents or contractors, to enter upon the property to abate, remove, or correct any condition or structure that violates the Governing Documents in accordance with the Association's covenant enforcement policy.

(b) If the Association determines that: (i) an emergency exists or (ii) the Owner has not complied with the written notices as provided in subparagraph (a) above, the Association may perform the work, then assess the cost of that maintenance, repair, or replacement against the Owner's Lot, which cost will become the Owner's personal obligation, a lien against the Lot, and collected as provided in this Declaration and the Association's collection policy.

**[NOTE: This section expands upon Article IX, Section 9.2 of the current Declaration.]**

**Section 6.4            Maintenance Standards and Interpretation**. The maintenance standards and enforcement and the interpretation of maintenance obligations under the Governing Documents may vary from one term of the Board to another term of the Board. These variances do not constitute a waiver of any right to adopt and enforce maintenance standards. No decision or interpretation by a prior Board constitutes a binding precedent with respect to subsequent Board decisions or interpretations.

**[NOTE: This section has been added.]**

**ARTICLE 7. ARCHITECTURAL CONTROLS**

**Section 7.1**            **Applicability.** The provisions of this article do not apply to the Exempt Property.

**Section 7.2**            **Architectural Review Committee.** The Architectural Review Committee (“ARC”) consists of three or more persons appointed by the Board of Directors. The Board of Directors may determine terms of office, fill vacancies, and may remove committee members, with or without cause. If the Board of Directors does not appoint committee members, the Board will serve as the ARC. The ARC may propose Design Guidelines from time to time, subject to the Board approval.

**[NOTE: This section modifies Article VII, Section 7.2 to delete references to declarant authority.]**

**Section 7.3**            **Approval Required.** No Owner will commence, place, erect, alter or demolish any Improvement to Property (as defined below) upon any portion of the Sundance Community without prior written approval.

**Section 7.4**            **Improvement to Property.** “Improvement to Property” requiring approval of the ARC, means and includes, without limitation: (a) construction, installation, erection or expansion of any building, structure or other Improvements, including utility facilities; (b) demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) grading, excavation, filling or similar disturbances to the land including, without limitation, change of grade, ground level, or drainage pattern; (d) major landscaping; and (e) any change or alteration of any previously approved Improvement to Property by an Owner or Owner’s predecessor-in-title, including any change of exterior appearance, color or texture.

**[NOTE: Sections 7.3 and 7.4, above, are intended to replace Sections 7.1, 7.3 and 7.4 of the current Declaration has been added. It also incorporates certain approval requirements described in Sections 6.2 and 6.3 of the current declaration. A description of what constitutes “major landscaping” may be more carefully defines in the Design Guidelines.]**

**Section 7.5**            **Application Procedure.**

(a) Applications must be submitted to the Association’s managing agent or other designated person.

(b) Applications will be reviewed by the ARC. ARC applications may be submitted and reviewed electronically, by email other electronic means; provided, however, that the Association will maintain records of Board and/or ARC actions approving or denying any such requests in accordance with the Act and the Association’s responsible governance policies.

(c) Owners submitting applications are responsible for providing documentation to the ARC regarding harmony of external design, effective location and use of existing Improvements and proposed Improvements to Property, preservation of aesthetic beauty and conformity with specifications and purposes generally set forth in the Declaration and the Design Guidelines.

(d) The ARC may require that applications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed Improvement to Property, location and size of driveways, walls, windbreaks and grading plan, as well as any other materials and information as may be required by the ARC and/or set forth in the Design Guidelines.

(e) The ARC may require submission of additional plans, specifications, or other information prior to approving or disapproving the application. Notwithstanding Section 7.9 below, until the ARC has received all required materials in connection with the application, it may postpone review of any materials submitted for approval.



**[NOTE: This section expands upon the procedure in Article VII, Section 7.1 of the current Declaration, and specifies the information that may be requested/required to be included in the ARC application.]**

**Section 7.6 Authority of Association to Engage Consultants.** The Board has the authority to select and engage professional consultants to assist in reviewing applications and/or to inspect any of the work performed. The cost of any consultants are to be paid by the submitting Owner, whether or not the application is approved. Prior to incurring consultant costs, the Association will notify the Owner of its belief that review and/or inspections by consultants are necessary. The Owner will then have the right to withdraw the submission. The Association may require payment of costs prior to review.

