

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR LYNWOOD SUBDIVISION

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Lynwood Subdivision is made and declared this 8th day of APRIL, 2025 by the Board of Directors of the Lynwood Subdivision Homeowners Association, Inc., a Colorado nonprofit corporation, (“Association”) upon the authority, approval and affirmative vote of at least 67% of the Members of the Association.

RECITALS:

A. Lynwood Subdivision was platted in 1979 per the plat recorded in Book 12 at Page 152 in the records of the Mesa County Clerk and Recorder (“the Plat”). Lynwood Subdivision is situated within Mesa County, Colorado. The Plat is attached hereto as Exhibit A and incorporated herein by this reference.

B. That certain Declaration of Covenants, Conditions and Restrictions was recorded on May 1, 1979 in Book 1198 at Page 278 in the records of the Mesa County Clerk and Recorder (“Original Declaration”), running with the land comprising the Lynwood Subdivision, more particularly described as follows:

All of Lynwood Subdivision, as per plat recorded in Book 12 at page 152, in the records of the Clerk and Recorder of Mesa County, Colorado

and all as more particularly subdivided and created by the Plat (the “Property”).

C. The Association was created on or about December 6, 1979 with the filing of the Articles of Incorporation of Lynwood Subdivision Homeowners Association, Inc. (“Articles”). The Articles were recorded at Reception No. 1209886 of the records of the Mesa County Clerk and Recorder.

D. Pursuant to the Articles, the Association was created for the purpose of promoting the health, safety and welfare of the residents within Lynwood Subdivision (the “Subdivision” or the “Community”). The Articles conferred upon the Association the powers to levy charges and assessments, hold and maintain real and personal property for the benefit of the Association and its members, encumber common property and borrow money, and other powers, all as more particularly set forth in the Articles.

E. The Association has operated continuously since its inception for the purposes and with the powers set forth in the Articles. The Subdivision has been operated as a common interest community as that term is presently defined in §38-33.3-103(8) C.R.S., which defines a common interest community as “real estate described in a declaration with respect to which a person, by virtue of such person’s ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a

declaration.” The “other real estate described in a declaration” includes but is not limited to easements for drainage and irrigation of the Property, improvements within such easements, and that real property described and defined in this Declaration as any part of the “Common Areas” of the Community.

F. The Association, acting by and through its Board of Directors with consent of the members by affirmative vote of 67% of the allocated voting interests of the Association, are causing this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Lynwood Subdivision to be recorded and to replace the Original Declaration in its entirety.

NOW THEREFORE, for the purpose of enhancing, perfecting and preserving the value, desirability and attractiveness of the Property and the improvements thereon in a manner that is beneficial to all Owners, the Property is hereby subjected to the provisions of this Declaration, and declares the covenants, conditions and restrictions set forth herein. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to, touching and concerning and running with the land and shall at all times inure to the benefit of and be binding upon any Person having at any time any interest or estate in the Property, and their respective heirs, successors, representatives or assigns. The foregoing Recitals are substantive provisions of this Declaration.

ARTICLE 1

DEFINITIONS

Section 1.01. “Articles of Incorporation” shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.02. “Assessment” shall mean and refer to any assessment levied against one or more Owner(s) or Lot(s) as permitted by this Declaration or applicable law, including without limitation any of the following:

(a) “Regular Assessment” shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot, including all fees, charges, late charges, attorney fees, fines and interest arising from failure to pay when due the principal amount of such assessment.

(b) “Special Assessment” shall mean and refer to a charge against any Lot for certain costs incurred by the Association for materials or services furnished to the Owner or his or her Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his or her Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any Owner or his or her employees, guests or invitees, or for excessive use or special use of the services or facilities, if any, provided by the Association, or for any other purpose for which this Declaration or applicable law specifies or permits the imposition of a Special Assessment.

(c) “Capital Assessment” shall mean and refer to a charge against any Lot representing a portion of the Association’s cost for the purchase, installation, construction, or expected or unexpected repair or replacement, of any capital improvement (including the necessary fixtures and personal property related to it) that is a Common Expense of the Association, plus reserves for repair or replacement of existing capital items, and acquisition, construction and installation of new capital improvements.

Section 1.03. “Association” shall mean and refer to the Lynwood Subdivision Homeowners Association, Inc., a nonprofit corporation incorporated under Colorado law.

Section 1.04. “Association Property” shall mean and refer to property, real or personal, owned, leased or held by the Association for the benefit of the Community.

Section 1.05. “Association Water” shall mean and refer to any shares of irrigation water and any water rights appurtenant to, associated with, or used in connection with all or any part of the Property and owned or controlled by the Association, or used by the Association in connection with the irrigation of the Property or any part thereof.

Section 1.06. “Board” or “Board of Directors” shall mean the Board of Directors of the Association.

Section 1.07. “Bylaws” shall mean the Bylaws of the Association, as they may be amended from time to time.

Section 1.08. “CCIOA” shall mean and refer to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et seq.*

Section 1.09. “County” shall mean and refer to the County of Mesa of the State of Colorado.

Section 1.10. “Committee” or “ACC” shall mean and refer to the Architectural Control Committee.

Section 1.11. “Common Area” shall mean any and all real property, and the improvements and fixtures on it owned, leased or controlled by the Association for the common use and enjoyment of the Members, including but not limited to the easements depicted on the Plat, any tracts appearing on any plat of the Property, including without limitation the parcel depicted and described as “Public Site” on the Plat, and any Irrigation Facilities, drainage facilities including swales, ditches, retention and/or detention areas, and any fence, wall, pedestrian path, landscaping, and street or lighting fixture owned or controlled by the Association, as well as signage or improvements on any Common Area or for the general benefit of the Subdivision or Owners, whether or not located on the real property owned or leased by the Association.

Section 1.12. “Common Expenses” shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association for the purposes set forth in this Declaration, the Bylaws and Articles of the Association, including without limitation expenses related to owning, operating, maintaining, improving or replacing Common Areas and Association Property,

conducting the business of the Association, and otherwise effectuating this Declaration, and any utility or water charges, fees, or rates that are charged to the Association.

