

Arapahoe County Clerk and Recorder:

Index in grantee's index under "Raintree East" and "Raintree East Homeowners Association, Inc." and in  
the grantor's index under "Raintree East Homeowners Association, Inc."

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
RAINTREE EAST**

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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
RAINTREE EAST**

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

**RECITALS**

A. The Declaration of Covenants, Conditions and Restrictions for Raintree East was recorded on April 19, 1973, in Book 2120, Page 169, *et seq.* at Reception No. 13524588, in the office of the Arapahoe County Clerk and Recorder (the "Original Declaration") creating the community known as "Raintree East," which community is governed and operated by the Association.

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

C. The Original Declaration has been amended by an amendment recorded on March 19, 1975 in Book 2319, Page 20 at Reception No. 1474291, in the office of the Arapahoe County Clerk and Recorder, and any others of record.

D. Article XIII, Section 3 of the Original Declaration, as amended, provides that the Original Declaration may be amended by owners of not less than 75% of the Lots; however, C.R.S. § 38-33.3-217(1)(a) states that any provision in the Declaration that purports to specify a percentage larger than 67% is declared void as contrary to public policy, and until amended, such provision shall be deemed to specify a percentage of 67%.

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

F. The purposes of the amendments in this Amended and Restated Declaration include, but are not limited to the following:

- to clarify the allocation of maintenance responsibilities between the Association and the Owners;
- to clarify the allocation of insurance responsibilities between the Association and the Owners;
- to update and change restrictions in the Community;
- to delete declarant rights and responsibilities that are no longer applicable;
- to update provisions so as to allow the Association to efficiently operate the Community and deal with Community concerns; and
- to update the Original Declaration to comply with current state law.

G. Owners of at least 67% of the Lots desire to amend the Original Declaration and have approved this Amended and Restated Declaration in writing;

H. Those Owners approving this Declaration have determined it to be reasonable and not burdensome.

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

## **ARTICLE 1. NAME**

**Section 1.1** **Name and Type.** The type of common interest community is a planned community. The planned community's name is Raintree East. The association's name is Raintree East Homeowners Association, Inc.

**Section 1.2** **Purposes.** The Association's goals include maintaining the Community and the Lots and furthering the collective interests of the Owners and Residents of the Community.

## **ARTICLE 2. DEFINITIONS**

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

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

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

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

(d) **Bylaws** mean the Bylaws of the Association.

(e) **Common Area** means all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon, but excluding the Lots. Common Area means the same as common elements in the Act.

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

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

(h) **Community** means all that property set forth in the description of the Property in the Original Declaration, as amended.

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

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

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

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

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

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

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

(p) Plat means the subdivision plats for the Community as recorded, which plat is a part of this Declaration.

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

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

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

(t) Rules and Regulations means any instrument adopted by the Association, as allowed for under this Declaration and the Act, for the regulation and management of the Community, Residents, Common Area and/or Lots, including any amendments or revisions.

### **ARTICLE 3. ASSOCIATION MEMBERSHIP AND ALLOCATION OF INTERESTS**

**Section 3.1** Membership. Every Person who is a record Owner of a fee interest in any Lot subject to this Declaration is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot is the sole qualification for membership. No Owner, whether one or more Persons, will have more than one membership per Lot owned. Only Members may serve on the Board of Directors. Membership does not include Persons who hold an interest as security for the performance of an obligation, but granting a security interest will not terminate the Owner's membership.

#### **Section 3.2** Allocated Interests.

(a) Voting. The Lot Owner(s) is entitled to one equally weighted vote for the Lot. When more than one Person holds an ownership interest in any Lot, the vote for the Lot will be exercised as those Owners determine among themselves. If more than one Person seeks to exercise the vote, the vote allocated to the Lot will be suspended.

