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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS
OF
STONE BROOK HOMEOWNERS' ASSOCIATION, INC.**



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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF
STONEY BROOK HOMEOWNERS' ASSOCIATION, INC.**

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by the Stoney Brook Homeowners' Association, Inc., a Colorado nonprofit corporation.

RECITALS:

A. On January 8, 1976, Codus Homes of Colorado, Inc. submitted the real property described on Exhibit A to that certain Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc., recorded in the real property records of the City and County of Denver, Colorado in Book 1179, Page 255, as amended by the following:

1. First Supplement to the Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc., recorded in the real property records of the City and County of Denver, Colorado in Book 1237, Page 503;
2. Second Supplement to the Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc., recorded in the real property records of the City and County of Denver, Colorado in Book 1312, Page 674;
3. First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc., recorded in the real property records of the City and County of Denver, Colorado in Book 1323, Page 162;
4. Second Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc., recorded in the real property records of the City and County of Denver, Colorado in Book 2294, Page 472;
5. Third Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc., recorded in the real property records of the City and County of Denver, Colorado in Book 2489, Page 47;

(collectively the "Original Declaration") to its covenants, conditions and restrictions;

B. The Owners within the Stoney Brook Community desire to amend and restate the Original Declaration by virtue of this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easement of Stoney Brook Homeowners' Association, Inc. (the "Declaration"); and

C. On January 8, 2004, the District Court for the City and County of Denver, Colorado granted the Association's Petition for Court Approval of Proposed Amended and Restated Declaration pursuant to C.R.S. §38-33.3-217(7). The Court found that the Association filed a petition for approval of the Declaration with the Court which was not objected to by: (i) thirty-three percent (33%) of the Owners, (ii) thirty-three percent (33%) of the lenders with security interests in one or more Lots, (iii) the Declarant, (iv) the Federal Housing Administration ("FHA") or (v) the Veteran's Administration ("VA"). The Court also found that the Declaration did not terminate the Original Declaration and that the Declaration did not alter the allocated interests of the Owners within the Association. A copy of this Order is attached and incorporated by reference as Exhibit "A" hereto.

D. Pursuant to C.R.S. §38-33.3-217(7), upon recordation of the Declaration and the Court Order approving the Declaration, the Declaration, as amended, shall be effective as if all of the approval requirements set forth in the Original Declaration were met.

NOW THEREFORE, the Original Declaration and all amendments and supplements thereto are replaced and superceded by the covenants, servitudes, easements and restrictions set forth below:

ARTICLE 1 DEFINED TERMS

Section 1.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or as set forth below:

(a) Act shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et. seq.*, as it may be amended.

(b) Architectural Review Committee or Committee means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate Improvement, and harmonious additions, alterations and Improvements within the Community.

(c) Assessment shall include all Common Expenses, insurance assessments, utility assessments, and any other expense levied to Lots pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) Association shall mean Stoney Brook Homeowners' Association, Inc., a Colorado nonprofit corporation, and its successors.

- (e) Board or Board of Directors shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.
- (f) Budget shall mean the annual budget for estimated cash requirements of the Association used to set Common Expense Assessments for the Owners, as more further provided in this Declaration.
- (g) Common Area shall mean all real property owned by the Association for the common use and enjoyment of the Owners, if any.
- (h) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.
- (i) Community or Stoney Brook Community or Planned Community shall mean the planned community known as "Stoney Brook," and the real property subject to this Declaration and as further defined by the recorded plats and the legal descriptions contained therein, and the Members of the Association.
- (j) Declaration shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc., as amended, recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado.
- (k) Governing Documents shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, any maps and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.
- (l) Improvement(s) shall mean and refer to all improvements now or hereafter constructed on the Property including without limitation, all buildings, streets, driveways, ponds, creek systems, exterior lighting, benches, walks, tennis courts and swimming pools.
- (m) Lot shall mean and refer to that portion of the Property shown as a Lot on any recorded Plat or site plan.
- (n) Member shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.
- (o) Owner shall mean the owner of record title, whether one or more persons or entities, to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

(p) Plat or Map shall mean and refer to the plat(s) and/or map(s) of the Property and Improvements that are subject to this Declaration and which are designated in the plat for Stoney Brook recorded in the records of the Office of the Clerk and Recorder of the City and County of Denver. More than one plat, map or supplement thereto may be recorded, and, if so, then the term "Plat" or "Map" shall collectively mean and refer to all of such plats, maps and supplements thereto.

(q) Property shall mean the property described in or which is subject to the Declaration together with all easements, rights, and appurtenances thereto and Improvements erected or to be erected thereon.

(r) Rules and Regulations shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including any amendment to those instruments.

ARTICLE 2 NAMES & DESCRIPTION OF REAL ESTATE/EASEMENTS

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is "Stoney Brook." The name of the Association is the "Stoney Brook Homeowners' Association, Inc."