Section 1.13. “Community” (or “Subdivision”) shall mean and refer to the Lynwood Subdivision common interest community.

Section 1.14. “Conveyance” shall mean and refer to the transfer of a fee simple title by deed, installment land purchase contract or otherwise of any part of the Property.

Section 1.15. “Irrigation Facilities” shall mean and refer to all improvements, equipment, facilities, and other real and personal property owned, operated, or maintained by the Association for the purpose of delivering water to the Lots and Common Area for irrigation purposes, and shall include, but not be limited to, all pumps, pipes, pipelines, connectors, controls, siphons, filters, valves, and related parts and materials located in, under, or upon Common Areas or easements within the Subdivision, or elsewhere outside of the Subdivision. Irrigation Facilities shall not include the “stub out” or “lateral” pipelines which extend beyond the exterior of the Common Area, irrigation and maintenance easement, or street, as the case may be, within the Subdivision and into a Lot, or to the riser(s) serving an individual Lot, regardless of where located.

Section 1.16. “Lot” shall mean and refer to each numbered lot of the Property depicted on the Plat as recorded, supplemented and amended. Boundaries of a Lot shall be as shown and defined on the Plat.

Section 1.17. “Member” shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.18. “Owner” shall mean and refer any person or entity holding a fee simple ownership interest in any Lot that is a part of the Property, including contract sellers, but excluding mortgagees (unless and until a mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 1.19. “Plat” means the plat of Lynwood Subdivision recorded with the Mesa County Clerk and Recorder, as it may be amended from time to time, and any replat of any part of the Property duly recorded with the Mesa County Clerk and Recorder. In the event of a discrepancy between any plat attached to this Declaration and the recorded plat, or if the attached plat is illegible, the recorded plat shall control.

Section 1.20. “Property” shall mean and refer to that certain real property in Mesa County, Colorado, described in Recital Paragraph B, together with such additions, if any, as may subsequently be brought within the jurisdiction of the Association by expansion or amendment of this Declaration.

Section 1.21. “Public Site” shall mean and refer to that certain parcel depicted on the Plat as recorded and amended and labeled as “Public Site”. Boundaries of the Public Site shall be as shown and defined on the Plat, or any recorded replat thereof. The Public Site shall be a Common Area of the Community.

Section 1.22. “Residence” means the single-family dwelling improvements (including attached garage, but excluding any outbuildings or detached structures) located on a Lot, which are used as an abode or home.

Section 1.23. “Subdivision” shall mean all of the Property, and improvements thereon, subject to this Declaration or any amendment to this Declaration.

ARTICLE 2

THE ASSOCIATION

Section 2.01. Membership. Every Owner of a Lot in the Property shall be entitled and required to be a Member of the Association, subject to the voting rights provisions of this Article 2. No person or entity other than an Owner of a Lot in the Property may be a Member of the Association. No Owner shall be entitled to sever his or her ownership interest in a Lot from membership in the Association, provided, that this shall not be construed as precluding the Owner of a Lot from creating or severing a co-tenancy, joint tenancy or any other form of co-ownership with any other person or persons.

Section 2.02. Allocation of Votes. Each Lot that may be created shall be allocated one vote in the Association, subject to Section 2.06. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of such Owners. There is majority agreement if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. If the Owners of the Lot are unable to reach a majority, their vote shall not be counted.

Section 2.03. No Cumulative Voting. In the election of directors of the Association, cumulative voting shall not be allowed.

Section 2.04. Membership Appurtenant. By accepting a deed to a Lot or other instrument the acceptance of which would render the holder an Owner, membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by Conveyance of a Lot without additional action or documentation.

Section 2.05. Directors of the Association. Management of the Association shall be carried out by a Board of Directors consisting of not fewer than three (3) nor more than nine (9) directors. The number of directors shall be as set forth in the Bylaws.

Section 2.06. Quorum. Quorum requirements are specified in the Bylaws.

Section 2.07. Officers of the Association. The officers of the Association are specified in the Bylaws.

Section 2.08. Authority. The Association shall have all rights, powers and authority specified or permitted by this Declaration, the Articles of Incorporation, the Bylaws, the Colorado

Common Interest Ownership Act, the Colorado Nonprofit Corporation Act, and any other other applicable law.

Section 2.09. Duties and Obligations. The Association shall perform all duties and obligations specified in this Declaration, the Articles of Incorporation, and the Bylaws, including but not limited to maintenance and upkeep of all Common Area, except where any Common Area is dedicated to or otherwise maintained by a governmental entity. The Association may adopt such rules, regulations, policies and procedures as it may deem appropriate, including without limitation those relating to ACC application and review procedures, hearings, accumulation and investment of reserve funds, fine schedules, collection and enforcement policies, record maintenance and disclosure policies, policies regarding conflicts of interest, and other policies.

Section 2.10. Actions Against Owners; Actions By Owners Against the Association. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including without limitation judicial action to enforce compliance with any provision of this Declaration, obtain mandatory or injunctive relief, or obtain damages for noncompliance, and may exercise any other right or remedy for enforcement of this Declaration permitted by law.

- (a) Good Faith Effort to Resolve Disputes. In the event of any dispute regarding the application, interpretation or enforcement of this Declaration or the rules and regulations of the Association, the disputing party shall give written notice of the dispute to the other party, and the parties shall first informally meet and correspond in an attempt to resolve the dispute.
- (b) Mediation. If the dispute is not resolved within thirty (30) days after the initial notice of the dispute from one party to the other, the parties shall proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. The mediator cannot impose a binding decision. The parties to the dispute must agree before any settlement is binding. Within fourteen (14) days after one party notifies the other of a dispute, the parties shall jointly appoint an acceptable professional mediator. If the parties cannot agree on a mediator, each party shall select a professional mediator whose sole purpose shall be to select a third professional mediator who shall mediate the dispute. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within thirty (30) days after the date the mediator is selected, or if one party does not respond or refuses to participate in selecting a mediator. If the dispute is settled through the mediator, the parties shall share equally in the mediation costs and pay their own attorney fees, if any.
- (c) Attorneys Fees and Costs. If the dispute is not settled by mediation and proceeds to litigation, the losing party in the litigation shall pay the prevailing party's portion of the mediation costs and its attorney fees, if any, and shall also pay the reasonable attorneys fees and litigation costs of the prevailing party.