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

## **ARTICLE 4. EASEMENTS**

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

- (a) The right of the Association to limit the number of guests of Members;
- (b) the Association's right to have access to the Lots to discharge its rights and obligations, under the Governing Documents, including without limitation, the maintenance responsibility of the Association;
- (c) the Association's right to suspend an Owner's rights to use the recreational facilities for any period during which any assessment or charge against their Lot remains unpaid and for a reasonable period of time (not to exceed 60 days or for the duration of the violation) for an infraction of the Declaration, Bylaws, or Rules and Regulations;
- (d) the Association's right to grant easements, leases and licenses across the Common Areas;
- (e) the Association's right to dedicate or transfer all or any portion of the Common Areas subject to approval of Owners holding 67% of the total Association vote; and
- (f) the Association's right to change the use of portions of the Common Areas or to close portions of the Common Areas; provided that permanent closure of any recreational facilities will require the affirmative vote of a 67% of Members voting at a properly called Member meeting.
- (g) Any Owner may delegate right to use and enjoy the Common Areas and facilities located thereon to the members of their family, or other Residents and guests. If the Lot is leased, the Owner will be deemed to have delegated these rights to the Residents of the Owner's Lot.

**Section 4.2 Easement for Entry.** The Association has an easement to enter Lots for maintenance, emergency, security, or safety purposes. Except in an emergency situation, entry will be during reasonable hours and after reasonable notice to the Lot Owner or Resident. For purposes of this section, an emergency justifying immediate entry into a Lot includes, but is not limited to, the following situations: a water or other utility leak; fire; strong foul odor; obvious insect infestation; or sounds indicating that a person or animal might be injured or sick and requires immediate medical attention. The Association has the right but not the obligation to enter a Lot for emergency, security, or safety purposes, and failure to exercise the easement right will not create liability to the Association.

**Section 4.3 Support.** Every portion of a Lot and all Common Areas contributing to the structural support of an abutting Lot are burdened with a non-exclusive easement of support for the benefit of the abutting Lot.

**Section 4.4 Encroachments.** To the extent that any Lot or Common Area encroaches on any other Lot or Common Area, a valid easement for the encroachment exists. This easement does not relieve an Owner of liability in case of negligent or willful misconduct.

**Section 4.5 Utilities.** To the extent that any utility line, pipe, wire, or conduit serving any Lot(s) or the Common Areas lies wholly or partially within the boundaries of another Lot or the Common Areas, the other Lot(s) or the Common Areas are burdened with a non-exclusive easement for the use, maintenance, repair and replacement of the utility line, pipe, wire or conduit, the non-exclusive easement in favor of the Lot(s) or Common Areas served.



## **ARTICLE 5. ASSESSMENTS**

**Section 5.1 Purpose of Assessment** The Association has the power to levy assessments. Assessments for Common Expenses are used to fulfill the Association's obligations pursuant to this Declaration and to promote the common benefit and enjoyment of the Owners and Residents in the Community as may be more specifically defined and authorized from time to time by the Association.

**Section 5.2 Personal Obligation For Assessments** Each Owner covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific lot assessments which are established pursuant to the terms of this Declaration. These amounts are also the personal obligation of the Person who owned the Lot when the assessment fell due. The personal obligation to pay any past due sums due the Association does not pass to a successor in title unless expressly assumed.

**Section 5.3 Lien** All assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs and expenses), up to the maximum amount permitted by law, is a charge and a continuing lien upon the Lot against which each assessment is made. The Association has authority to record a notice of lien in the county's real property records evidencing the Association's lien. The Association's lien under this article is not subject to the provision of any homestead exemption as allowed under law. The lien has the priority set forth in the Act.

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

**Section 5.5 Specific Lot Assessments** The Association has the power to levy specific lot assessments against Lots pursuant to this section as it deems appropriate.

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

(b) Any other expense benefiting fewer than all of the Lots, may be assessed equitably against those Lots according to the benefit received as determined by the Association; provided that except as provided in subsections (a) and (b) above, expenses incurred for the maintenance, repair or replacement of the Common Area or portions of the Lots that are the Association's maintenance responsibility will not be assessed as a specific Lot assessment.

(c) Any expense related to utilities, including but not limited to water, sewer, gas and electricity, may be specifically assessed equitably among the Lots in proportion to use rather than equally, but only if use can be reasonably determined or estimated through means such as, but not limited to, separate metering or evaluation by an independent entity with expertise in making these determinations.

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

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

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

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

(iii) upon 30 days written notice, the Association may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner loses the privilege of paying assessments and charges in installments for that fiscal year, unless the Association, in its sole discretion reinstates the privilege.