Section 2.2 Property. The Planned Community is located in the City and County of Denver, State of Colorado. The Property of the Planned Community is described in the Original Declaration. Easements for utilities and other purposes over and across the Lots and any Common Area may be as shown upon a recorded Plat and on any recorded Map of the Planned Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.3 Number of Lots. The number of Lots initially included in the Stoney Brook Community is two hundred eighty-two (282).

Section 2.4 Identification of Lots/Lot Descriptions. The identification of each Lot is shown on the plat. Every contract for sale, deed, lease, Security Interest, will or other legal instrument shall legally describe a Lot by its identifying lot number, followed by the name of the Community, with reference to the Plat, any Map and the Declaration. An illustrative description is as follows:

Lot ____, Stoney Brook, according to the Amended and Restated Declaration recorded ____, 20__, at Reception No. ____ and the recorded plat, in the records of the Clerk and Recorder, the City and County of Denver, State of Colorado.

Reference to the Declaration, Plat and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration, Plat or Map, without specific references thereto.

Section 2.5 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to any Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;
- (b) the right of the Association, to enforce compliance with the Governing Documents as provided therein;
- (c) the right of the Association, upon approval of at least sixty-seven percent (67%) of the Owners, to mortgage the Common Area as security for obtaining a mortgage, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners;
- (d) the right, power and authority of the Association, upon approval of at least a majority of all Owners, to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting any Common Area; and
- (e) the right of the Association to close or limit the use of any Common Area while maintaining, repairing and making replacements in any Common Area.

Section 2.6 Delegation of Use. Any Owner may delegate their right of enjoyment to any Common Area and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot.

Section 2.7 Easements for Driveways. To the extent that a driveway appurtenant to a Lot is located on or partially on Common Area, the Lot Owner of such driveway shall have an exclusive right and easement to use such driveway, as shown on the Plat.

Section 2.8 Easements for the Board of Directors. Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to allow for their performance of obligations in this Declaration, provided that the easement granted and the use thereof shall not unreasonably interfere with or impair the use of any Improvements constructed on a Lot and shall be exercised only after reasonable notice to the Owner of the Lot.

Section 2.9 Utility, Map and Map Easements. Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon a recorded plat or the Plat or Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.



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Section 2.10 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.11 Easement for Encroachments. If any part of the Common Area encroaches or shall hereafter encroach upon a Lot or the patio or private driveway appurtenant thereto, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter (whether because of reconstruction or otherwise) encroach upon the Common Area, or upon another Lot, the Owner of that Lot shall and does have an easement for such encroachment and for the maintenance of the same. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any of the Improvements, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. An overhang easement is granted to any Owner whose roof, eaves, gutter or similar items overhang the Lot of another Owner or the Common Area.

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot shall be allocated one (1) vote which shall be cast as a single vote and shall not be subject to fractional voting. Contract purchasers will not be Association members until such time as they obtain record title.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Stoney Brook Community so as to provide a community of high quality and to enhance and protect the property value, desirability and attractiveness of the Stoney Brook Community and the Lots therein. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Stoney Brook Community shall be managed by the Association. The Association shall be governed by the Act and the Governing Documents for the Association. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of its final responsibilities.

Section 3.4 Specific Powers. The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Stoney Brook Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the authority, upon obtaining the affirmative vote of at least a majority of the Members present and entitled to vote at any duly constituted annual or special meeting of the Members, to enter into unsecured debt obligations to obtain funds to be used for any purpose authorized in the Governing Documents, and may enter into debt obligations secured by the Common Area upon obtaining the affirmative vote of sixty-seven percent (67%) of the Members so entitled to vote.

Section 3.5 Indemnification. To the full extent permitted by law, each officer, director or committee member of the Association and other volunteer appointed by the Board of Directors shall be indemnified by the Owners and the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws and by Colorado law.

Section 3.6 Association Management Contracts. Any contract for professional management of the Stoney Brook Community may not exceed three (3) years. Any such contract must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice.

ARTICLE 4 MAINTENANCE

Section 4.1 Association Responsibility.

(a) Common Area. Except as provided for below, the Association shall provide and pay for all repair, replacement, improvement, and maintenance of the Common Area and all Improvements located thereon including, without limitation, landscaping, sprinkler systems, ponds and streams, streets and parking areas, utility lines (to the extent not maintained by utility companies), light fixtures, sidewalks, pathways, and any and all other Improvements as determined in the sole discretion of the Board.