- (d) No Waiver. Failure by the Association or by any Owner to enforce any covenant, restriction, lien, charge, condition, or reservation imposed by this Declaration shall in no event be deemed a waiver of the right to do so thereafter or in any other context.

Section 2.11. Conveyance or Encumbrance. The Association shall have the right to encumber, dedicate or convey all or any part of any Common Area or the Association interest in Association Water or any other Association asset. However, no such encumbrance, dedication or conveyance shall be effective unless an instrument signed by 67% of the Members entitled to vote agreeing to such encumbrance, dedication, or transfer has been recorded in the real property records of Mesa County, Colorado. Any of the instruments required by this Section 2.11 may be signed in counterparts that shall together constitute a single agreement.

Section 2.12. Management. The Association may utilize professional management in performing its duties. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years, and shall provide for termination by either party to it, with or without cause and without payment of a termination fee, upon ninety (90) days prior written notice.

ARTICLE 3

COMMON AREAS

Section 3.01. Title to the Common Area. Except where conveyed to or owned by a governmental entity, the Common Area shall be titled in the Association.

Section 3.02. Members' Easements of Enjoyment. Every Member shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and pass with the title to every Lot, including but not limited to an easement for ingress and egress over and through the Common Area. Each such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. Common Areas may be created for a primary purpose in order to comply with the local land use jurisdiction's zoning, development, building or stormwater management regulations. The right of the Members to use such Common Areas is subject to the primary purpose of the same and such use shall not interfere with, obstruct or compromise the primary purpose for which the Common Area is created.
- b. The Association shall have the right to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Area;
- c. The Association may borrow money and encumber (by mortgage, deed of trust or otherwise) the Common Area or any part of it in accordance with Section 2.11, provided any such encumbrance shall be expressly subordinate to the rights of the Members;
- d. The Association has the right to suspend a Member's voting rights, Common Area use, and/or any benefits of membership in the Association, including the use of Association Water, for any period during which any Assessment against such

Member's Lot(s) remains unpaid and delinquent, and/or while a Member is in violation of this Declaration or any rules or regulations adopted by the Association; provided that any suspension of such voting rights, Common Area use, or benefits of membership in the Association, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee of the Association after notice and hearing given at a special meeting of the Board held in accordance with the Bylaws;

- e. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; no such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by Members entitled to cast 67% of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice of the proposed action is sent to every Member no less than thirty (30) days nor more than sixty (60) days in advance;
- f. The right of the Association or its agents, employees, managers, directors, or designees to enter upon the Common Area for purposes of construction, improvement, maintenance, installation of facilities, and making repairs and remedying defects; and
- g. The Association has the right to close or limit any use of the Common Area while maintaining, repairing and making replacements in the Common Area, or limit any use of the Common Area which interferes with its primary purpose, as applicable.

Section 3.03. Delegation of Use. Any Member may delegate his or her right of enjoyment to the Common Area and Association Water to his or her family members, licensees and invitees, or tenants or contract purchasers who are in possession of such Member's Lot.

Section 3.04. Waiver of Use. No Member may exempt himself or herself from personal liability for Assessments duly levied by the Association, or release the Lot(s) owned by such Member from the liens and charges created by CCIOA or by this Declaration, by waiver of the use and enjoyment of the Common Area or the facilities on it, or by abandonment of his or her Lot.

Section 3.05. General Restrictions.

- a. All Owners of Lot(s), by their acceptance of their respective deeds or other instruments causing them to become Owners, covenant and agree that the Common Area shall remain undivided, and no Owner shall bring any action for partition (which right is expressly waived), it being agreed that this restriction is necessary to preserve the rights of Owners with respect to the operation and management of the Property.
- b. No Owner shall engage in any activity that will temporarily or permanently deny free access to any part of the Common Area, if any, to all Members, nor shall any Owner place any structure or fence upon the Common Area. The Association is hereby granted the authority to remove any obstructions from the Common Areas, including without limitation any structure, fence, personal property, landscaping,

or other items which unreasonably interfere with the purposes of any Association easement.

Section 3.06. Maintenance of Common Area. The Association shall maintain all Common Areas and all improvements thereon. All landscaping, walls, fencing, irrigation facilities, drainage facilities and walkways on Common Area shall be maintained in good condition by the Association.

Section 3.07. Improvements in Common Areas. The Association may in its reasonable discretion make improvements upon, to or within the Common Areas and the expenses thereof shall be Common Expenses.

ARTICLE 4

COVENANT FOR ASSESSMENTS

Section 4.01. Creation of the Lien and Personal Obligation of Assessments.

(a) Each Owner of any Lot by acceptance of a deed or other conveyance for that Lot, whether or not it shall be so expressed in that instrument, is deemed to covenant and agree) to pay to the Association: (a) all Assessments and charges levied against that Lot; and (b) all fees, charges, late charges, attorney fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed by C.R.S. § 38-33.3-316(1) or any other provision of CCIOA or by any other applicable law. The Association shall have the right, independent of CCIOA, to impose reasonable charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, or the rules and regulations of the Association.

(b) Any charge set forth in this Section 4.01, from the time such charge becomes due, shall be a charge on and covenant running with the land, and shall be a continuing lien on the Lot against which each such item is assessed. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. A valid acceleration of installment Assessment obligations may be made by the Board at any time any Assessment or Assessment installment is at least thirty (30) days overdue. Each such charge, together with interest, costs, and reasonable attorney fees, shall also be the joint and several personal obligation of each person and entity who was the Owner of the Lot at the time when the item became due, provided, that this personal obligation shall not pass to an Owner's successors-in-interest unless expressly assumed by them.

(c) The Association's lien on a Lot for Assessments shall be superior to any homestead exemption now or later provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other such exemption as against such Assessment lien.