**[NOTE: This section has been added. This language is intended to address situations that might require the owner to engage an engineer, electrician, landscape architect, etc. to ensure that improvements do not negatively impact other Lots or the common areas.]**

**Section 7.7 Architectural Review Criteria.** The ARC will exercise its reasonable judgment with the objective that proposed Improvements to Property conforms to and harmonizes with the existing surroundings, Residences, landscaping and structures. The ARC's approval on matters coming before it will not be unreasonably withheld, and actions taken will not be arbitrary or capricious. Criteria for approval include, but are not limited to: (a) conformity and harmony of exterior appearances with neighboring structures, including design compatibility and scale; (b) compliance with applicable PUD guidelines; (c) color and materials to be used; (d) location on the Lot; (e) relation to the natural environment; (f) street visibility; (g) preservation of aesthetic beauty and conformity with the specifications and purposes generally set out in this Declaration and in the Design Guidelines, if any; and (h) any other matter the ARC deems to be relevant or appropriate.

**[NOTE: This section is similar to and expands Article VII, Section 7.1 of the current Declaration.]**

**Section 7.8 Variances.** The ARC may recommend reasonable variances or adjustments from any conditions and restrictions imposed by the Governing Documents to overcome practical difficulties and unnecessary hardships resulting from the application of the conditions and restrictions contained in the Governing Documents. Any variance or adjustment recommended is subject to the Board of Director's written approval.

**[NOTE: This section is similar to Section 7.5 of the current Declaration, but requires Board approval to grant variances.]**

**Section 7.9 Reply and Communication.** The ARC will respond to Owner's application within 30 days of receipt of the completed application and all information the ARC reasonably requires, provided that the response time will be 45 days if a variance is requested or required. If the ARC fails to respond to the application within this time frame, the approval will not be required and this article will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this article are satisfied, nothing herein authorizes anyone to construct or maintain any Improvement to Property that is otherwise in violation of the Governing Documents or of any applicable zoning or other laws.

**[NOTE: This section is similar to Article VII, Section 7.1 of the current Declaration.]**

**Section 7.10 Commencement of Approved Work.**

(a) If any building or other permits are required, the Owner must provide copies of the relevant permits the ARC prior to commencement of the work.

(b) All Improvements to Property approved by the ARC must be commenced within six months from the date of approval.

(c) If not commenced within this time, then approval expires, unless the ARC gives a written extension to start the work.

(d) At a mutually agreed time, the ARC or its representative is authorized to enter the Lot to inspect the ongoing and completed work. All work must be performed in accordance with the plans as approved by the ARC, including any conditions the ARC imposed.

**[NOTE: This section has been added.]**

**Section 7.11 Completion of Approved Work.** All work approved by the ARC will be completed within six months from the date of commencement, unless the ARC otherwise agrees in writing. All approved Improvements to Property must be completed in their entirety, unless the ARC otherwise agrees in writing.

**[NOTE: This section has been added.]**

**Section 7.12 Notice of Noncompliance.** The Committee will issue the owner a notice of non-compliance if work is done without prior approval, or is not performed in accordance with the approved application, or is not completed within the required time frame. Within 45 days and at the Owner's sole cost and expense, the Owner must correct items listed in the notice of non-compliance or restore the Lot to the condition that existed prior to the commencement of the work.

**[NOTE: This has been added.]**

**Section 7.13 Right to Appeal.** If the Board is not acting as the Committee, the applicant may appeal the Committee's decision to the Board of Directors by written appeal submitted to the Board within 20 days of the date that the ARC decision or notice is mailed to the Owner. The Board of Directors will review the decision of the ARC and all materials submitted to the ARC pursuant to the criteria set forth in this article and the Design Guidelines. The ARC's decision may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the reversal when the Board concludes that the ARC's decision was not consistent with the criteria set forth in this article and the Design Guidelines, if any. If the Board denies the Owner's appeal, the Owner will have 45 days from the date of notice of the Board's decision to correct the noncompliance. If the Board does not issue its decision on any appeal within 60 days of the submission date, then appeal is deemed denied.