(b) Right to Provide Maintenance to Lots and Exterior of Lot Improvements. The Association shall have the right, but not the obligation, to maintain, repair, paint, replace and otherwise care for all or any segment of the exterior portions of Improvements located on Lots including, without limitation, exterior walls, roofs, gutters, downspouts, foundations and landscaping. Without limiting the generality of the forgoing and by way of illustration, if the Association exercises its right to provide such maintenance, the Board, by resolution or by regulation, will describe the maintenance to be provided and will specify the work to be paid for by the Association, and the work, if any, to be paid for by the Owner. Payment by the

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owner shall be in the manner prescribed by the Board. The Board shall have the right to charge such costs as an Assessment against the Owner and the Lot.

(c) Repair and Replacement, Insurance or Condemnation. The Association will repair or replace buildings or Improvements upon Lots to the extent the Association receives insurance or condemnation proceeds to pay for the cost of such work.

(d) Other Association Maintenance Functions. The Association may undertake, but has no obligation to undertake, any activity, function or service for the benefit of all, some or one (1) Owner. Without limiting the generality of the forgoing and by way of illustration, the Association may enter into an agreement with one (1) or more Owners to provide landscaping services, including the selection, purchase, replacement and maintenance of plantings located on individual Lots. Such agreements shall be in a form prescribed by the Board and shall detail the services to be provided by the Association and the cost thereof, including the manner of payment to the Association. The Board shall have the right to charge such costs as an Assessment against the Owner and the Lot.

(e) Emergency Repairs. The Association may undertake, but shall have no obligation to undertake, emergency repairs to Lots and Improvements thereon as the Board believes is necessary to prevent imminent danger to life or property. Such repairs shall be paid for by the Owner in the manner prescribed by the Board. The Board shall have the right to charge such costs as an Assessment against the Owner and the Lot.

Section 4.2 Access. For the purpose of performing the maintenance referred to in this Article, and inspections related thereto, the Board of Directors, through its duly authorized agents, contractors, employees or the Architectural Review Committee, shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot and Improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Board of Directors or its agents, contractors or employees, may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

Section 4.3 Owner Maintenance. Except as provided above, each Owner shall be responsible for all maintenance, repairs, painting, and replacement of Improvements on his Lot and all fixtures, furnishings, equipment and appliances of every kind therein, and the driveway and patio appurtenant to a Lot (whether located within the Lot or in the Common Area) and shall be kept and maintained in clean, safe and attractive condition and in good order and repair. The areas to be maintained by each Owner shall include without limitation the roof, floors, interior and exterior walls doors and windows, heating/air-conditioning and plumbing systems and fixtures, gutters and downspouts, including proper drainage of water away from the foundation, and all electrical and of electronic systems, fixtures and equipment located within his Lot, except that the Association will replace garage light bulbs and remove snow from the driveway and sidewalks leading to the Improvements on the Lot. An Owner shall not act to impair any easement or utility service, nor do

any act or allow any conditions to exist which will adversely affect the use and enjoyment of other Lots or the provision of utility services to such Lots. No Owner shall, in whole or in part, change the landscaping or drainage pattern adjacent to his Lot by the addition or removal of any items thereon without the prior written consent of the Board of Directors. If an Owner fails to fulfil his responsibilities under this Section, the Board of Directors may, at its option, take such action as it deems appropriate, including without limitation performing the Owners' obligations, after ten (10) days notice to such Owner, except in emergencies, and any costs resulting therefrom shall be charged as an Assessment against such Owner and his Lot.

Section 4.4 Negligence. In the event that the need for maintenance or repair of the Common Area, or any portion thereof, is caused through the willful or negligent act of the Owner, his family, guests, tenants, or invitees, then the cost of such maintenance or repairs shall be the personal obligation of such Owner, and if not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of such expenses, costs and fees, then failure to so repay shall be a default by the Owner under the provisions of this Declaration, and such expenses, costs and fees shall automatically become an Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Declaration to collect the Assessment.

ARTICLE 5 PARTY WALLS

Section 5.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction upon the Property and placed on the dividing line between the Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 5.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

Section 5.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5.4 Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.



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Section 5.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE 6 COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES

Section 6.1 Creation of Association Lien and Personal Obligation to Pay Assessments for Common Expenses. Each Lot, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments for Common Expenses and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association's annual Assessments for Common Expenses and such other Assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall pass to a successor in title upon conveyance of a Lot. No Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessments for Common Expenses are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

Section 6.2 Annual Assessments.

(a) During each fiscal year, the Board shall prepare and approve a Budget for the succeeding fiscal year showing, in reasonable detail, estimated income from interest earned, authorized fees and charges and Common Expenses for the Association, which shall be determined by the Board as necessary to operate the Association in a manner that will maintain and enhance the value and attractiveness of the Community.

(b) The Budget will include provision for allocations to reserves to pay future costs of Common Expenses based on estimates of future repair and replacement costs of Common Area components. Annual Assessments shall be based on the Board's determination of the funds necessary to pay Common Expenses as provided for in the Budget.



