

**FULL  
AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE AND  
PROTECTIVE COVENANTS  
FOR  
BEAVER LAKES ESTATES AND  
BEAVER LAKES ESTATES FILING #2**

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**FULL AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS FOR  
BEAVER LAKES ESTATES AND BEAVER LAKES ESTATES FILING #2**

THIS AMENDED AND RESTATED DECLARATION is effective upon recording.

***RECITALS***

A. On December 31, 1998, the Members of the Empire Lodge Homeowners Association Inc. submitted the following real property to that certain Amended Declaration of Restrictive and Protective Covenants for Beaver Lakes Estates and Beaver Lakes Estates Filing #2, recorded in the real property records of Lake County, Colorado at Reception No. 319006 (collectively referred to as "Original Declaration"):

All of the real property located within Beaver Lake Estates (lower filing) Reception No. 244822 and Filing No. 2 Reception No. 263834, the plats of which are recorded in the Office of the Clerk and Recorder, Lake County, Colorado;

B. The Owners within the Beaver Lakes Estates Community desire to amend and restate the Original Declaration by virtue of this Amended and Restated Declaration of Restrictive and Protective Covenants for Beaver Lakes Estates and Beaver Lakes Estates Filing #2 ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration; and

C. The Original Declaration provides for and allows for this Declaration in Paragraph 10, which provides as follows:

These covenants may be amended at any time by more than fifty percent of the members in FLHA, Inc.;

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

E. The amendments within this Declaration have been prepared and determined by the Owners that have approved this Declaration to be reasonable and not burdensome;

F. The purposes of the amendments in this Declaration are to add a new Section 6.22 regarding short term leasing; to amend Sections 6.3 and 7.2 of the Original Declaration; and to correct typographical errors in Sections 1.1(k), 3.8, 7.16 and 8.8(f).

G. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots and to further the interests of the residents of the Community and Members of the Association; and

H. Pursuant to the requirements set forth in Paragraph 10 of the Original Declaration, more than fifty percent (50%) of the members in Empire Lodge Homeowners Association Inc. subject to the Original Declaration have approved this Declaration.

NOW THEREFORE, the Original Declaration is replaced and superseded by the covenants, servitudes, easements and restrictions set forth below, which run with and concern the land described in Paragraphs A of the Recitals, together with all Common Property.

## ARTICLE I 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 the context requires otherwise:

- (a) Act shall mean the Colorado Common Interest Ownership Act, (as abbreviated CCIOA) *C.R.S. '38-33.3-101 et. seq.*, as it may be amended.
- (b) Assessment shall include all Common Expense Assessments and any other expense levied against Lots pursuant to this Declaration, including interest, late fees, attorney fees, fines, and costs.
- (c) Association shall mean Empire Lodge Homeowners Association Inc. (as abbreviated ELHOA), a Colorado nonprofit corporation, and its successors and assigns. This includes the Board of Directors and the Membership.
- (d) Board or Board of Directors shall mean the body, designated in the Governing Documents to act on behalf of the Association.
- (e) Architectural Control Committee or ACC 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 ensure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.
- (f) Common Area or Common Property shall mean:
  - 1. All real property depicted as Common Area on the Plat and owned by the Association for the common use and enjoyment of the Owners, including by way of illustration, but not limited to: the two lakes, the lodge, camp grounds, cabins, horse corrals, roads, and any other common areas or facilities further identified in that certain deed recorded in Book 504 at Page 937 and Page 938, County of Lake, State of Colorado.
  - 2. Water Rights and Water Storage Rights as determined by Colorado District Court, Water Division 2 in Pueblo, in Case number 97CW83 "Findings of Fact, Conclusions of Law, Judgment, and Decree.

3. Future acquisitions by the Association.

(g) 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 for Reserve Fund.

(h) Community or Beaver Lakes Estates Community or Planned Community shall mean the planned community known as "Beaver Lakes Estates" and which consists of the real property stated in Paragraph A of the Recitals, including all Common Areas and Common Property.

(i) Declaration shall mean and refer to this Amended and Restated Declaration of Restrictive and Protective Covenants for Beaver Lakes Estates and Beaver Lakes Estates Filing #2, recorded in the Office of the Clerk and Recorder, Lake County, Colorado.

(j) Governing Documents shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, any Maps, Rules and Regulations, and any policies of the Association, as all of the foregoing may be amended from time to time.

(k) Lot shall mean and refer to any plot of land shown upon any recorded Plat of the Property with the exception of Common Areas and shall mean the same thing as "Unit" in CCIOA.

(l) Member shall mean any Owner. The terms Member and Owner may be used interchangeably.

(m) Owner shall mean the owner of record title, whether one or more persons or entities, of any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In addition, each Lot Owner shall own an undivided interest in and to the Common Areas as defined in this Declaration. The Association shall hold title to all Common Areas for the use and benefit of Lot Owners.

(n) Pet shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations.

(o) 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 or Map recorded in the records of the Office of the Clerk and Recorder of Lake County. 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.



(p) Property shall mean the real property contained within the Beaver Lakes Estates Community which is subject to this Declaration, together with all easements, rights, water rights and water storage rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(q) Reserve Fund is a fund required to be established and maintained by ELHOA for replacement of and significant repairs to, major components of common area as defined in these Declaration, that the association is obligated to maintain. Reserve funds may also be used for major repair or replacement of road maintenance equipment. Reserve funds are not intended for routine maintenance of Common Area components or routine maintenance of road maintenance equipment.

(r) Rules and Regulations shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community and/or clarification of the Governing Documents, including any amendment to those instruments.