**[NOTE: This section has been added.]**

**Section 7.14 Limitation of Liability.** Neither the Association nor its directors, officers, committee members or agents will bear any responsibility for the design, quality, structural integrity or soundness of approved construction or modifications, nor for compliance with building codes, zoning regulations, and other governmental requirements. The Association, its directors, officers, committee members, and agents are not liable for any injury, damages or loss arising out of (i) the manner, design, or quality of approved construction on or to modifications to any Lot, or (ii) as a result of the Association's enforcement or non-enforcement of this article with respect to the Exempt Property. No lawsuit, action or claim may be brought against any of the foregoing for any injury, damage or loss.

**[NOTE: This section has been added.]**

**Section 7.15 No Waiver of Future Approvals.** The Association's approval of any proposals and applications for any work done or proposed, or in connection with any other matter requiring the Association's approval, is not a waiver of any right to withhold approval as to any similar proposals and applications.

**[NOTE: This section has been added.]**

## ARTICLE 8. COVENANTS

**Section 8.1 Owner Responsibility for Compliance.** Each Owner is responsible for ensuring that the Owner's family, guests, and Residents comply with all provisions of the Governing Documents. Each Owner and Resident will endeavor to observe and promote the purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, or Residents as a result of the person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner.

**[NOTE: This section has been added.]**

### **Section 8.2 Use of Lots.**

(a) Residential /Business Use. Except as provided below, each Lot will be used for residential purposes only. No trade or business of any kind may be conducted in or from a Lot or any part of the Community, except that the Owner residing in the Residence, or the Resident, may conduct ancillary business activities within the Lot so long as the business activity:

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

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

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

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

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

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

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

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

**[NOTE: This section has been added. We have included comprehensive restrictions to address home occupations. If the Board prefers to be less restrictive or rely on zoning ordinances only, please let us know.]**

(b) Occupancy. If an Owner is a corporation, partnership, trust or other legal entity the entity will designate in writing to the Association the name(s) of the natural person(s) who will occupy

the Lot. The designated person(s) to occupy the Lot may not be changed more frequently than once every 30 days without the express written consent of the Association.

**[NOTE: Recognizing that a corporate entity will have individuals residing in the Residence, this provision addresses potential use of a corporately owned Lot for transient occupancy.]**

**Section 8.3 Leasing.** The Community is intended to be an owner-occupied community. However, any Owner has the right to lease or allow occupancy of a Lot upon terms and conditions the Owner deems advisable, subject to restrictions of this Declaration, any other restrictions of record, and the following:

(a) "Leasing" for the purposes of this Declaration is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner, with or without consideration. For the purposes of this Declaration, occupancy by one or more roommates of an Owner who occupies the Lot as his primary residence does not constitute leasing.

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

(c) All leases will be in writing and will provide that the lease is subject to the Governing Documents. The Association has the authority to require a particular lease form or addendum to implement the provisions of this section. Owners are required to provide Residents with copies of the current Declaration and Rules and Regulations.

(d) Each Owner who leases his Lot will provide the Association, upon request, a copy of the current lease (lease amount may be redacted) and tenant information, including the names of all Residents, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(e) Each Owner who leases his Lot (or any portion thereof) on a short-term basis must provide to the Association, upon request, documentation showing the Owner is in compliance with local and state short-term leasing regulations and licensing requirements. For short-term leases, the property owners must also be the owner's primary residence (meaning the owner must live in the property at least six months out of the year). Owners, tenants, Residents and guests must at all times comply with applicable ordinances, laws, regulations or requirements of any governmental authority having jurisdiction over the Lots or the Community.

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

(g) All leases are subject to the Association's right to remove and/or evict the Resident for failure to comply with the Governing Documents. If the Association requests that the Owner evict the Resident, and the Owner fails to commence action within 30 days of the date of the Association's written request and notice, the Association may commence eviction proceedings. If Owner fails to comply with the request to evict, the Owner delegates and assigns to the Association the power and authority to evict the Resident as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the Resident, any costs, including but not limited to attorney fees incurred and court costs associated with the eviction, will be an assessment and lien against the Lot.

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

(i) If a Lot is leased or occupied in violation of this section or if the Owner or Resident violates the Governing Documents, the Association will be authorized, in addition to all other

available remedies, to levy fines against the Resident and/or Owner, and to suspend all voting.