Section 4.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: Common Expenses; to promote the health, safety or welfare of the residents of the Property; for the benefit of the Common Area or Association Water; or for any other purpose of the Association, as those purposes (as amended from time to time) are specified in this Declaration, the Bylaws or the Articles of Incorporation; or as otherwise authorized or permitted by CCIOA or other applicable law.

Section 4.03. Initial Administrative Contribution. The Board shall have the authority to charge each Owner that purchases a Lot a one-time, non-refundable payment to the Association in an amount determined by the Board that shall be used by the Association to cover administrative costs related to the change in ownership. This payment shall be collected and transferred to the Association at the time of closing of each sale of a Lot, and shall not relieve an Owner from making regular payments of Assessments when due.

Section 4.04. Initial Assessment. The Board shall determine the amount of the Regular Assessments based on a budget adopted by the Association as described in this Declaration.

Section 4.05. Assessment Due Dates. The Board shall fix the amount of such annual Assessments against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Regular Assessment shall be sent to every Owner subject to the Assessment. The due date(s) shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Special Assessments and Capital Assessments may be made by the Board at any time, except as limited by this Declaration or other applicable law.

Section 4.06. Expense Allocation. Except as otherwise stated in this Article 4, or as otherwise provided by other applicable law, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of platted Lots then in the Subdivision. Despite anything to the contrary stated in this Section 4.06, if permitted or required by this Declaration (see for example Section 4.07) or other applicable law, any Common Expense or portion of any Common Expense or other cost or expense to the Association benefiting or caused by fewer than all Lots shall be assessed exclusively against the Lots benefited by or causing the Common Expense or other cost or expense.

Section 4.07. Owner's Negligence. In the event that the need for maintenance, repair, replacement, reconstruction or reconfiguration of Common Area, or any other Common Expense, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any family or household member, guest or invitee of such Owner, such expense and all related fees, costs and expenses of or to the Association shall be the personal obligation of such Owner and may be made part of any Assessment against such Owner and that Owner's Lot(s). Negligence or the willful act or omission of any Owner or any family or household member, guest or invitee of such Owner, and the amount of the Owner's liability therefor, shall be determined by the Board of Directors at an informal hearing after notice to the Owner, provided that any such

determination that assigns liability to any Owner pursuant to the terms of this Section 4.07 may be appealed by such Owner to a court of law.

Section 4.08. Priority of Lien. The lien for Assessments, which includes without limitation all those items specified in Section 4.01, shall have the priority specified in C.R.S. § 38-33.3-316(2), or other applicable law.

ARTICLE 5

BUDGET AND RECORDS

Section 5.01. Disclosure of Records. The Association shall make the following information available to Owners by posting on an internet web page (if the Owners have been previously notified of the web address via mail or e-mail), or maintaining a literature table or binder at the Association's principal place of business, or by mail or personal delivery:

- a. The name of the Association;
- b. The name of the Association's designated agent or management company, if any;
- c. A valid physical address and telephone number for both the Association and the designated agent or management company, if any;
- d. The name of the common interest community;
- e. The initial date of recording of the Declaration;
- f. The reception number or book and page for the main document that constitutes the Declaration;
- g. The date on which the Association's fiscal year commences.
- h. The Association's operating budget for the current fiscal year;
- i. A list, by type of Lot or unit, of the Association's current Assessments, including both Regular and Special Assessments;
- j. The Association's annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- k. The results of the Association's most recent available financial audit or review;
- l. A list of all Association insurance policies, including but not limited to property, general liability, Association director and officer professional liability, and fidelity, which shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed;
- m. The Articles of Incorporation, Bylaws and any rules and regulations of the Association;
- n. The minutes of the Board and Member meetings for the fiscal year immediately preceding the current annual disclosure; and
- o. Any rules, regulations and procedures concerning the investment of reserve funds, the adoption and amendment of policies, procedures and rules, and the resolution of disputes between the Association and Owners.

Section 5.02. Annual Record Disclosures. Within ninety (90) days after the end of each fiscal year of the Association, the Association shall make available to Owners (by the same methods described in Section 2.13) the information described in subsections 5.01(g) through 5.01(o).

Section 5.03. Books and Records. Association policies and regulations regarding records, retention of records, and Member access to records are specified in the Bylaws.

Section 5.04. Annual Budget. The Board of Directors shall cause an operating budget, balance sheet, and cash flow statement for the Association to be prepared no less frequently than annually.

Section 5.05. Delivery of Budget. Within ninety (90) days after adoption of any proposed budget, the Board of Directors shall mail by ordinary first-class mail or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget which shall be within a reasonable time after mailing or other delivery of the summary.

Section 5.06. Ratification of Budget. Unless at the meeting Owners representing a majority of all Lots veto the budget, the budget is ratified, whether or not a quorum is present.

Section 5.07. Rejection of Budget. In the event that the proposed budget is vetoed, the budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

Section 5.08. Reserve Fund. As part of each annual budget, the Board of Directors may include an amount that, in its reasonable business judgment, will at least establish and maintain an adequate reserve fund for the repair or replacement of any personal property, fixtures and improvements required to be operated or maintained by the Association based upon age, remaining life, replacement cost and any other relevant factors. Any reserve funds may be deposited in such interest bearing account(s) as the Board of Directors deems appropriate.

Section 5.09. Audit and Review. Upon the request of at least one-third of the Owners, the books and records of the Association shall be subject to a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the Board. Such person need not be a certified public accountant (except in the case of an audit), but shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

Section 5.10. Fiscal Year. The fiscal year of the Association shall initially be the calendar year, but the Association may adopt a different fiscal year, for Assessments or otherwise, if permitted by law.

Section 5.11. Surplus Funds. Any surplus funds may be (a) retained for expenditure in the subsequent year's budget, or (b) transferred to the reserve fund account, (c) returned to the Lot Owners in proportion to their assessments paid, or (d) credited to the future assessments of the Lot Owners in proportionate share, or any combination of these, as reasonably determined by the Board.