(c) Owners shall be provided a copy of the Budget and the opportunity to comment on the proposed Budget prior to its approval by the Board. Owners shall be given at least thirty (30) days advance notice of the time and place the Board will meet to consider a proposed Budget. After such thirty (30) day notice, the Board may adopt the proposed Budget at the meeting set forth in the notice.

(d) Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors.

(e) The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 6.3 Apportionment of Common Expenses. Except as provided in this Declaration, all Assessments for Common Expenses shall be assessed against all Lots equally.

Section 6.4 Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors; provided that the Association prepares a new Budget for the annual year reflecting such special Assessment and distributes the same to all Owners.

Section 6.5 Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 6.6 Lot Specific Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article those amounts expended by the Association for the benefit of any individual Lot and the Owner thereof, including, but not limited to: fines; improvement, repair, replacement and maintenance specific to a Lot; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner, his guests, employees, licensees, lessees or invitees; and all other expenditures or charges which the Board of Directors, in its sole discretion, chooses to allocate to a Lot and which are readily determined to be allocable to a particular Lot.



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Section 6.7 Working Capital. The Board may require each Owner to make a reasonable deposit with the Association for working capital or contingent expenses and may collect the same as a special Assessment as set forth in this Declaration.

Section 6.8 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against a Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be 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 permitted under the Act.

Section 6.9 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Original Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.



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Section 6.10 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Area, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses costs and fees incurred by the Association are not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Article.

ARTICLE 7 COVENANTS AND RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 7.1 Flexible Application of the Subsequent Covenants and Restrictions. All Property within the Stoney Brook Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules.

Section 7.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The Board may add, delete, modify, create exceptions to, or amend use guidelines and restrictions, or Rules and Regulations, in accordance with this Declaration and established legal principles.
- (c) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.
- (d) The Board may establish fines for the infraction of all Rules and Regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.
- (e) All penalties imposed are collectible as Assessments.

Section 7.3 Use/Occupancy. Lots shall be used for residential purposes and may be used for commercial and business purposes in conjunction with residential use as long as there is no adverse external effect on the nature, perception, operation or ambiance of the Community as a first class residential community, as reasonably determined by the Board of Directors of the Association.

Section 7.4 Leasing and Occupancy. Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

- (a) No Lot shall be occupied or leased except under the terms and conditions set forth in the Governing Documents. Each Lot shall be occupied and used by Owners, their guests, occupants or lessees for residential purposes only, except as may be provided by the Declaration.
- (b) Owners shall be responsible for the actions and/or violations of their guests and lessees, and the lessee's guests. Owners shall provide a copy of the Governing Documents to each lessee and occupant at the time the lease is executed.
- (c) Each Owner is strongly encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant.
- (d) All leases must be in writing, for a term of not less than six (6) months and must be signed by all occupants over the age of eighteen (18). No lease may be for less than the entire Lot. Every lease must include the following:
 - (i) A statement that the lessee has received a copy of the Governing Documents, that the lease is subordinate to the Governing Documents, and that lessee agrees to comply with same.
 - (ii) An affirmative covenant of the lessee providing that failure by the lessee or the lessee's guest to comply with the terms of the Lease, the Governing Documents or Colorado statute shall constitute a default by Lessee under the lease.
- (e) Each Owner who leases his Lot shall provide the Association with a copy of the current lease and tenant information including names of all occupants, vehicle descriptions including license plate numbers, and any other information reasonably requested by the Association or its agents.
- (f) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(g) An Owner may be requested by the Board to evict any lessee who has committed more than two (2) violations of any of the provisions of the Governing Documents. Notwithstanding this provision, an Owner shall immediately evict any lessee who commits, or whose guest commits, any act, or series of acts, which endanger the life of any person, or who willfully and substantially endangers any Common Area or other property pursuant to the provisions of Colorado Revised Statute § 13-40-107.5. If an Owner does not enforce the terms of this subsection (g), the Board shall have the authority to do so.

(h) Notice of violation may be sent to the lessee in addition to the Owner of the Lot. The Owner will be held solely responsible for all fines incurred for violations by lessees.

Section 7.5 Restrictions on Animals and Pets. Animals, including but not limited to cats, dogs, birds, reptiles, or other household animals, hereinafter for brevity termed "animal," may be kept, maintained or harbored in a Lot if the animal is not obnoxious to other Owners or occupants. All animals shall be controlled by their Owner and shall not be allowed off of the Owner's Lot, except when properly leashed and accompanied by the animal Owner or his or her representative. Animal waste shall be cleaned up immediately from each Lot by the animal Owner. If an animal is obnoxious to other Owners or occupants, the Owner or person having control of the animal shall be given a written notice to correct the problem. The written notices provided for herein shall be issued by the authorized representative of the Association or, if there is no authorized representative then by one or more of the members of the Board of Directors of the Association. Animals may not be kept for any commercial purposes. Owners shall hold the Association harmless from any claim resulting from any action of their animals.