**[NOTE: This section updates and expands upon Section 3.6 of the current Declaration. We have not included a minimum lease terms (e.g., 30 days). As written, this would permit owners to lease their residence for any period of time, including short term (nightly) rentals through services such as Airbnb, VRBO, etc. If you want to include a minimum lease term, let us know.]**

**Section 8.4**      **Use of Common Areas.** There will be no obstruction of the Common Areas, nor will anything be kept, parked, or stored on or removed from any part of the Common Areas without the prior written consent of the Board, except as specifically provided herein. No exterior additions, alterations, or decorations may be made to any Common Area fencing, monument signage or landscaping. The Association may remove unattended personal property from Common Areas. The Association will not be liable to the Owner of any Lot or his Residents, guest, or family, for loss, damage or injury, by theft or otherwise, of any property which may be stored in or upon any of the Common Areas or for the removal of such property.

**[NOTE: This section has been added.]**

**Section 8.5**      **Subdivision.** No Lot may be further divided or subdivided, nor may any easement or other interest in less than the whole be conveyed by the Owner of the Lot without the prior written approval of the Association; provided, however, Association approval is not required for the transfer or sale of any Lot or for the granting of any security interest in the Lot. No Owner has the right to partition or seek partition of the Common Area or any Lot.

**[NOTE: This section has been added.]**

**Section 8.6**      **Temporary and other Structures.** In accordance with the applicable planned unit development (PUD) guidelines, no temporary house trailer, garage or outbuilding will be placed or erected upon a Lot except with the Association's prior written approval.

**[NOTE: This section simplifies Article VI Section 6.4 of the current Declaration.]**

**Section 8.7**      **Drainage.** There will be no interference with the established drainage patterns over any property within the Community, unless adequate provision is made for proper drainage and approved by the ARC. In the event of any such interference where there has been no adequate provision made for proper drainage, the Owner interfering with the established drainage patterns will be liable for any damage resulting from such interference.

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

**[NOTE: This section has been added.]**

**Section 8.8**      **Landscaping Requirements.** All major landscaping is subject to the approval of the ARC. Grass, shrubs and trees will be maintained in an attractive, healthy, live and growing condition, as more particularly provided for in this Declaration. No artificial plants, artificial grasses or flowers may be placed on the Lot as exterior landscape materials unless approved by the ARC. For a list of plant or tree species that are not permitted for planting in the Sundance HOA Community, please refer to the City of Boulder Forester.

**[NOTE: This section is intended to replace Article VII, Section 7.4 of the current Declaration, and eliminates references to specific types and species of trees, since this list is likely to become obsolete and is subject to change from time to time by local ordinance.]**

**Section 8.9      Prohibition of Damage, Nuisance and Noise.**

(a) Without the prior written consent of the Board of Directors, nothing will be done or kept on a Lot or the Community that would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

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

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

(d) Specific unauthorized and unreasonable annoyances or disturbances will include, but are not limited to, the following:

(i) fighting, screaming, shouting, excessively loud talking, or playing music or television, raucous behavior or insobriety either outside a Lot at any time or within a Residence if the conduct can be heard in another Residence;

(ii) using any alarm, equipment, or device, mechanical or otherwise, that creates or produces excessively loud sounds or any vibrations either outside a Residence at any time or within a Residence if the sounds can be heard or vibrations felt in another Residence;

(iii) threatening or intimidating conduct towards any Resident, guest or pet in the Community;

(iv) conduct that creates any danger or risk of injury to others or damage to property in the Community;

(v) conduct that creates any noxious or offensive odor if the odors can be detected in another Lot;

(vi) incessant or excessive pet noises, including dog barking, if the conduct can be heard in another Residence; or

(vii) similar action or activity that interferes with the peaceful use and enjoyment of another Lot or the Common Areas by any other Owner, members of his family, guests, invitees, or Residents.

**[NOTE: This section expands Article VI, Section 6.6 of the current Declaration. It is frequently difficult to enforce nuisance provisions because they tend to be broad and subjective. Therefore, we have identified specific behaviors that are typically objectionable. The list can be expanded or contracted as the Board deems appropriate. We have also added language to encourage residents (neighbors) to proceed individually to enforce the restrictions in this section.]**

**Section 8.10      Pets.**

(a) An Owner or Resident may keep a reasonable number of generally recognized household pets on the Lot. For purposes of this section, the following are not considered household pets: poultry, fowl, swine (including pigs and hogs), venomous snakes, horses, goats, sheep, cows, llamas, burrows, or animals determined in the Association's sole discretion to be dangerous animals.