ARTICLE 6

NONPAYMENT OF ASSESSMENTS

Section 6.01. Delinquency. Any Assessment provided in this Declaration that is not paid when due is delinquent. If any such Assessment is not paid within thirty (30) days after the due date without additional notice or demand, the Assessment shall bear interest from the due date at a rate not to exceed the maximum rate of interest permitted by CCIOA or other applicable law, as determined by the Board. In the Board's discretion, a late fee not to exceed 10% of the past due Assessment may be added to the past due amount each month the past due Assessment remains unpaid, beginning thirty (30) days after the original due date. The Association may, at its option, exercise any right or remedy available to the Association under applicable law, including without limitation bringing an action at law against the Owner personally obligated to pay the same or foreclosing the lien provided in Section 4.01 against the Lot(s) as to which the Assessment has not been paid; and in any case there shall be added to the amount of such Assessment interest and all costs that may be incurred by the Association in its collection of the Assessment, including reasonable attorney fees. Each Owner vests in the Association or its assigns the right and power to bring all actions or proceedings at law or in equity or to institute judicial foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

Section 6.02. Nature of Obligation and Lien.

(a) The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The Board or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness and the name of the Owner of the Lot and description of the Lot. Such a notice shall be signed by one member of the Board or by the managing agent of the Association and may be recorded in the real property records of Mesa County, Colorado. The lien for each unpaid Assessment attaches to each Lot at the beginning of each Assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the Assessment for the Lot against which it is filed and collected as part and parcel thereof. Each Assessment, together with interest, late charges, costs and reasonable attorney fees, shall also be the personal obligation of each person who was the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass by Conveyance of a Lot.

(b) The statutory lien for Assessments is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of this Declaration; and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a first mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association that would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under Section 4.01 of an action or a non-judicial foreclosure either to enforce or to extinguish the lien.

(c) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recording of any claim of lien or Assessment is required; however, a notice of lien may be recorded at the Association's option, in which event costs and attorney fees incurred in connection with the preparation and filing of such notice shall be assessed against the Owner's Lot as a default Assessment.

Section 6.03. Foreclosure Sale. Any foreclosure sale related to an Assessment lien is to be conducted in accordance with those provisions of the laws and rules of the courts of the State of Colorado applicable to the foreclosure of mortgages, or in any other manner then permitted or provided by applicable law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same in the name of the Association.

Section 6.04. Curing of Default. Upon the timely curing of any Assessment delinquency, the Association is authorized to file or record a certificate setting forth the satisfaction of such claim and release of such lien upon payment by the defaulting Owner of a fee determined by the Association to cover the costs of preparing and filing or recording such release, and other expenses incurred.

Section 6.05. Cumulative Remedies. The Assessment lien and the rights of foreclosure and sale under it shall be in addition to, and not in substitution of, all other rights and remedies that the Association and its assigns may have under this Declaration and then applicable law, including without limitation a suit to recover a money judgment for unpaid Assessments, as provided above, all of which rights and remedies shall be cumulative.

ARTICLE 7

RESTRICTIONS ON USE

Section 7.01. Use of Lots. Use of Lots is restricted to high quality dwellings. No store, office or other place of business, except as otherwise provided in Section 7.02 below, shall be permitted or allowed within or upon a Lot, a Residence or in any accessory structure.

Section 7.02. Home Occupations. Use of part of a Residence for a home occupation is permitted only as follows:

- a. The home occupation must be permitted by applicable County regulations and all applicable standards thereof must be met at all times; and
- b. The home occupation does not entail, involve, or require any visits to the Lot or the Residence by any customers or clients at any time; and
- c. The home occupation does not entail, require or involve the presence at any time upon the Lot or within the Residence of any employee who does not live in the Residence; and
- d. None of the business activities may be conducted outside of the Residence; and
- e. No outdoor storage or display of any kind is allowed; and
- f. No noise, light, or odors are emitted in relation to the home occupation that are perceptible beyond the Lot boundaries.

Section 7.03. Nuisance and Hazardous Activities. No obnoxious, offensive or other activity which would constitute a public or private nuisance or annoyance to the Community will be permitted. In addition, the following are prohibited:

- a. Trash, junk and rubbish. No junk, trash, or rubbish will be allowed to accumulate and the same must be stored in appropriately maintained trash receptacles only and shall be regularly and promptly removed. Lot Owners shall not deposit, dump, or store trash, junk or rubbish on any common area or within any public right-of-way or public property abutting the Property.
- b. Other Obnoxious or Offensive Activities. No obnoxious or offensive activity shall be conducted on any Lot, nor shall any activity be permitted that becomes an annoyance or nuisance within the Subdivision, including without limitation unreasonably bright light or light which causes unreasonable glare when viewed from the street or an adjacent Lot or property; unreasonably loud or annoying sounds; and noxious or unreasonably offensive odors; all as shall be determined by the Board in its reasonable discretion.
- c. Open Burning. No open burning shall be allowed anywhere in the Subdivision and no outdoor burning of wood, paper, trash or any other rubbish materials, in a fire pit or elsewhere/otherwise, shall be allowed anywhere in the Subdivision.
- d. Hazardous Activity or Materials. No activities shall be conducted, nor materials stored, upon or within the Property or the improvements therein or thereon which are or might be unreasonably hazardous to any person or property.
- e. Firearms and Explosives. No firearms, explosives, fireworks, air rifles, BB guns, crossbows or similar devices shall be discharged anywhere on the Property.
- f. Livestock and Poultry. No livestock or poultry will be kept within the Property.
- g. Pets, Dangerous or Wild Animals. No dangerous or wild animals will be kept on the property. Household pets will be permitted so long as they remain in control of the Lot Owner or other person in charge of the pet.

Section 7.04. Setbacks. Property line setbacks shall be as shown on the Development Plan for Lynwood Subdivision filed on April 26, 2979 at Reception No. 1190126 in the office of the Clerk and Recorder of Mesa County.

Section 7.05. Screening. Clothes lines, equipment, garbage cans, service yards, and storage areas shall be adequately screened by planting or construction

Section 7.06. Height. No structure shall be erected, altered, placed or permitted on the Lot which exceeds 25 feet in height from the highest finished grade line immediately adjoining the foundation or structure. No radio, short wave or television antenna over five feet above the highest roof line is permitted unless approved by the ACC.