Section 7.6 Antennae. Subject to federal statutes or regulations governing planned communities, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained within the Stoney Brook Community, except pursuant to the Rules and Regulations of the Association. Any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type erected, installed or maintained by an Owner is subject to reasonable and valid safety restrictions, and reasonable restrictions as to screening of the device from view by neighboring Lots. All costs associated with the installation or maintenance of any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type by an Owner, including costs of repair, replacement, improvement and maintenance of the structure to which such exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type is affixed, erected and/or installed upon, shall be the sole responsibility of that Owner.



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Section 7.7 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Community by Owners. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

Section 7.8 Vehicular Parking, Storage, and Repairs.

(a) Vehicular parking upon any Common Area shall be regulated by the Board of Directors.

(b) The following vehicles may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, or unless authorized in writing by the Board of Directors of the Association: oversized vehicles, commercial vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation.

(c) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Board of Directors of the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within seventy-two (72) hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages.

Section 7.9 Use of Common Area. Except as otherwise provided for in the Governing Documents, there shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association.

Section 7.10 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Board of Directors.

Section 7.11 No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any Property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property within the Community and no open fires shall be lighted or permitted on any Property within the Community 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.

Section 7.12 Restrictions on Clotheslines and Storage. No clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted in the Community unless the same, in each instance, is expressly permitted in writing by the Board of Directors of the Association. Where such written permission is granted, such permission is revocable if the item or condition becomes obnoxious to other Owners, in which event the Owner or person having the item or condition complained of shall be given a written notice to correct the problem or, if not corrected, the Owner upon written notice will be required to remove the item/condition from their Lot and from the Community. The written notices provided for herein shall be issued by the Board of Directors of the Association. Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

Section 7.13 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community except such sign or signs as may be approved in writing by the Board of Directors or as permitted in other provisions of this Article or the Rules and Regulations of the Association.

Section 7.14 Restriction on Mining and Drilling. No Lots within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 7.15 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors, or its successors and assigns. The Board of Directors may establish and enforce penalties for the infraction thereof. Owners shall be provided with a copy of any proposed addition, deletion or other modification of the Rules and Regulations and at least ten (10) days notice of the time and place the Board will meet to consider approval of any such addition, deletion or modification. Owners may



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attend such meeting and comment on the proposed Rules and Regulations.

Section 7.16 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

ARTICLE 8 ARCHITECTURAL REVIEW

Section 8.1 Establishment of the Architectural Review Committee. The Architectural Review Committee ("Committee") shall be appointed by the Board and shall consist of a minimum of three (3) members of the Board and other persons appointed by the Board, if any. In the event an Architectural Review Committee is not so established, the Board shall perform all duties of the Committee as provided in this Article and the Governing Documents.

Section 8.2 Required Approval. No structures, including residences, accessory buildings, tennis courts, swimming pools, antennas, flag poles, fences, walls, exterior lighting, landscaping, or any other Improvement shall be constructed erected or installed on a Lot, nor shall any alteration or change to the exterior of the Improvements, the exterior of a residence, to a Lot or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced within the Community unless complete plans and specifications shall have been first submitted to and approved in writing by the Committee as outlined in the Rules and Regulations. The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed Improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee.

Section 8.3 Architectural Criteria. The Committee shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth herein. The approval or consent of the Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration.

Section 8.4 Architectural Guidelines. The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association.

Section 8.5 Reply and Communication. The Committee shall reply to all submittal of plans and specifications made in accordance herewith in writing within forty-five (45) days after receipt. In the event the Committee fails to take any action on submitted plans and specifications within forty-five (45) days after the Committee has received the plans and specifications, approval shall be deemed to be granted. All communications and submittals shall be addressed to the Committee at the office address of the Association.

Section 8.6 Variances. The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in architectural guidelines. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Area nor deviate substantially from the general intent and purpose of this Declaration, and written approval of the Board is obtained by the Committee.

Section 8.7 Right to Appeal. An Owner may appeal any decision of the Committee to the Board of Directors. The Board of Directors shall review the decision of the Committee pursuant to the criteria set forth in this Article and the Rules and Regulations. Any decision of the Committee may be overruled and reversed by a majority of the Directors by a written decision setting forth the reasons for the reversal when the Directors conclude that the Committee's decision was inconsistent with the criteria set forth in this Article and the Rules and Regulations.

Section 8.8 Waivers. The approval of the Committee of any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 8.9 Liability. The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 8.10 Records. The Committee shall maintain written records in the office of the Association of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 8.11 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction herein contained shall in no event

be deemed a waiver of the right to do so thereafter.