(b) No Owner or Resident may keep, breed or maintain any pet for any commercial purpose. No structure for the care, housing, or confinement of any pet may be constructed or maintained on any part of the Common Areas. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Areas provided, however, dogs need not be leashed when within fenced patio or deck areas on the Owner's Lot, when attended. Feces left by pets upon the Common Areas, or on Lots, including the pet owner's Lot, must be removed promptly by the pet owner or other person responsible for the pet.

(c) Following notice and an opportunity for a hearing, the Association may require any pet that, in its opinion, endangers the health of any Owner or Resident be permanently removed from the Community upon ten days written notice.

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

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

**[NOTE: This section expands to Article VI, Section 6.11 of the current Declaration. The restriction on the types of animals that are not permitted is based on the applicable City of Boulder ordinance for lots smaller than one-half acre. The prohibition on chickens (poultry) is carried forward from Section 6.11 of the current declaration. If the Association wished to allow chickens, such to certain restrictions, let us know.]**

**Section 8.11      Unightly Articles.** No unsightly article will be permitted to remain on any Lot or other portion of the property if it is visible from adjoining property or public or private streets or drives. Without limiting the generality of the foregoing, trailers, mobile homes, recreation vehicles, graders, trucks (other than pickups), boats, tractors, campers, wagons, buses, snowmobiles, snow removal equipment and garden and maintenance equipment, will be kept at all times (except when in actual use) in an enclosed structure or otherwise fully screened from view in a manner consistent with this Declaration, such as approved fencing, garages and structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics are permitted in backyards only. Liquid propane, gas, oil and other exterior tanks will be kept within an enclosed structure.

**[NOTE: This section is similar to and expands upon Section 6.6 of the current declaration.]**

**Section 8.12      Trash Removal Restriction.**

(a) No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash will be kept stored or allowed to accumulate on any portion of a Lot except within an

enclosed structure or in a garage; provided, however, that normal household waste can be set out in trash cans the evening before scheduled garbage pick-up and must be removed and returned to their enclosed structure by evening of the day of garbage pick-up.

(b) All equipment for the storage or disposal of such materials will be kept in a clean and sanitary condition.

(c) Notwithstanding anything to the contrary in subparagraph (a), Owners or Residents may temporarily store landscaping and/or gardening materials, such as mulch and rocks, for such duration as may be reasonably necessary to complete active landscaping projects.

**[NOTE: This section supplements the trash removal restrictions set forth in Article VI, Section 6.5 of the current Declaration. We have added language to address the placement and removal of trash cans. If you would like to modify the times or eliminate this requirement, please let us know.]**

### **Section 8.13      Vehicles and Parking.**

(a) Prohibited Vehicles. Boats, trailers, jet-skis and trailers for same, oversized trailers, hauling trailers, buses, recreational vehicles (as may be defined in the Rules and Regulations) may be stored permanently in a garage, or in the street or driveway for up to seven days. Emergency vehicles, as defined in the Act, are permitted in the Community. Notwithstanding the above, otherwise prohibited vehicles are allowed temporarily on the Lots and Common Areas during normal business hours for the purpose of serving any Lot or the Common Areas; provided, however, no such vehicle may remain on the Lots or Common Areas overnight or for any other purpose unless prior written consent of the Board is first obtained.

No unlicensed vehicles may be parked on the Lots or Common Areas. No stored or abandoned or inoperable vehicles of any kind may be stored or parked on the Lot or Common Areas. An "abandoned or inoperable vehicle" is defined as any passenger car, truck, motorcycle, boat, trailer, camper house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which for a period of two days or longer, does not have an operable propulsion system installed therein, has one or more flat tires or has another condition preventing the regular and normal operation and movement of the vehicle. A vehicle will be considered "stored" if it remains in the same location in the Community for 14 consecutive days or longer without prior written Board permission.

(b) Enforcement. If any vehicle is parked on any portion of the Community in violation of this section or in violation of the Rules and Regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed. The notice will include the name and telephone number of the person or entity that will do the towing. If 24 hours after such notice is placed on the vehicle the violation continues, or occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the vehicle owner or user, at the expense of the vehicle owner.