## ARTICLE 2 NAMES & DESCRIPTION OF PROPERTY/EASEMENTS

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is Beaver Lakes Estates. The name of the Association is the Empire Lodge Homeowners Association Inc. or as may be used from time to time: ELHOA.

Section 2.2 Property. The Planned Community is located in Lake County, State of Colorado. The Property of the Planned Community is described in the Recital A of this Declaration, in the Plat, along with all Common Areas, and/or is consistent with the common scheme and plan for the creation and operation of the Community. The number of Lots currently included in the Community is two-hundred and sixty (260). 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 Owners' Right of Enjoyment. Every Owner shall have an undivided interest and a right of enjoyment in and to all Common Areas, and such undivided interest and right of enjoyment shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Board may promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;

(b) The Board shall suspend voting rights and the right to use of any Common Area (excluding roads, which right to use shall not be suspended) during

any period that an Owner is in default in payment of any Common Expense Assessment and/or any other outstanding financial obligations to the Association.

(c) The Board may borrow funds pursuant to Article 5, Section 5.10 of this Declaration and, upon approval of more than sixty seven percent (67%) of the total vote of the Members of the Association, to mortgage the Common Area as security for the purpose of borrowing money, provided, that the rights of such mortgagee shall be subordinate to the rights of the homeowners;

(d) The Board may lease only to Members and/or Members' guests, any improvements located in the Common Area, including, but not limited to the lodge, campground and cabins owned by the Association. Leasing of lakes, dams and water rights shall be prohibited without 67% of the total votes of the membership of the Association.

(e) The Board may transfer or convey ownership of any Common Area, but only upon approval of more than sixty seven percent (67%) of the total vote of the Members of the Association.

(f) By bid or by sale, the Board shall transfer ownership of a lot acquired by the Association as provided in this Declaration. The Board shall notify all Members that the Lot will be offered for sale on the open market and shall provide written notice to Members whose Lots adjoin the Lot to be put up for sale. Net proceeds from the sale of said Lot shall be deposited directly into the Operating Budget.

(g) The Board may close or limit the use of any Common Area while maintaining, repairing and making replacements in any Common Area.

(h) The Board may change use of, add or remove substantial improvements to the Common Area upon approval of a super majority of sixty-seven percent (67%) of Members present at the Annual Lot Owners meeting or a special meeting called for the purpose of voting on this issue as long as a quorum is present, unless the change is of a minor nature. The Board may determine what is considered a substantial improvement and/or a change of minor nature.

(i) Use of the Common Area is restricted to Members and Members' guests. Use of the Common Area is solely for the benefit of Members and Members' guests.

**Section 2.4 Utility, Map and Map Easements.** Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon the Plat of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

**Section 2.5. Augmentation Plan.** An augmentation plan to provide wells in Beaver Lakes Estates filing #2 as determined by Colorado District Court, Water Division 2, in Pueblo, in Case number W-4482 "Findings of Fact, Conclusions of Law, and Decree

approving Plan for Augmentation including exchange". All right, title, and interest in 4 shares of Twin Lakes Reservoir and Canal Company Stock has been irrevocably assigned to Empire Lodge, Inc. for the perpetual use and benefit of Beaver Lakes Estate filing #2 and its individual property owners. The State Water Engineer is the Plan's administrator. The State Water Engineer currently requires well water meters to measure the removal of all water from every well in Beaver Lakes Estate filing #2 and that meter readings be reported to State Water Engineer. Plan requirements are subject to change. The Augmentation Plan limits water use to household uses only. Water use for irrigation is not allowed. (See Court Document for complete Augmentation Plan Details).

Section 2.6 Annexation. Annexation of additional Lots and/or Property to the property listed in Paragraph A of the Recitals in this Declaration shall require more than fifty percent (50%) of the total vote of the membership.

### ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is a record Owner of a record title 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 (see Section 3.8 (Allocated Interests) of this Declaration for allocation of common expense liability and votes in the Association). Fractional and cumulative voting are prohibited.

Section 3.2 General Purposes and Powers of the Association. The Association shall, through its Board of Directors, perform functions and manage the Beaver Lakes Estates Community as provided in this Declaration so as to protect the value and desirability of the Beaver Lakes Estates Community and the Lots. The Association, through its Board of Directors, shall be responsible for the maintenance, repair, replacement and improvement of any Common Areas, and enforce the provisions of this Declaration. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management, and shall acquire title subject to this Declaration.

Section 3.3 Responsibilities of the Association. The responsibilities of the Association shall be carried out through the Board of Directors ("Board") in accordance with the Bylaws of the Association and consistent with the principles outlined below.

(a) The Board shall prepare, approve and publish an annual budget for the next fiscal year at least 3 months prior to the end of the current fiscal year for the preceding year, provided that strict compliance to such timeframe is not necessary under emergency or other unforeseen circumstances. The Board shall adhere to the annual budget amount.

(b) Financial responsibility requires due diligence and transparent accountability by the Board when entering into contracts, securing loans subject to requirements set forth in these Declarations and incurring other liabilities on behalf of the Association.

(c) The Board shall publish accurate signed minutes of all meetings along with a current balance sheet, a current assessment income and expense report, Reserve Fund Report and special assessment income and expense report prior to the next regular Board meeting, and will keep and publish documentation of all business of the Association, including Architectural Control and appeals.

(d) The Board shall keep current and maintain an accurate list of Members in accordance with provision 38-33.3-317 of CCOIA. (CCOIA requires that the list show the number of votes each unit owner is entitled to).

Section 3.4 Reserve Fund. ELHOA shall maintain a Reserve Fund in accordance with an initial reserve study and periodic studies thereafter per the policy adopted by the Board of Directors. The Reserve Fund is not intended for routine maintenance and repairs, but for significant repair and replacement of community assets. The reserve assessment shall be accounted for separately in ELHOA's account books.