ARTICLE 9 INSURANCE/CONDEMNATION

Section 9.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. The Association shall maintain adequate hazard and liability insurance covering loss, damage or destruction by fire or other casualty to the Common Area, Lots, Improvements installed or made to Lots and any injuries occurring to the persons while on a Lot.

Section 9.2 Hazard Insurance on Lots and Common Area. The Association shall obtain and maintain, to the extent obtainable, hazard insurance covering loss, damage or destruction by fire or other casualty to:

(a) Improvements to the Common Area and the other property owned by the Association.

(b) Improvements initially installed on the Lots at the time of original construction, but not including Improvements, betterments, furniture, furnishings, fixtures, equipment and personal property, supplied or installed by Owners.

All blanket at hazard insurance policies shall provide for full replacement value without deduction for depreciation and shall contain a standard non contributory mortgage clause in favor of each holder of first lien security interests, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such first lien holders, as their interests may appear of record in the records of the Office of the Clerk and recorder of the City and County of Denver, State of Colorado. In the event the Board of Directors determines the Association is unable to obtain insurance policies that provide for full replacement value without deduction for depreciation as provided for herein, the Board shall, within ten (10) business days of such determination, notify each Owner that the Association is unable to obtain such insurance. Such notice shall be in writing and be mailed to each Owners' mailing address as shown in the records of the Association.

Section 9.3 Association Liability Insurance. The Association shall obtain adequate public liability and property damage liability insurance covering the Community including all Lots and the Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association. All liability insurance shall name the Association and Owners as the insured.

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Section 9.4 Association Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds 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 or bonds 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.

Section 9.5 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 9.6 Officers' and Directors' Personal Liability Insurance. The Association shall obtain officers' and directors' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities.

Section 9.7 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

- (a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days' prior written notice to all of the Owners, holders of first lien Security Interests and the Association.
- (b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least ten (10) days prior to the expiration of the then-current policies.
- (c) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.
- (d) In no event shall any casualty insurance policy contain a co-insurance clause.
- (e) Prior to the Association obtaining any blanket policy of casualty insurance on the Lots or Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Lots and Common Area and any Improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof.

(f) Owners are advised to carry their own insurance on everything within the boundaries of their residence, as discussed in Section 9.2 above, and all personal property within those boundaries for their benefit and at their expense provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if an Owner has other insurance that covers the same loss or losses as covered by policies of the Association. Owners are further advised to obtain liability coverage for their individual Lots and personal actions. In this regard, the Association's insurance coverage, as specified hereunder, does not obviate the need for Owners to obtain insurance for their own benefit.

(g) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 9.8 Other Association Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 9.9 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 9.10 Managing Agent Insurance. The managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association.

Section 9.11 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 9.12 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been



completely repaired or restored.

Section 9.13 Duty to Repair. Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 9.14 Condemnation and Hazard Insurance Allocations and Distributions. In the event surplus funds exist, pursuant to Sections 9.12 and 9.13 of this Declaration, and the Association distributes hazard insurance proceeds or condemnation proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 9.15 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to the Common Area unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with the terms of this Declaration.

(b) Any loss falling within the deductible portion of the Association policies to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Lots involved in the same proportion as each Owner's claim bears to the total amount of insurance proceeds paid for the occurrence and shall be assessed against the Lot.

Section 9.16 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered a special Assessment as discussed in this Declaration and shall not require any vote of the Owners.

ARTICLE 10 GENERAL PROVISIONS

Section 10.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association, acting through the Board, may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, at the Board's discretion, the fine may first be assessed against the violator; provided, however, if the fine is assessed against the violator and is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board and the opportunity for a hearing have been provided);

(ii) suspending the right to vote;

(iii) performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass;

(v) preclude, without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.



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(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association not to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule or regulation.

Section 10.2 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 10.3 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 10.4 Amendment of Declaration by Owners. Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the City and County of Denver of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 10.5 Amendment of Declaration by the Association. The Association shall have the authority to amend, revise, remove, repeal or add any provision to this Declaration, without Owner or mortgagee approval, in order to conform with any applicable state, city or federal law

Section 10.6 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

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Section 10.7 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 10.8 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 10.9 Challenge to this Amendment. All challenges to the validity of this amendment or any amendments must be made within one (1) year after the date of recording of this document.

Section 10.10 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 10.11 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned, being the President and the Secretary of Stoney Brook Homeowners' Association, Inc., hereby certify that the Association has obtained written approval of this Amended and Restated Declaration from at least two-thirds (2/3) of the Owners and seventy-five percent (75%) of the first mortgagees within the Stoney Brook Community, as evidenced by written instruments filed with the records of the Association, or in the alternative, a Court Order has been entered by the District Court for Denver County, Colorado, pursuant to Section 217(7) of the Act approving this Declaration.