If a vehicle is towed in accordance with this section, neither the Association nor its directors, officers or agents will be liable to any person for any claim of damage resulting from the towing. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

**[NOTE: This section updates Article XI, Section 6.12 of the current Declaration and incorporates the answers to the questionnaire. Please review the list of prohibited vehicles carefully and let us know if any should be added or deleted.]**

### **Section 8.14      Vehicle Repair. Maintenance, repair, rebuilding, dismantling, repainting, or**



any kind of servicing of vehicles, trailers or boats may not be performed or conducted in the Community except (a) in driveways, for repairs up to three days, or (b) within completely enclosed structures that screen the sight and sound of the activity from the street and from adjoining property. This restriction does not prevent washing and polishing of any motor vehicle, boat, or trailer, together with those activities normally incident and necessary to washing and polishing.

**[NOTE: This section has been added.]**

**Section 8.15      Use of Garages.**

(a) No Owner or resident of a Lot may convert the garage which is attached to the resident to a family room, living room, bedrooms or other such room which would normally be considered a living area; provided, however that this restriction does not prohibit the placement of a washer, dryer, or other similar appliance in the garage.

(b) Garages may not be used as bedrooms, for overnight occupancy or in any manner other than for parking of vehicles and storage.

(c) Nothing may be done or kept in a garage which would be in violation of any statute, rule, ordinance, regulation. Permit or other validly imposed requirements of any governmental body.

**Section 8.16      Signs.** Except as may be provided for herein or as may be required by state law or legal proceedings, no signs, advertising posters, political placards or billboards of any kind will be erected, placed, or permitted to remain on a Lot without the prior written consent of the Board or its designee, except as follows: (a) one professional security sign not to exceed one square foot in size may be displayed on Lot and a reasonable number of professional security decals not larger than eight inches by eight inches may be displayed within windows in a Residence; (b) one professionally lettered "For Rent" or "For Sale" sign not to exceed three feet by four feet in size may be displayed on a Lot being offered for sale or for lease; and (c) political signs as permitted by Colorado law; and (d) patriotic display of American flags not exceeding four feet by six feet in size attached to a flagstaff on a Residence. The Board has the right to erect reasonable and appropriate signs on behalf of the Association.

**[NOTE: This provision is similar to Article VI, Section 6.9 of the current Declaration. We have incorporated the same size restrictions on "for sale/for lease" signs and flags and added a security sign/decal provision and provisions allow the display of political signs consistent with CCIOA Section 106.5.]**

**Section 8.17      Antennas and Satellite Dishes.** Satellite dishes, antennae or other devices for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation will not be erected, used or maintained by Owners or Residents on any portion of the Common Areas except as allowed by federal law. However, the Association has the right to erect, construct and maintain these devices on the Common Areas.

**[NOTE: This section has been added. It is consistent with the federal Telecommunications Act.]**

**Section 8.18      Hazardous Activities.** No activities will be conducted on a Lot and no Improvements will be constructed on a Lot that are, or might be, unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms will be discharged upon the property, and no open fires will be lighted or permitted on any portion of the property, except in a contained barbeque unit while attended and in use for cooking purposes, or within an interior or exterior fireplace designed to prevent dispersal of burning embers.

**[NOTE: This section has been added.]**

**Section 8.19**      **Restriction on Marijuana Use, Growth and Distribution.** Except for the growth and use of medical marijuana for personal use by the Resident as permitted by Colorado law, no Owner, Resident or other Person may use the Lot or any portion of the Lot for use of marijuana by any means or for the purpose of growing or distributing marijuana. No Owner or Resident may grow medical marijuana for another person who is not a Resident of that Lot. No Lot may be used for the production or use of hash oil, whether for personal use or distribution. Owners will be responsible for any costs of damages resulting from a violation of this section. The restrictions in this section may be further clarified by the Board through rule and regulations.

**Section 8.20**      **Rules and Regulations.** The Board of Directors may adopt, amend and repeal rules and regulations concerning and governing the Residences, Lots and Common Areas to further the provisions of this Declaration and the general plan of development.

**[NOTE: This section is similar to Article VI, Section 6.13 of the current Declaration.]**

**Section 8.21**      **Use of the words Sundance Filing No. 1, Sundance Community, and Sundance Homeowners Association.** Without the Association's prior written consent, Owners or Residents will not use the words Sundance Filing No. 1, Sundance Community, Sundance Homeowners Association, or the logo of the Community or Association, if any, or any derivative thereof, if use is likely to cause confusion, mistake or deception, in the Association's sole discretion.