Section 3.5 Removal of Directors.

(a) One or more Directors or the entire Board of Directors may be removed with cause or without cause, upon approval of 50% of the total votes of the Members of the Association. Alternatively, removal may be accomplished by a vote of 67% of Members present at an Annual Meeting or a Special Meeting where there is a 50% quorum of Members present.

(b) Notice of a Special Meeting of the Members to remove Directors shall set forth that the meeting is being conducted for that purpose and shall be provided to every Member, of the Association by regular mail, including the Directors sought to be removed. Directors sought to be removed retain the right to be present at the Special Meeting and shall be given the opportunity to speak to the Members prior to a vote to remove being taken. Directors sought to be removed shall not conduct the meeting.

(c) In the event of removal of one or more Directors, a successor shall be elected by the Members present at the meeting to serve for the remainder of the term of his or her predecessor.

Section 3.6 Authority of the Association. The business affairs of the Community shall be managed by the Board of the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Plat, its Articles of Incorporation and Bylaws, and any Rules, Regulations and policies adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Membership in the Governing Documents, shall be exercised by or under the authority of the Board of Directors.

Section 3.7 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association, but only upon the

approval of more than fifty percent (50%) of the total vote of the Members of the Association.

Section 3.8 Allocated Interests. The Common Expense liability and votes in the Association are set as follows:

- (a) Common Expenses:
  - (i) The percentage of liability for Common Expenses (Assessment) shall be equal per Lot in situations where an owner owns a single Lot.
  - (ii) Multiple adjacent Lots owned and titled in the same name to the same Owner, with no more than one dwelling (as defined in Section 7.3 of this Declaration) upon said Lots for the purposes of Common Expenses shall be deemed a single Lot.
  - (iii) Owners of multiple Lots without contiguous or common borders shall, for the period commencing upon recordation of this Declaration and continuing until April 30, 2014 shall be considered a single Lot with one common expense assessment. Commencing May 1, 2014, such Lots shall be deemed multiple Lots with Common Expenses due on each Lot.
- (b) Voting: One vote per Lot Assessment.

Section 3.9 Meetings of the Association.

- (a) Rules of Order. Rules of Order shall be observed as outlined in the Bylaws to show respect for all opinions and manage meetings in an organized way.
- (b) Board Officers. The composition of the Board of Directors shall include a President, Vice President, Secretary, Treasurer and Parliamentarian, whose duties shall be defined in the Bylaws.
- (c) An annual meeting of the Members shall be held during the Association's fiscal year, at such time of the year and date as determined by the Board. Directors shall be elected by the Members at the annual meeting as per Section 3.9 (e). The Members shall transact other business as may properly come before them at the annual meeting. Failure to hold an annual meeting shall not be considered a forfeiture or dissolution of the Association. Notice of these meetings shall be done according to the current Association Bylaws.
- (d) Special Meetings. Special meetings of the Association may be called by the President, a majority of the members of the Board of Directors, or by the secretary upon receipt of a petition signed by Owners holding at least ten percent (10%) of the total votes of the Members of the Association. The form of notice, date, time, and place of the meeting shall be determined by the Board. If a notice for a special meeting demanded pursuant to petition is not given by the secretary within 14 days after the date the written demand or demands are delivered to the secretary, the

person(s) signing the demand or demands may set the time and place of the meeting and give notice. Any meeting called under this Section may be conducted by the President of the Board except as specified in Section 3.4 (b), by the person(s) submitting the petition, or by a person chosen by a majority of the Board.

(e) All regular, annual and special meetings of the Board (with the exception of Executive Board Meetings) shall be open to attendance and participation by all Members of the Association. Notice for all meetings will be provided in advance by regular and/or email.

Section 3.10 Quorum of Members for Annual and/or Special Meetings. The presence of twenty percent (20%) of the Members eligible to vote at any meeting, in person or by proxy, shall constitute a quorum for any action at an Annual or Special meeting, except as otherwise provided in the Governing Documents. If the required quorum is not present, the Members present shall have power to adjourn the meeting until such time as a quorum shall be present. If adjourned, notice of the new date, time or place need not be given, if the new date, time and place is announced at the meeting before adjournment

Section 3.11 Indemnification. To the full extent permitted by law, each officer, director, employee, or committee member of the Association and any other volunteer appointed by the Board of Directors shall be indemnified by 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, employee, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, employee, committee member or volunteer at the time such expenses are incurred, pursuant to the indemnification provisions as set forth in the Bylaws and by Colorado law.

Section 3.12 Security Disclaimer. Each Owner and his tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.13 Education and Training. The Association shall provide, or cause to be provided, at no cost, on at least an annual basis, education as to the general operations of the Association and the rights and responsibilities of owners, the Association and its Board of Directors. The Association shall provide each new Director with a copy of the current rules of order adopted by the Board, copies of all Governing Documents, and copies of all pertinent court cases that pertain to the Association.

Section 3.14 Compensation and Conflict of Interest. No compensation shall be paid to Members of the Board of Directors. No remuneration shall be paid to a Director for services

performed by him or her for the Association in any other capacity unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken. A Director shall abstain from voting on any issue for which he or she has a conflict of interest. Board Members shall not be related to each other. Board members and employees of the Association shall not be related. Board members and contractors who provide materials and services to the Association shall be not be related. Co-Owners of a Lot shall not be members of the Board at the same time.