STONEY BROOK HOMEOWNERS' ASSOCIATION, INC.,
a Colorado nonprofit corporation,

By: Brian C. Pickard
President

ATTEST:

Sean P. Alford
Secretary

STATE OF COLORADO)
COUNTY OF Denver) ss.

The foregoing Declaration was acknowledged before me by Brian C. Pickard, as President and by Sean P. Alford, as Secretary, of Stoney Brook Homeowners' Association, Inc., a Colorado nonprofit corporation, on this 9 day of January, 2004

James Oliver Lynch
Notary Public

My commission expires Feb 15, 2005



EXHIBIT A
COURT ORDER

[attached]

0032256.WPD;1

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City & County Of Denver AMD R176.00 D0.00

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DISTRICT COURT, CITY AND COUNTY OF
DENVER, STATE OF COLORADO

Court Address: 1437 Bannock St. #256
Denver, CO 80202

Phone Number: (720) 865-8301

Petitioner:

STONEY BROOK HOMEOWNERS'
ASSOCIATION, INC.,
a Colorado nonprofit corporation

Attorney: Elina B. Hindley, Esq.
Name: Orten & Hindman, P.C.
Address: 11901 W. 48th Avenue
Wheat Ridge, Colorado 80033-2166
Phone Number: (303) 432-9999
Fax Number: (303) 432-0999
E-mail: ehindley@ortenhindman.com
Atty. Reg. #: 29820

▲ COURT USE ONLY ▲

Case Number: 03CV8706

Div.: Ctrm.: 7

**ORDER APPROVING AMENDED AND RESTATED DECLARATION, PURSUANT
TO C.R.S. §38-33.3-217(7)**

THIS MATTER comes before the Court for hearing on January 8, 2004. After reviewing the pleadings filed in the matter and considering the statements of Counsel, the Court makes the following Findings of Fact and Conclusions of Law and Orders:

Findings of Fact and Conclusions of Law

1. Stoney Brook Homeowners' Association, Inc. ("Association") seeks to amend the Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc. recorded in the real property records of the City and County of Denver, Colorado in Book 1179, Page 255, as amended and supplemented ("Declaration").
2. The Association notified its Owners of the Proposed Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc. (the "Proposed Amended and Restated Declaration") on April 24, 2003 and August 11, 2003.
3. The Members of the Association discussed the Proposed Amended and Restated Declaration (as submitted to the Court in the Petition filed herein) at informational sessions held on May 10, 2003, May 22, 2003, June 7, 2003 and June 21,



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City & County of Denver

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2003. Additionally, the Proposed Amended and Restated Declaration was discussed and voted on at a special meeting of the Members held on September 12, 2003.

4. Based on the foregoing, the Association has complied with the notice and meeting requirements set forth in Section 38-33.3-217(7)(a)(I) and (II).

5. At least fifty 50% of the Members required by the Declaration to approve the Proposed Amended and Restated Declaration have voted in favor of the Proposed Amended and Restated Declaration, pursuant to C.R.S. §38-33.3-217(7)(a)(III).

6. Based on the Certificate of Mailing filed in this case, a Notice of the Petition was mailed to all of the Owners within the Association, to lenders with a security interest in Lots within the community and to the declarant.

7. A hearing regarding the petition was held, as referred to above, on January 8, 2004, before this Court.

8. The Association has satisfied all of the requirements of C.R.S. §38-33.3-217(7).

9. Not more than 33% of the Owners, 33% of the lenders with security interests in one or more Lot or the declarant have filed written objections with the Court prior to the hearing.

10. Neither the Federal Housing Administration nor the Veterans Administration is entitled to vote on the proposed amendment.

11. The Proposed Amended and Restated Declaration presented to the Court does not terminate the Declaration. The preponderance of the evidence and application of plain language of the Declaration indicates that the Proposed Amended and Restated Declaration is an amendment, and not a termination.

12. The Proposed Amended and Restated Declaration presented to the Court does not change the allocated interests of the Owners.

13. Based upon these Findings of Fact and Conclusions of Law and pursuant to the requirements of C.R.S. §38-33.3-217(7)(e) and (f), it is hereby:

ORDERED that the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc. is approved by this Court and shall be binding upon all Owners in the Stoney Brook community and shall have the same legal effect as if were adopted pursuant to the amendment requirements set forth in the Declaration upon recording with the Clerk and Records' office for the City and County of Denver.



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IT IS FURTHER ORDERED that the Association record a copy of the approved Amended and Restated Declaration together with a copy of this Order with the Clerk and Recorder's office for City and County of Denver, Colorado, *not later than 30 days from the date of this order.*

DONE this 9th day of Jan., 2004. *EW*

BY THE COURT:

William A. Lutz

DISTRICT COURT JUDGE



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City & County of Denver
Electronically Recorded

R \$28.00

AMD

D \$0.00

AFTER RECORDING RETURN
TO: Altitude Community Law
P.C.
555 Zang St., Suite 100
Lakewood, CO 80228

**FIRST
AMENDMENT
TO THE
AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
OF
STONEY BROOK HOMEOWNERS' ASSOCIATION, INC.**

THIS AMENDMENT is made effective this 31st day of August, 2021.