**[NOTE: This section has been added.]**

## **ARTICLE 9.                      INSURANCE**

**[NOTE: The only requirements regarding insurance in the current Declaration are that the Association comply with requirements of CCIOA. The provisions outlined below are more comprehensive.]**

**Section 9.1**      **Insurance on the Lots.** Each Owner will obtain property and liability insurance covering loss, damage or destruction by fire or other casualty to the Residence and Improvements located or installed on their Lot, the other property of that Owner, and any injuries occurring to the persons while on a Lot. The Association will not be liable for the failure of any Owner to maintain insurance.

**Section 9.2**      **Insurance to be Carried by the Association.** The Association will obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act. Insurance coverage includes the following and will be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

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

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

(c)      **Association Fidelity Insurance.** The Association will obtain fidelity coverage to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including

persons who serve the Association with or without compensation. The fidelity coverage should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees and others who are responsible for handling the funds of the Association.

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

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

**Section 9.3** Miscellaneous Terms Governing Insurance Carried by the Association. The Association will maintain, to the extent reasonably available, insurance policies with the following terms or provisions.

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

(b) All insurance policies will contain waivers of subrogation against any Owner or member of the Owner's household.

(c) All insurance policies will contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and will provide that policies may not be canceled or modified without at least 30 days prior written notice to all of the Owners, holders of first lien security interests and the Association, except in instances of nonpayment of premiums, which will require at least ten days' prior written notice.

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

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

(f) All Association insurance policies will be primary, if there is other insurance in an Owner's name covering the same risk.

**Section 9.4** Insurance Premium. Insurance premiums will be a Common Expense included as a part of the Association's annual assessments.

**Section 9.5** Managing Agent's Insurance. The managing agent, if any, will maintain insurance for its benefit, and will maintain and submit evidence of coverage to the Association. Insurance will include professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage (unless the Association otherwise provides fidelity coverage).

**Section 9.6** Insurance Review. The Board may review the insurance carried by the Association periodically, to determine the amount of insurance required and the service capabilities of the current carrier.

**Section 9.7** Claims and Adjustments by the Association. Any loss covered by an Association insurance policy will be adjusted by the Association. The insurance proceeds for a loss will

be payable to the Association and not to any holder of a first lien security interest. The Association will hold any insurance proceeds for the repair or restoration of the damaged property. The Association is not entitled to use insurance proceeds for other purposes unless there is a surplus after the damaged property has been completely repaired or restored.

**Section 9.8** **Duty to Repair.** The Association must repair or replace promptly any portion of the Community for which insurance is required under this article that is damaged or destroyed, unless Owners entitled to cast 67% of the total Association vote agree not to rebuild.

**Section 9.9** **Condemnation and Property Insurance Allocations and Distributions.** In the event condemnation proceeds or property insurance proceeds are distributed to the Owners, the distribution will be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

**Section 9.10** **Responsibility for Payment of Deductible Amount.** Whether the Board, in its discretion, submits a claim under the Association's insurance policies or not, the Association will pay or absorb the deductible amount for any work, repairs or reconstruction for damage to property that is the Association's maintenance responsibility unless the damage is caused by the negligent or willful act or omission of an Owner, the Owner's family, guests, or invitees, in which case the Association will seek reimbursement of the deductible amount as an individual assessment in compliance with and under the terms of the Declaration.

**Section 9.11** **Insurance Assessments.** If the insurance proceeds are not sufficient to defray the costs of reconstruction and repair for any reason, including the allocation of deductibles, the deductible or additional cost will be a Common Expense.