#### ARTICLE 4 MAINTENANCE RESPONSIBILITIES

Section 4.1 Association Maintenance and Service Responsibilities. The Board shall oversee the upkeep and maintenance of all Common Areas of the Community, including but not limited to road maintenance and snow removal, cabin repair and cleaning, lodge repair and cleaning, performance of water agreements and court-ordered culvert cleaning and gate repair etc. To this end the Board may employ and direct a resident caretaker or caretakers and, as needed, independent contractors to carry out the work required to adequately discharge this responsibility.

The Board of Directors of the Association shall be responsible to ensure that all provisions of the following Court cases (as they may be modified) are met:

(a) Case number 1994CV01 (consolidated with 2001CV77) from the Colorado District Court in Lake County.

(b) Case number 97CW 83 from the Colorado District Court, Water Division 2, in Pueblo are met, as may be legally modified. This includes but is not limited to culvert, gate and road maintenance, water readings, water calculations, and meeting water calls.

(c) Water Rights as determined by Colorado District Court, Water Division 2, in Pueblo, in Case number W-4482 "Findings of Fact, Conclusions of Law, and Decree approving Plan for Augmentation including exchange." This includes but is not limited to culvert, gate and road maintenance, water readings, water calculations, and meeting water calls.

Section 4.2 Maintenance of Lots and Improvements. Owners are responsible for the maintenance, repair and replacement of the property and improvements located within their Lot boundaries. The Association, and its agents, shall have the authority, after giving the Owner 90 days written notice by certified mail to the Owner of record, to enter and remove Garbage, Junk, Litter, Vehicles in Non-operative Condition and Trash as defined in Leadville Ordinance 8.08.

In the event of any emergency situation which threatens the use of or damage to the Common Areas, or to any Member's Lot(s) or improvements, agents of the Association may, without prior notice to Owner(s) enter a Lot or Lots, to mitigate the emergency situation. Written notice of any actions taken shall be given to the Lot Owner(s) once the emergency situation has been remedied. The Association shall be allowed to recover costs for Trash

removal and/or emergency mitigation from the Lot owner(s) by means of a detailed invoice as a Supplemental Assessment against the Owner(s) pursuant to this Declaration.

Section 4.3 Owner Liability. An Owner shall not be liable for injury or damage to person or property caused by or resulting from the Owner's maintenance or lack of maintenance of the Lot except if the Owner has failed to exercise due care in performing said maintenance. An Owner shall not be liable to any other Owner, or any Owner's occupant, guest or family or the Association for any damage or injury caused in whole or in part by the Owner's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Owner's failure to discharge its responsibilities.

## ARTICLE 5 COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES

Section 5.1 Lien For Nonpayment of Assessments. Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed, or other conveyance, agrees to pay to the Association annual Assessments for Common Expenses and other Assessments imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, shall become a lien on the Owner's title to his/her Lot(s) if unpaid by the due date. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use of enjoyment of the Common Areas or by abandonment of the Lot against which the Assessments for Common Expenses are made.

Section 5.2 Purpose and Basis of Assessments. Common Expense Assessments may be made on an annual basis against all Members as provided in Section 3.8, Allocated Interests. All Assessments shall be used for maintaining and repairing common areas (including roads, lodge, cabins, lakes, campground etc.), road maintenance and snow removal and for providing services to Members. The amount of such Assessment may vary as dictated by economic conditions and the need to furnish services requested by Members. The annual Assessment for Common Expenses shall be based upon the Association's advance budget of cash requirements prepared by the Board. This budget shall include funding for the Reserve Fund.

The Board shall be limited to engaging legal counsel for collection of unpaid assessments, foreclosure of Association liens, operational advice, or defending or a lawsuit, without membership approval. If the Board deems it necessary to engage legal counsel for other reasons, the proposal shall require the affirmative vote of more than sixty-seven percent (67%) of the Members present at an annual or special meeting where a 33% quorum has been established, and the Board is required to construct and mail to the membership a detailed proposal for legal counsel giving sufficient reasons, cost estimates, and clear desired outcomes.

Section 5.3 Annual Assessment. Assessments for Common Expenses shall be allocated equally (see Section 3.8 (Allocated Interests) of this Declaration) and shall be due



and payable in monthly, quarterly or annual installments, or in any other manner, as determined by the Board of Directors. 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 5.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments to cover expenses not covered by the reserve fund. Any proposed Special Assessment shall require approval of more than fifty percent (50%) of the total votes of the Members of the Association. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services.

Section 5.5 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article for the following:

(a) Improvement, repair, replacement or maintenance to Common Areas or improvements thereon caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration.

(b) All fines and costs assessed against an Owner pursuant to provisions of the Governing Documents. Fines shall be limited to a maximum of \$250.00 per infraction, not to be imposed as a daily charge or obligation. Fines may exceed this limit if an infraction is continuously repeated or leads to significant costs and/or risks to the Association, up to a maximum of reimbursement of costs to the Association.

Section 5.6 Working Capital. The Association may levy a working capital fee upon each transaction of the sale of a Lot or Lots in an amount up to one-tenth of the annual Common Expense Assessment, in order to fund the Association and its purposes, including all duties and obligations under this Declaration. The working capital fee shall be collected and transferred to the Association at the time of closing of each Lot.

Section 5.7 Application of Payments. All sums collected on a delinquent account referred to an attorney shall be remitted to the Association's attorney or to the Board at the Board's discretion until the account is brought current. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 5.8 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within thirty (30) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate of up to 12% (or prime plus 2% if prime rate exceeds 12%) on a per annum

basis to accrue monthly from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

(b) Should the Association determine to make Assessments due and payable in something other than annual installments (e.g., monthly, quarterly, etc.), failure to make payment of an installment 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. The Board may, in its discretion, decelerate the Member's annual Assessment.