RECITALS

A. The Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc. was recorded in the real property records of the City and County of Denver, State of Colorado, on January 27, 2004 at Reception No. 2004025048 ("Restated Declaration").

B. The Restated Declaration provides for and allows for this First Amendment to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Stoney Brook Homeowners' Association, Inc. (the "First Amendment") in Section 10.4, which provides as follows:

Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association.

C. Terms used herein are as defined in the Restated Declaration.

D. All Owners are aware of the provisions of the Restated Declaration allowing for amendment, by virtue of the record notice of the Restated Declaration, by acts and disclosures, newsletters or notices of the Association and by other means.

E. This First Amendment has been prepared and determined by the Association and by the Owners that have approved this First Amendment to be reasonable and not burdensome.

F. The purpose of this First Amendment is to allow for supplementation of the capital reserve fund maintained by the Association for the payment of future major capital expenses.

G. The undersigned, being the President and Secretary of the Association, hereby certify that Owners representing at least 67% of the votes in the Association have consented and agreed to this First Amendment.

NOW THEREFORE,

I. Amendment. The Restated Declaration is hereby amended as follows:

(a) **Additional provision.** Section 6.7 is hereby supplemented with the addition of Section 6.7 (A) as follows:

Section 6.7 (A) Capital Reserve Fee. Each Owner acquiring title to a Lot after the effective date of this First Amendment shall make a non-refundable contribution to the Association's Capital Reserve Account in the amount of Five Thousand Dollars (\$5,000.00) (the "Capital Reserve Fee"). From and after January 1, 2023, and annually thereafter on the first day of January of each succeeding year, the Capital Reserve Fee shall be increased by Three Percent (3%) cumulatively, to attempt to reflect increased costs of capital reserve items (the "Annual Capital Reserve Fee Increase") The Capital Reserve Fee, as increased, shall be collected and transferred to the Association at the time of closing and transfer of title of the Lot and shall, until used, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association. Payment of the Capital Reserve Fee shall not relieve an Owner from making regular payments of Assessments as the same become due. This Capital Reserve Fee shall not be assessed in the event of a transfer of title to a Lot: (1) to the then spouse of an Owner of that Lot, or (2) a transfer solely for estate planning purposes or (3) by an Owner of an existing Lot (the "Existing Lot") on purchasing a different Lot (the "New Lot"), if the closing and transfer of title for the acquisition of the New Lot occurs within 365 days of the sale and transfer of title to the Existing Lot to a bona-fide third party not related to the Owner, with time being of the essence. If an Owner purchases a New Lot before the sale of the Existing Lot, The

Capital Reserve Fee shall be paid upon the purchase of the New Lot and refunded to the Owner if the closing and transfer of title to the Existing Lot to a bona-fide third party not related to the Owner, thereafter occurs within 365 days of the purchase of the New Lot, or (4) to a lender or financial institution upon obtaining title to a Lot through foreclosure or a deed in lieu of foreclosure. In the event of a dispute as to whether or not a transfer of title requires the collection of the Capital Reserve Fee, the decision of the Board of Directors of the Association (the "Board") shall control. Further, from time to time, the Board may adopt Rules and Regulations governing the enforcement and exemptions of and from the Capital Reserve Fee.

II. No Other Amendments. Except as amended by the terms of this First Amendment, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment is executed by the undersigned.

**Stoney Brook Homeowners' Association,
Inc.,** a Colorado nonprofit corporation

By: _____

President

By: _____

Secretary

STATE OF COLORADO)

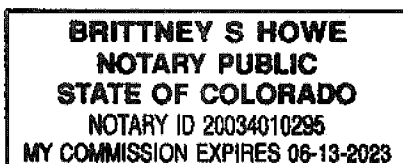
) ss.

CITY AND COUNTY OF DENVER)

The foregoing was acknowledged before me this 31st day of August, 2021, by Stanley R. Trout as President of Stoney Brook Homeowners' Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 06-13-2023



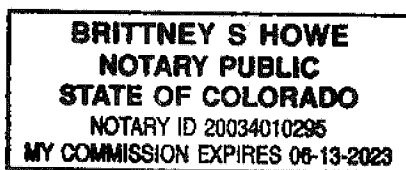
Notary Public

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing was acknowledged before me this 31ST day of August, 2021, by ANDREW KLATSKIN, as Secretary of Stoney Brook Homeowners' Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 06-13-2023



Brittney S Howe
Notary Public