**Section 9.12** **Damage to or Destruction of Residences on Lots.** In the event of damage to or destruction of structures on a Lot, the Owner will promptly repair or reconstruct the damaged structure in a manner consistent with the original construction or plans approved in accordance with this Declaration unless the Owner elects not to rebuild in cases of substantial damage or destruction. If the structure is substantially destroyed and the Owner determines not to rebuild or reconstruct, the Owner will promptly clear the Lot of all debris and continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

## **ARTICLE 10. AUTHORITY AND ENFORCEMENT**

### **Section 10.1** **Compliance With and Enforcement of Governing Documents.**

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

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

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which will be a lien upon the violator's Lot (in the event that any Resident, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine will first be assessed against the violator. If the fine is not paid by the violator within the time period set by the Association, the Owner will pay the fine upon notice from the Association);

(ii) suspending voting rights;

(iii) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

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

(v) requiring an Owner, at the Owner's expense, to cease any construction of any modification that has not been approved, or, upon obtaining a court order, to remove any structure or improvement in the Lot or the Common Areas in violation of the Governing Documents and to restore the Lot or Common Areas to its previous condition;

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

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

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

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

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

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

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

**[NOTE: This section has been added.]**

**Section 10.2** Failure to Enforce. The Board will have the discretion to determine whether enforcement action in any particular case will be pursued; provided that the Board will exercise judgment, be reasonable and not be arbitrary and capricious. Notwithstanding the above, no right of action will exist against the Association for failure of enforcement where: (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; (iii) a particular violation relates to the Exempt Property, or (iv) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so. A decision of the Association not to pursue enforcement action will not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

**[NOTE: This section has been added.]**

## ARTICLE 11. AMENDMENTS

Except where a higher vote is required for action under any other provision of this Declaration or by the Act, in which case such higher vote will be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Lot Owners holding at least 67% of the total Association vote.

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

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

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

**[NOTE: This section revises and updates Article XIII, Section 13.2 of the current Declaration. We have deleted references to the Declarant and to mortgagees. In planned unit developments that are not condominiums, mortgagee consent is not required by FNMA or other secondary mortgage market entities. We have also provided authority for the Board to amend the Declaration in limited circumstances, and incorporated the statutory provision regarding the statute of limitations to challenge an amendment.]**

## ARTICLE 12. GENERAL PROVISIONS

**Section 12.1 Security.** The Association may, but will not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her family members, tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and the Association will not have a duty to provide security in the Community. Furthermore, the Association does not guaranty that non-residents will not gain access to the Community and commit criminal acts in the Community nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or Residents. It will be each Owner's and Resident's responsibility to protect his or her person and property and all responsibility to provide such security will lie solely with each Owner. The Association will not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

**[NOTE: This section has been added to put residents on notice that they are responsible for security of themselves and their property.]**

**Section 12.2 Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate any of its rights or privileges.

**[NOTE: This section has been added.]**

**Section 12.3 Electronic Records, Notices and Signatures.** Notwithstanding any other

portion of this Declaration, records, signatures and notices will not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws will govern the giving of all notices required by this Declaration.

**[NOTE: This section has been added.]**

**Section 12.4** **Duration.** The covenants and restrictions of this Declaration will run with and bind the property perpetually unless otherwise terminated as provided in C.R.S. § 38-33.3-218.

**[NOTE: This section revises Article XIII, Section 13.1 of the current Declaration.]**

**Section 12.5** **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise will in no way affect the application of such provision to other circumstances or affect any other provision(s), which will remain in full force and effect.

**[NOTE: This section has been added.]**

**Section 12.6** **Public in General.** The rights and burdens created in this Declaration do not, are not intended to, and will not be construed to create any rights and burdens in or for the benefit of the general public.

**[NOTE: This section has been added.]**

**Section 12.7** **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and do not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article.

**[NOTE: This section has been added.]**

**Section 12.8** **Singular Includes the Plural.** Unless the context otherwise requires, the singular includes the plural, and the plural includes the singular, and each gender referral is deemed to include the masculine, feminine and neuter.

**[NOTE: This section has been added.]**

**Section 12.9** **Conflicts.** In the event of a conflict between this Declaration and the Articles of Incorporation or Bylaws, this Declaration will control. In the event of a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

**[NOTE: This provision has been added.]**

IN WITNESS WHEREOF, the undersigned officer of the Sundance Homeowners Association, hereby certifies that this Amended and Restated Declaration was adopted by the Members of the Association or that the District Court of Boulder County has entered an order approving this Amended and Restated Declaration.

This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

SUNDANCE HOMEOWNERS ASSOCIATION

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

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF \_\_\_\_\_  )

The foregoing Declaration was acknowledged before me by \_\_\_\_\_,  
\_\_\_\_\_ of the Association, on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

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

FINAL DRAFT



EXHIBIT "A"

Legal Description of Community

[To be attached]

FINAL DRAFT