(c) The Association may foreclose its liens against an Owner's Lot(s). Foreclosure or attempted foreclosure by the Association shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, charges or fees, or monthly or other installments thereof, which are not fully paid when due.

(d) The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set in its deed of trust or mortgage, to the extent permitted under the Act.

Section 5.9 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 this 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 material-men'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. No sale, transfer, foreclosure, 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.

Section 5.10 Borrowing. The Association shall have the power to borrow money and assign its right to future income, including the right to assign its right to receive Assessments for Common Expenses, as security for the loan. The Association shall not enter into a loan for any amount over 33% of the annual budget without approval of at least a majority of the Members present and voting, in person or by proxy, at a regular or special meeting of the Membership at which a quorum is present.

## ARTICLE 6 COVENANTS AND RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 6.1 Flexible Application of the Subsequent Covenants and Restrictions. All Lots within the 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.

Section 6.2 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 establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions. Fines shall be limited to the maximum amount specified in Section 5.5(b) of this Declaration, not to be imposed as a daily charge or obligation.

(c) All fines imposed are collectable as Assessments.

Section 6.3 Use/Occupancy. All Lots within the Community shall be used only for those purposes allowed by local zoning, control and regulation, and permitted by this Declaration, subject to any Rules and Regulations adopted by the Association. Lots shall not be used for any purpose other than a residential dwelling, a private garage and such other enclosed and covered outbuildings as are incidental to a residential use of the Lot. No flat, apartment, duplex, multi-family dwelling or structure to be used for commercial purposes shall be erected or maintained on any Lot. No used or second-hand structure shall be moved upon any Lot except with the written permission of the Architectural Control Committee. No mobile home or remodeled mobile home shall be permitted on any Lot.

Notwithstanding the above, home occupations and light construction, including but not limited to furniture construction, shall be allowed so long as the home occupations and/or light construction are incidental and secondary to the use of the Lot and do not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited. In no instance shall a home occupation or light construction project be visible externally, nor shall any home occupation or light construction project employ more than one person other than the Owner. Uses which have one or more of the following characteristics are not permitted: (a) storage of hazardous materials (b) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (c) permanent or long term parking of heavy equipment, including semi-trailers; (d) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

Section 6.4 Camping During Construction Periods. Owners may camp on their Lots during construction periods only when a valid building permit is active as per Lake County camping regulations.

Section 6.5 Landscaping Requirements and Restrictions. Each Lot shall be maintained by the Owner in a good, neat, attractive and well-kept condition, which shall include the removal of debris including rubbish. See also Section 4.1 of this Declaration.

Section 6.6 Restrictions on Pets. Pets may be kept on a Lot, if the Pet is not a nuisance to other residents, except that no Pets may be kept for any commercial purposes. When on Common Area, Pets must be in the immediate control of the Owner. Feces left by Pets upon the Common Area must be removed promptly by the owner of the Pet or the person responsible for the Pet. Owners shall hold the Association harmless from any claim resulting from any action of their Pets or the Pets of their tenants, guests or other invitees. Nothing contained herein shall prohibit the keeping of horses in areas designated or approved by the Association.

Section 6.7 Antennae. "Permitted Antennas" are defined as (a) an antenna which is less than 40 inches in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than 40 inches in diameter and is used to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television signals.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna.

Section 6.8 Tanks. Propane tanks are permitted. No liquid fuel tanks are permitted, except for liquid fuel tank(s) owned and maintained by the Association.

Section 6.9 Nuisances. Any activity which unreasonably disturbs any Owner, or unreasonably interferes with the peaceful enjoyment or possession of a Lot or any Common Area, or any portion of the Beaver Lakes Estates Community by residents, is prohibited. No unlawful use or activities shall be permitted within the Beaver Lakes Estates Community or any portion thereof.

Section 6.10 Vehicular Parking, Storage, and Repairs. As used in this Section, the following terms shall be defined as follows:

Vacant/Undeveloped Lot: Any Lot for which plans for a residence have not yet been approved by the Committee, as set forth in this Declaration.

Developed Lot: Any Lot on which a residence has been constructed or for which plans for a residence have been approved by the Committee, as set forth in this Declaration.

(a) No vehicular parking (unless camping as provided in Section 6.4 of this Declaration), storage, or repairs shall be permitted on Vacant/Undeveloped Lots in the Community. Parking upon any Common Area shall be permitted around rental cabins, Beaver Lakes Estates maintenance buildings, the lodge and the campground

as designated by the Association. Parking upon any common area shall be regulated by the Association.

(b) No semi-tractor trailers shall be permitted in the Community except for loading and unloading, delivery of goods, emergency, construction, or for the maintenance of any Common Area, Lots, or any improvement located thereon. Excavation equipment shall only be permitted in the Community during construction.

(c) No parked vehicle may impede the safe and efficient use of roads or parking areas, obstruct emergency access to/from the Community, or interfere with residents' use of their driveways

(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 for more than 21 days as per Leadville Ordinance 8.08 and there is no damage (c.g. oil residue) and all equipment and parts are removed upon completion of the work.

Section 6.11 Use of Common Area. There shall be no obstruction 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 6.12 Restriction on Signs and Advertising Devices. (a) Except as provided in this Section no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Lot. (b) Political signs, which are signs intended to impact the outcome of an election or ballot issue, must be displayed in accordance with the Association's Rules and Regulations. (c) Two professionally lettered "For Sale" or "For Rent" signs not to exceed three feet by two feet may be displayed on a Lot. (d) Address posts are exempted from this restriction.