Section 7.07. Tanks. No elevated tanks of any kind (oil, gas, water, etc.) will be permitted within the Property.

Section 7.08. Signage. No commercial signage is permitted within the Property, including without limitation advertising signs, billboards or unsightly objects. For purposes of this Section

7.06, one “For Sale” sign on a Lot of a size permitted by applicable County regulations is not considered to be a commercial sign that is prohibited by this Section.

Section 7.09. Lot Maintenance in Accordance with this Declaration. Each Lot and the improvements thereon shall be properly maintained by the Owner of such Lot in accordance with the requirements, covenants, and restrictions of this Declaration.. In the event any Owner fails to maintain his or her Lot(s) in accordance with this Declaration, the Association may hire out such maintenance as is necessary to bring such Lot(s) into compliance with this Declaration, and may assess the Owner of such Lot(s) for those costs, as provided in this Declaration. The Association is hereby authorized to establish a schedule of fines that may be imposed upon a Lot Owner and a Lot for violations of this Declaration and to establish a process by which such fines may be imposed. A Lot Owner shall be responsible for payment of such fines as it is responsible for payment of assessments hereunder. The Association may enter upon a Lot and repair, maintain, rehabilitate and restore the premises and/or improvement or abate the improper use of a Lot in accordance with this Declaration, and any costs thereof shall be charged against the Owner of said Lot.

Section 7.10. Association Easements. Easements for the purpose of installing, maintaining, repairing, replacing, operating and using irrigation lines and related facilities and drainage ditches, pipes and related facilities, and for access, ingress and egress, are hereby created in favor of and benefitting the Association for and on behalf of the Members over those areas depicted as easements on the Plat. Such easements shown on the Plat include the right or reasonable access, ingress and egress to and from the easement area for the purposes of the easement. Such easements shall be maintained by the Owner of the burdened Lot free from obstructions and items that unreasonably interfere with the use and purpose of the easement. No permanent structure shall be erected on any such easement. The Association shall not be liable to any Lot Owner for damage to any such installation, including without limitation shrubbery, trees, flowers or improvements of an Owner located on any land subject to an easement, by the Association or its assigns, agents or employees, acting in the reasonable exercise of its easement rights.

Section 7.11. No Re-subdivision, Re-Platting, Rezoning or Combining of Lots. No Lot shall be subdivided or re-platted by an Owner into smaller Lots or parcels. No Owner shall seek to change the zoning of any Lot; nor shall the Association seek to change the zoning of any Lot or Common Area. No Lot shall be combined with another Lot.

Section 7.12. Public Service Company Tariffs. All Lots are subject to and bound by Public Service Company tariffs which are now and may in the future be filed with the public Utilities Commission of the State of Colorado relating to street lighting in the Subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. Until such time as the street lights and related facilities are transferred to a governmental entity that is made responsible for payment of such rates and charges, the Owners shall pay as billed a portion of the cost of public street lighting in the Subdivision according to Public Service Company rates, rules and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado, or, if required by the utility provider, the

Association shall pay such rates and charges for street lighting in the Subdivision and such rates and charges shall be Common Expenses.

ARTICLE 8

ARCHITECTURAL CONTROL

Section 8.01. ACC Approval Required. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition or alteration be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the ACC.

Section 8.02. Appointment and Designation. The Board shall appoint the members of the ACC. The Board may, from time to time, by the vote or written consent of a majority of its members, delegate some or all of the rights or responsibilities of the ACC under this Declaration to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the ACC in all matters delegated.

Section 8.03. Application Procedures, Standards, and Guidelines

- a. Rules and Procedures. The ACC may, from time to time in its sole discretion, adopt, amend and repeal rules, regulations, policies, standards, guidelines, and procedures interpreting and implementing the provisions of this Declaration as they relate to construction and maintenance of improvements upon a Lot, including without limitation procedures regarding the submission and review of applications. The ACC may establish a reasonable fee for its review based on the nature and extent of the plans and specifications involved. Any such fee shall not be refundable.
- b. Review Fee and Address. Any plans and specifications shall be submitted in writing together with a reasonable processing fee determined by the Board. The address of the ACC shall be the principal place of business of the Association or such other place as the ACC may from time to time designate to the Board of Directors. The address shall be the place for the submittal of any plans or specifications and the place where the current rules and regulations, if any, of the ACC shall be kept.

Section 8.04. Decision of the ACC. The ACC may reject any application that it deems to be incomplete. Following review of a complete application, the ACC may approve, approve with conditions, or deny the application. A majority vote of the ACC is required to approve or approve with conditions a request for ACC approval pursuant to this Article 8. The ACC shall have the right to deny approval for, or impose reasonable conditions upon, construction of any improvement which is, in its reasonable discretion, unsuitable because of aesthetic or other reasons, or does not comply with this Declaration. In the event the ACC fails to reject, approve, approve with conditions, or disapprove such design and location within thirty (30) days after said plans and

specifications have been submitted to the ACC, the ACC shall be deemed to have approved the plans and specifications.

Section 8.05. Appeal. If the Board and the ACC are constituted with different members, an applicant may appeal the decision of the ACC to the Board. The Board may remand the application to the ACC with instructions, or it may affirm or overturn the decision of the ACC. The Board may from time to time promulgate, amend, and repeal reasonable procedures and rules for an appeal pursuant to this Section 8.05.

Section 8.06. Records. The ACC shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day. Records shall be maintained for a minimum of ten (10) years.

Section 8.07. Variance. The ACC may grant reasonable variances or adjustments from any condition or restriction imposed by this Declaration in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the strict application of this Declaration or the rules and policies of the ACC. Variances or adjustments shall be granted only if they will not be materially detrimental or injurious to other Lots or the Subdivision or the general intent and purpose of this Declaration. The grant or denial of a variance request shall not affect in any way any of the terms and provisions of this Declaration covered by the variance and shall not serve as a basis for subsequent variances with respect to any other request. The grant of any variance shall not affect in any way the Owner's obligation to comply with applicable City codes and other governmental laws or regulations.