Should a sign, poster, billboard, advertising device, or display of any kind be erected or maintained on a Lot in violation of this Section, the Board or its designee shall contact the Owner and request that the offending sign be removed. If the request for removal has not been complied with within 14 days the Board/designee shall have the right to enter the property, remove the item, and any such action shall not be deemed a trespass.

Section 6.13 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container, suitably located, screened from public view, and protected from disturbance. The burning of refuse out of doors shall not be permitted anywhere on the Property. No incinerator or other device for burning of refuse outdoors shall be constructed, installed or used by any person. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

"Slash" such as dead trees, branches, weeds or other vegetation removed from Lots, may be deposited at a common location specified by the Association. No garbage, refuse or rubbish shall be deposited at that common location.

Section 6.14 Rules and Regulations. In furtherance of the provisions of this Declaration, Rules and Regulations governing the Community may be adopted, amended, or repealed by the Board of Directors. The Board of Directors may establish and enforce penalties for infractions thereof. Fines shall be limited to the maximum amount specified in 5.5 (b), not to be imposed as a daily charge or obligation.

Section 6.15 Compliance With Other Laws. No unlawful use shall be permitted within the Beaver Lakes Estates Community or any portion thereof.

Section 6.16 Restriction on Mining and Drilling. No Property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth. Notwithstanding the foregoing, private wells (with valid permit) are authorized as a source of water for "household use". "Household Use" shall include use for human, domestic needs, and for household pets and horses. Water from wells shall not be used for irrigation. Location and construction of wells shall conform to Lake County and State Health Department regulations.

Section 6.17 Sewage. Sewage disposal systems shall be limited to non-evapotranspiration systems that do not wholly or primarily utilize liquid evaporation or transpiration by vegetation as a means of effluent disposal. Location and construction of sewage disposal systems shall conform to Lake County and State Health Department regulations.

Section 6.18 Trees. No live trees shall be cut or removed from the Property except with prior written approval of the Architectural Control Committee. Trees may be removed to establish a defensible perimeter around an improvement on a lot as established by the Lake County Fire Department or the National Forest Service Documentation of fire perimeter recommendations would be submitted to the ACC prior to any trees being cut.

Section 6.19 Use of the Words Beaver Lakes Estates and Empire Lodge Homeowners Association. No Owner or resident shall use the words Beaver Lakes Estates or Empire Lodge Homeowners Association or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

Section 6.20 Restrictions on Lighting. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare.

Section 6.21 Firearms, Fireworks and Fires. No firearms shall be discharged upon any Property within the Beaver Lakes Estates Community. All fires must be contained and supervised at all times. A contained fire is a fire in a barbecuc pit with grill, a patio fireplacc, a rock circle or a buried metal ring. Fires must be entirely extinguished when not supervised. Fires are allowed in designated areas provided by the Association. County and Forest Service Fire Bans shall apply. No fireworks of any kind are allowed in the Beaver Lakes Estates Community.

Section 6.22 Short Term Rentals Short Term Rentals, as defined by Lake County, Colorado, shall be prohibited in the Community. Upon the effective date of this Declaration, Owners renting their Lots on a short term basis shall have 90 days to comply with this Section. Any Owner operating a short-term rental after this time frame shall be subject to fine up to one thousand five hundred dollars (\$1,500.00) per violation.

## ARTICLE 7 ARCHITECTURAL REVIEW

Section 7.1 Composition of the Architectural Control Committee. The Architectural Control Committee (or ACC) shall consist of three or more members designated by the Board of Directors to review and approve or reject proposed improvements and alterations within the Beaver Lakes Estates Community. Members elected to the ACC preferably should have skill, training and/or experience in architecture, design, landscape design, building or a related field. Members shall retain the right to appeal the ACC's decision to the Board if requested in writing within a reasonable timeframe from the ACC's decision; provided, however, that any director who is simultaneously serving on the ACC at the time of the decision shall recuse him or herself from the appeal. The ACC may propose architectural guidelines from time to time, which clarify the criteria, standards and/or procedures of architectural review, and which guidelines shall be approved by the Board of Directors.

Section 7.2 Land Use Permitted. On any platted lot in Beaver Lakes Estates Community there may be constructed, subject to approval by the ACC, one new single-family residence for private use, a private garage and other outbuildings incidental to single family use. All improvements shall comply with Lake County Building and Zoning regulations.

Section 7.3 Land Use Prohibited. No flat, apartment, duplex or multi-family dwelling, nor structures to be used for commercial purposes shall be erected on any platted lot at Beaver Lakes Estates Community. No mobile home or remodeled mobile home shall be permitted on any platted lot in Beaver Lakes Estates Community.

Section 7.4 Alterations. Painting an improvement constitutes an alteration (unless similar to the existing color). Alterations to the exterior of a residence or other improvement on a platted Lot, are subject to approval by the ACC. Alterations must comply with Lake County Building and Zoning regulations.

Section 7.5 Outbuildings and Temporary Structures. An "outbuilding" shall mean an enclosed or covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, shacks, barns, or detached garages or carports, shall be allowed on any Lot unless approved in writing by the Architectural Control Committee. Further, no outbuilding or temporary structure shall be used on any Lot at any time for residential purposes, either temporarily or permanently.

Section 7.6 Fences. All fences, walls or other barriers shall require approval by the ACC. No fence, wall, hedge, barrier or other improvements shall be erected or maintained along, on, across, or within the areas reserved for easements and rights of way.

**Section 7.7 Criteria.** The approval of the ACC 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 the suitability of the improvement to the platted Lot upon which it is to be located and the effect of the proposed improvement on the outlook of adjacent or neighboring properties. Criteria shall include, but may not be limited to:

- *harmony of external design with existing structures,*
- *location with respect to topography and finish grade elevation,*
- *scale of proposed improvement to Lot size,*
- *negative impact on view of an adjacent Lot, and*
- *conformity with the specifications and purposes generally set out in this Declaration.*

**Section 7.8 Lot Owner Responsibility.** It is the responsibility of the Lot Owner to apply directly in writing, upon the form provided by the ACC, submitting plans and specifications for any building or improvement. Owners will not commence construction or installation of an improvement until they have submitted improvement plans and specifications and received written approval from the Committee. Owners shall comply with any request by the Association for additional information relating to an improvement prior to the Committee's approval of a request.

**Section 7.9 Reply and Communication.** The ACC shall reply to all submittals of plans in writing within 30 days after receipt. In the event the ACC fails to respond on submitted plans and specifications within 30 days after the ACC has acknowledged receipt of the plans and specifications, the application shall be deemed to be approved. All communications and submittals may be addressed to the ACC in care of the Association or directly to an ACC Member. Electronic submission shall be an acceptable form of submittal and must be accompanied by the ACC Form provided by the Association. This submission must be acknowledged by the receiving ACC member. This acknowledgement starts the 30-day review period. Electronic submissions shall be in a word or PDF format or other easily readable file format or other file format specified by the ACC.

**Section 7.10 Notice to Adjacent Lot Owners.** Owners shall be required to provide adjacent Lot Owners notice of any major architectural requests, as further set forth in the Rules and Regulations, for consideration by the ACC. An adjacent Lot Owner's disapproval would not be the sole basis for denying any architectural request for an improvement or alteration, but would be factored into the decision made by the Section.

**Section 7.11 Approval of Plans.** No buildings, outbuildings, fences or other improvements shall be erected or maintained on any platted Lot at Beaver Lakes Estates Community, nor shall any improvement or alteration be commenced until plans and specifications showing color, location, landscaping and other pertinent information have been submitted to and approved in writing by the ACC.

**Section 7.12 Continuity of Construction.** Exteriors of all structures commenced on platted lots at Beaver Lakes Estates Community shall be completed within eighteen (18) months. Owners retain the right to apply for extensions due to unforeseen complications of a personal nature.



Section 7.13 Liability. Approval of plans by the ACC shall not guarantee the correctness of Lot lines, soil conditions, structural soundness, drainage, or sewage disposal systems. ACC approval does not constitute approval by Lake County Building and Zoning Department.

Section 7.14 Records. The Association shall maintain written records of all architectural applications submitted along with their approval or rejection by the ACC and the outcome of appeals by the Board. Such records shall be retained for a minimum of three (3) years and shall be open and available for inspection and copying by any Owner or any Owner's designated agent(s) during reasonable business hours.

Section 7.15 Enforcement. The Association may enforce this Article with any one or more enforcement remedies available under the Declaration and Colorado law including, without limitation:

- (a) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot. Fines related to Architectural Control issues shall be limited to a maximum of \$1,500.00 per occurrence, not to be imposed as a daily charge or obligation. Notwithstanding the preceding, if a violation is determined to exist and such violation remains uncured for a period of 180 days or longer, the violation shall be considered a new violation and shall be subject to additional fines pursuant to this paragraph after notice and an opportunity for a hearing;
- (b) suspending voting and use rights;
- (c) 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;
- (d) requiring an Owner to bring into compliance any addition or improvement that differs from the ACC application that was approved by the ACC;
- (e) requiring the Owner to immediately cease and desist and, without liability to any person, 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 work related to the violation;
- (f) levying Supplemental Assessments to cover documented costs and fees incurred by the Association to bring a Lot into compliance with the Governing Documents;
- (g) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both; and
- (h) recording a notice of violation against the Owner and the Lot.

Section 7.16 Energy Efficiency Measures and Renewable Energy Devices The Association shall permit the installation or use of energy efficiency measures or renewable energy devices as defined per Colorado law and amendments thereof, subject to any reasonable aesthetic provisions governing dimensions, placement and external appearance adopted by the Association in its architectural guidelines This Section shall not be construed to confer upon any Owner the right to place an energy efficiency measure or renewable energy device on property that is:

- (a) owned by another person;
- (b) leased, except with permission of the lessor;
- (c) collateral for a commercial loan, except with permission of the secured party, or
- (d) a Common Area of the Community.

## ARTICLE 8 INSURANCE

Section 8.1 Insurance on the Lots. Each Owner has the responsibility to obtain hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to their Lot, or other property of that Owner located on such Lot, and liability insurance covering any injuries occurring to persons or property damages on a Lot. The Association shall not insure Lot Owner improvements or liability.

Section 8.2 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 in this Declaration 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.

Section 8.3 Hazard Insurance on Common Area. The Association shall obtain hazard insurance covering loss, damage or destruction by fire or other casualty to any insurable improvements installed or made to any Common Area and the other property of the Association.

Section 8.4 Association Liability Insurance. The Association shall obtain public liability and property damage liability insurance covering any 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 motor vehicles on behalf of the Association.

Section 8.5 Association Fidelity Insurance The Association shall obtain 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 8.6 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 8.7 Directors' and Officers' Personal Liability Insurance. The Association shall obtain directors' and officers' 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 in acting as officers and directors on behalf of the Association.

Section 8.8 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 provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.
- (b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.
- (c) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without prior written notice to all of the Owners as provided by Colorado law and to the Association.
- (d) 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 10 days prior to the expiration of the then-current policies.
- (e) All liability insurance shall name the Association, the Board, the caretaker, the managing agent (if applicable), the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insured persons or entities.
- (f) Prior to the Association obtaining any blanket policy of casualty insurance on any 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 any 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 affected pursuant to the provisions hereof. In the event the Association obtains casualty insurance on the Lots, then in no event shall that casualty insurance policy contain a co-insurance clause.
- (g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance there-under shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner.