Section 8.08. Approval or Consent Not a Waiver. The approval or consent of the ACC to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ACC as to any other application submitted for approval or consent under this Article 8.

Section 8.09. Improper or Unauthorized Construction. If any improvements are made upon or within any Lot that were not approved by the ACC or that are not in accordance with the approved plans and specifications, the Association may enter upon a Lot and repair, maintain, rehabilitate and restore the premises and/or improvement or abate the improper use of a Lot in accordance with this Declaration, and any costs thereof shall be charged against the Owner of said Lot.

Section 8.10. No Liability. The Association and the ACC, nor any member thereof, shall not be liable in damages to anyone submitting plans or specifications for approval under this Declaration arising out of or in connection with any action, failure to act, approval, disapproval or failure to approve or disapprove any matter within its jurisdiction under this Declaration. Any Owner submitting or causing to be submitted any plans or specifications agrees and covenants on behalf of such Owner and such Owner's heirs, successors, legal representatives and assigns that they will not bring any such action or suit at law or in equity against the Association, the ACC, or any of the members thereof. Notwithstanding any other provisions in this Section 8.09, decisions

concerning the approval or denial of an Owner's application for architectural or landscaping changes shall not be made arbitrarily or capriciously.

Section 8.11. Inspection. During initial construction, remodeling, repair or other work on a Lot or to a Residence requiring ACC approval, any member or agent of the ACC may from time to time at any reasonable hour or hours and upon reasonable prior notice enter and inspect any Lot or Residence to determine whether the Residence or Lot's improvement complies with the provisions of this Declaration.

Section 8.12. General Provisions. The members of the ACC shall not be entitled to any compensation for services performed under this Article 8. The powers and duties of the ACC shall cease and terminate upon the termination of this Declaration.

Section 8.13. No Recordation of ACC Decisions. No Lot Owner shall record, or cause to be recorded, in the official land records of the County of Mesa any architectural control approval, denial, conditional approval or any other ACC action, communication, decision or record thereof.

ARTICLE 9

ASSOCIATION WATER

Section 9.01. Management of Association Water.

(a) To the extent permitted by law, and subject to the requirements, easements, restrictions, covenants and servitudes referenced in and created by this Declaration, the Association shall have the exclusive authority to allocate, deliver, manage and control the use of the Association Water, and shall own, operate, repair and maintain the Irrigation Facilities, as well as all drainage facilities and retention and detention areas. The Association's authority shall include (without limitation) the promulgation of rules, regulations, policies and procedures, not inconsistent with this Declaration, concerning the application and use of Association Water, including conservation measures and measures to reduce peak demand. If an Owner violates any provision of this Declaration or any rule or regulation promulgated under it related to Association Water or the Irrigation Facilities, the Association may restrict or terminate the delivery of Association Water to such Owner's Lot, in addition to any other rights the Association may have under this Declaration or at law. The Association also may restrict or terminate the delivery of Association Water to an Owner's Lot in the event of any emergency involving Association Water or the Irrigation Facilities.

(b) Owners shall schedule and control irrigation water in accordance with the watering schedule established by the Association.

Section 9.02. Easements for Ingress and Egress. Each Owner grants to the Association reasonable ingress and egress over, under and across all easements shown on the Plat for the purpose of operating, repairing or maintaining Irrigation Facilities. No Owner shall construct, erect or maintain any improvement or structure that shall interfere with the Association's ownership, operation, maintenance or repair of the Irrigation Facilities. The Association shall have

the authority to remove or alter any structure or improvement that interferes with the ownership, operation or maintenance of the Irrigation Facilities, the costs of such removal to be borne by the Owner of the interfering improvement or structure.

Section 9.03. Irrigation Assessments. Any billings by any person or entity associated with Association Water shall be a Common Expense.

Section 9.04. Hazardous Drainage. Release of contaminants or hazardous materials, as defined in CERCLA, RCRA, FIFRA, the Toxic Substances Control Act, or any other applicable federal or state environmental law, into the Property is prohibited.

Section 9.05. Maintenance and Water Assessments. The Association shall have responsibility to maintain the Irrigation Facilities, and ditch laterals (except where such laterals are maintained by the water users' association or water users district), and all associated expenses shall be Common Expenses.

ARTICLE 10

INSURANCE

Section 10.01. Insurance. The Association shall obtain and maintain property insurance insuring against damage to the Common Area for broad form covered causes of loss in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. The Association shall also obtain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area, in an amount deemed sufficient in the judgment of the Board of Directors, insuring the Board, the Association, any management agent, and their respective employees, agents and all persons acting as agents. In addition, if reasonably available, the Association may maintain director and officer liability insurance. The Association, as attorney-in-fact, shall have the authority conferred upon it in Article 10 to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy. Premiums for all such insurance shall be a Common Expense.

Section 10.02. Assessment of Members. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration, and for all deductibles paid by the Association. In the event that multiple properties are damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

Section 10.03. Waiver of Subrogation. The Association and the Owners each waive any and all rights of recovery against the other, their officers, Members, agents and employees, occurring on or arising out of the use and occupancy of the Property to the extent such loss or damage is covered or indemnified by proceeds received from insurance carried by the other party, or for which such party is otherwise reimbursed.

Section 10.04. Fidelity Bond Insurance. If any Owner or Association employee controls or disburses Association funds, the Association may obtain and maintain, to the extent reasonably available, a fidelity bond insurance in an aggregate amount equal to at least two (2) months of current Assessments, plus reserve calculated from the then-current budget of the Association, or such other aggregate amounts as the Association Board deems reasonable and appropriate.

Section 10.05. Independent Contractors. Any person employed as an independent contractor by the Association for the purposes of managing the Association must obtain and maintain a fidelity bond in the same amount required by the Association pursuant to Section 10.04, unless the Association names such a person as an insured employee in a contract of fidelity insurance described in Section 10.04. The Association may carry or require of an independent contractor employed to manage the Association fidelity bond coverage in an amount greater than that specified in this Section 10.05.

Section 10.06. Fidelity Bond Premiums. Premiums for bonds required of the Association under this provision are Common Expenses.