Section 8.9 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 8.10 Insurance Premium. 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 8.11 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 8.12 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 8.13 Duty to Repair. Any portion of the Community for which the Association is required to insure under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 8.14 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance 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 8.15 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 Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to 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 in compliance with and under the terms of the Declaration.

Section 8.16 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 Insurance

Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

Section 8.17 Damage to or Destruction on Lots. In the event of damage to or destruction of structures or improvements on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure and improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

## ARTICLE 9 GENERAL PROVISIONS

### Section 9.1 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 may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(1) **Monetary Fines.** Prior to imposing a monetary fine, notice must be given as specified in this Declaration with an opportunity for a hearing by a dispute resolution committee appointed by Board and the owner must be found to have violated the Governing Document at said hearing. The fine shall constitute a lien upon the violator's Lot. Fines shall be limited to the maximum amount specified in Section 5.5(b) of this Declaration, not to be imposed as a daily charge or obligation.

(2) Without liability to any person, any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration, may be prevented from performing or continuing any further activities in the Beaver Lakes Estates Community by the Association. The Lot Owner shall be notified in writing and electronically, when available.

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

(c) 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 may be entitled to recover all costs,

including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(d) 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 further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association 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.

Section 9.2 Attorney Fees. In a legal proceeding in any way related to the Governing Documents or the Community, the court may award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded by the court against an Owner shall be charged as an Assessment and shall constitute a lien against the Lot.

Section 9.3 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 9.4 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

#### Section 9.5 Amendment of Declaration by Owners.

Any Article, Section or Subsection of this Declaration that requires more than sixty-seven percent (67%) approval of the total votes of the Members of the Association may be amended, revised, or repealed at any time, upon approval of more than sixty-seven percent (67%) of the total votes of the Association.

All other Articles, Sections or Subsections of this Declaration, not otherwise specified in this section (Section 9.5) may be amended, revised, or repealed at any time, upon approval of more than fifty percent (50%) of the total votes of the Members of 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 Lake County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above.

Section 9.6 Amendment of the Bylaws. The bylaws shall only be amended in accordance with the amendment provisions set forth therein. The board of directors may make non-substantive changes to the bylaws in accordance with the Colorado Revised Non-profit Corporation Act or as may be permitted in the bylaws. Notwithstanding the preceding, it is the policy of the Association to encourage transparency and owner participation in bylaw amendments. Any proposed substantive amendment to the Bylaws shall be referred to a bylaw amendment committee which shall determine the need for the proposed amendment and refer such amendment to the Board for consideration by the Owners.

Section 9.7 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.

Section 9.8 Interpretation. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 9.9 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 9.10 Challenge to this Amendment. All challenges to the validity of this amendment or any future amendments must be made within one year after the recording date of this document.

Section 9.11 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 9.12 Conflict of Provisions. In case of conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

The undersigned, being Lot Owners of Empire Lodge Homeowners Association, hereby certify that we have obtained written approval of this Declaration from more than 50% of the total votes of the Members of the Association. Approvals obtained shall remain in effect until this Declaration is approved unless approval is expressly revoked in writing.

**EMPIRE LODGE HOMEOWNERS  
ASSOCIATION, a Colorado nonprofit corporation**

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

President

ATTEST:

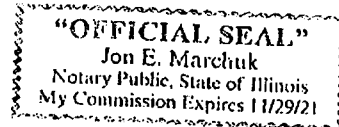
Eric S Flora  
Secretary

STATE OF <sup>Illinois</sup> COLORADO )  
COUNTY OF <sup>mb</sup> ~~El Paso~~ ) ss.  
<sup>Kane</sup>

The foregoing Declaration was acknowledged before me by Karen A Runowski, as President of Empire Lodge Homeowners Association, a Colorado nonprofit corporation, on this 21<sup>st</sup> day of July, 2021.

My commission expires: 11/29/21

Jon E. Marchuk  
Notary Public

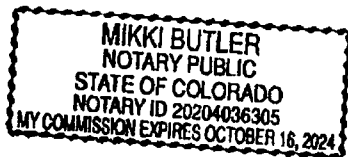


STATE OF COLORADO )  
COUNTY OF El Paso ) ss.

The foregoing Declaration was acknowledged before me by Eric S Flora, as Secretary of Empire Lodge Homeowners Association, a Colorado nonprofit corporation, on this 17 day of July, 2021.

My commission expires: October 16, 2024

Mikki Butler  
Notary Public





**EXHIBIT A  
PROPERTY**

Common Area and Common Property on the Beaver Lake Estates Plat Reception No. 244822 and Beaver Lake Estates Filing Number 2 Plat Reception No, 263834 owned by the Association for the common use and enjoyment of the Owners identified in the deed and assignment recorded in Book 504 at Page 937 and Page 938, County of Lake, State of Colorado.

Access road easement recorded in Book 414 Page 196 County of Lake, State of Colorado and as amended by Case number 1994CV01 (consolidated with 2001CV77) from the Colorado District Court in Lake County.

Water Rights and Water Storage Rights as determined by Colorado District Court, Water Division 2 in Pueblo, in Case number 97CW83 "Findings of Fact, Conclusions of Law, Judgment, and Decree."

Water Rights as determined by Colorado District Court, Water Division 2, in Pueblo, in Case number W-4482 "Findings of Fact, Conclusions of Law, and Decree approving Plan for Augmentation including exchange."