Section 10.07. Additional Insurance. The Association may carry any other insurance it considers appropriate to protect the Association or the members, including insurance on property it is not obligated to insure.

ARTICLE 11

DAMAGE OR DESTRUCTION OF COMMON AREA

Section 11.01. Appointment of Association as Attorney-in-Fact. This Declaration constitutes each Owner's appointment of the Association as his or her attorney-in-fact to administer repairs, receive and apply insurance funds, and to ensure compliance with this Declaration upon the damage, destruction or obsolescence of the Common Area. Any grantee's acceptance of a deed or other conveyance rendering that person an Owner shall constitute the irrevocable appointment of the Association as the grantee's attorney-in-fact, to act with all the powers as provided in this Section 11.01.

Section 11.02. Rights of Association as Attorney-in-Fact. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authority, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner that is necessary and appropriate to exercise the powers granted in this Declaration. Repair and reconstruction of the Common Area means restoring the same to substantially the same condition in which it existed prior to the damage. The obsolescence of any Common Area shall be determined by the Board, in its sole and absolute discretion. Except as otherwise provided in this Declaration, any insurance proceeds collected shall be paid to the Association for the purpose of repair, restoration or replacement.

Section 11.03. Application of Insurance Proceeds. In the event of damage or destruction to any improvement installed by the Association within the Common Area due to an insured loss, the Association shall apply the insurance proceeds to the reconstruction and repair of the damaged improvement. If the insurance proceeds are insufficient, the Association may levy a Capital

Assessment in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction, unless:

- (a) The planned community is terminated;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or
- (c) Members entitled to cast 67% of the votes vote not to rebuild.

Distributions of insurance proceeds shall be made to the Association unless made jointly payable to the Owners and first mortgagees of their respective Lots, if any. The Capital Assessment described in this Section 11.03 shall be a debt of each Owner and a lien on his or her Lot and the improvements on it, and may be enforced and collected in the same manner as any Assessment lien provided for in this Declaration.

ARTICLE 12

GENERAL PROVISIONS

Section 12.01. Easements. Easements for the installation and maintenance of utilities and irrigation, detention and other water facilities are reserved as shown on the Plat. Within these easements no improvement, structure, planting or other material (excluding fences capable of being readily removed for the purposes of the easement) shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of such utilities or facilities, or which may change the direction of flow of drainage channels in the easements. The Association shall have the right (but assume no obligation) to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 12.02. Term. The provisions of this Declaration shall each constitute covenants, running with the land applicable to all of the Property and Lots, binding all persons and entities claiming by, through or under it for a period of twenty (20) years from the date of recording of this Declaration in the real property records of Mesa County, Colorado, which shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity unless amended or terminated as provided in Section 12.03.

Section 12.03. Amendment and Termination. This Declaration may be amended, supplemented, changed, or canceled in whole or in part at any time by the vote or agreement of the Owners of 67% of the Lots. Such agreement may be in any number of counterparts. Such amendment shall be effective when duly recorded in the real property records of Mesa County, Colorado.

Section 12.04. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 12.05. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provisions, which

shall remain in full force and effect. To the extent feasible, any non-complying provision and the remainder of this Declaration shall be reformed to comply with applicable law and to preserve the intent of this Declaration, including the invalidated provision.

Section 12.06. Waiver. The failure of the Association or any Owner to enforce any right under this Declaration upon any occasion shall not be deemed a waiver of such right on any subsequent occasion(s). The waiver, either express or implied, by Association or any Owner of any of the rights, terms or conditions in this Declaration shall not be deemed as or constitute a waiver of any other rights, terms or conditions in this Declaration. Any waiver, in order to be valid and effective, must be in writing.

Section 12.07. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be hand-delivered or sent by United States first class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the secretary of the Association. If the Owner fails to provide an address to the secretary, notice shall be sent to the address of the Owner specified in the deed recorded in the real property records of Mesa County, Colorado by which that Owner took title and to the street address of that Lot, if any.

Section 12.08. Section Headings. The article and section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration, which shall remain in full force and effect.

Section 12.09. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of each Owner and each and all of their heirs, personal representatives, successors in interest, and assigns.

Section 12.10. No Rights Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose, except for the easements dedicated to the public on any plat of the Property and the City's right of access to repair or maintain, if necessary, drainage facilities.

Section 12.11. Applicability of Governmental Regulations. The covenants, conditions and restrictions contained in this Declaration are separate and distinct from any zoning, building or other law, ordinance, rule or regulation of the City or of any governmental authority having jurisdiction over the Property that now or in the future may contain different requirements from or in addition to those contained in this Declaration or that may prohibit uses permitted in it or permit uses prohibited in it. In the event of any conflict between the provisions of this Declaration and the provisions of any such law, ordinance, rule or regulation, the Owner must first comply with all governmental laws, ordinances, rules and regulations and then, to the extent possible, the Owner must comply with the provisions of this Declaration, unless such compliance would result in a violation of such law, ordinance, rule or regulation, in which case, upon a finding that compliance with this Declaration would result in such a violation, the Board shall waive any such covenant, condition or restriction to the extent it results in such a violation, and in connection with such waiver, the Board may impose such conditional covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

Signed the date above first written by:

LYNWOOD SUBDIVISION HOMEOWNERS ASSOCIATION, INC.

By: _____
Jeff Welch, President

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

The foregoing certification and Amended and Restated Declaration of Covenants, Conditions and Restrictions for Lynwood Subdivision was acknowledged before me this _____ day of _____, 2025 by Jeff Welch as President of Lynwood Subdivision Homeowners Association, Inc.

Witness my hand and official seal.

My commission expires: _____

Notary Public

CERTIFICATION OF MEMBER APPROVAL:

I hereby certify that the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Lynwood Subdivision was presented to the membership of the Association and was approved by written ballot by an affirmative “yes” vote of at least 72 of the 106 voting Members of the Association, constituting at least 67% of the members in accordance with Section 64 of the Original Declaration.

LYNWOOD SUBDIVISION HOMEOWNERS ASSOCIATION, INC.

BY: _____
Jeff Welch, President

ATTEST:

Tabitha Bradford, Treasurer