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

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

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

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

**Section 5.7      Budget and Assessment.** Prior to the beginning of each fiscal year, the Association will prepare a budget covering the estimated costs of operating the Community during the coming year, including an annual reserve contribution for replacement of improvements that are its responsibility, and establish the annual assessment or installments for the coming year. The Association will deliver a summary of the proposed budget to each Member within 90 days after the Board adopts the proposed budget and set a date for an Association meeting to consider the budget, which meeting will occur within a reasonable time after delivery of the budget summary. Unless the budget is more than five percent higher than the budget for the prior year, no Owner vote on or ratification of the budget is required. If the budget is more than five percent higher than the budget for the prior year, the proposed budget must be approved by a majority of the members present and voting at a duly called meeting of the Association.

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

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

**Section 5.8**      **Special Assessments.** In addition to the annual assessment provided for above, the Association may, at any time, and in addition to any other rights it may have, propose a special assessment against all Owners to meet any unanticipated or unexpected expenses. Any special assessment (except as provided in this Declaration regarding repair or reconstruction of casualty damage to or destruction of all or part of the Community) will become effective upon the approval of a majority of the Owners present and voting, in person or by proxy, at a duly called meeting at which a quorum is present.

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

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

**Section 5.11**      **Borrowing.** The Association has the power to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments, but only upon the affirmative vote of a majority of the Owners present and voting, in person or by proxy, at a duly called meeting at which a quorum is present, or by ballot in lieu of a meeting as provided for in the Bylaws.

## **ARTICLE 6.                      MAINTENANCE RESPONSIBILITY**

**Section 6.1**      **By the Owner.** Each Owner is obligated to maintain, repair and replace or improve and keep in good repair all portions of the Lot except any portion of a Lot which is expressly made the Association's obligation as set forth in this article. These responsibilities include, but are not limited to the following:

- (a)      all glass surfaces (including exterior cleaning);
- (b)      windows, window frames (except for periodic painting of the exterior window frames during the Association's regular paint schedule only), casings and locks (including caulking of windows) and screens;
- (c)      all doors (including storm and screen doors), doorways, door frames, and hardware that are part of the entry system of the Residence, including doors from a Residence to the interior of a garage (except for periodic painting of the exterior surface of entry doors and door frames during the Association's regular paint schedule only);
- (d)      all utility lines pipes, ducts, conduits, wires or other apparatus which serve only the Lot, from the point where the lines enter the Residence (including all electricity and water and sewer pipes, lines, ducts, conduits);
- (e)      any fireplace (including the flue, damper, and firebox);

- (f) all communications, television, telephone, cable and electrical lines, receptacles and boxes serving only the Lot, whether located within or outside the boundaries of the Lot unless maintained by a utility provider;
- (g) skylights, if any;
- (h) hose bibs/water faucets on the exterior walls of the Residence;
- (i) vents serving the Residence, including cleaning of dryer vents;
- (j) hot water heaters and associated pipes, lines, ducts, conduits or other apparatus which serve the Lot, whether located within or outside the boundaries of the Lot;
- (k) the foundation, subflooring, beams, support posts, floor joists, rafters and trusses, under-roofing support, and wall framing and other structural components of the Residence;
- (l) waterproofing Residence foundations above and below grade;
- (m) all enclosed areas adjacent to the Residence, whether Common Area or a portion of the Lot;
- (n) garage door openers and door sensors, light bulb replacement in the garage, and cleaning the interior of the garage;
- (o) any portion of the heating and air conditioning systems including the air conditioning compressor and fan coil serving the Lot, whether located within or outside the boundaries of the Lot;
- (p) any exterior electrical outlet on a Residence or in a garage that serves only the Residence;
- (q) light bulb replacement for fixtures on the Residence adjacent to enclosed patio areas and balconies;
- (r) switches and electrical lines to outdoor light fixtures on a Residence, provided that the Association will maintain, repair and replace the exterior light fixture;
- (s) pest, rodent and other insect control in the Residence; and
- (t) any improvements to the Lot and/or the Common Area made by the Owner or the Owner's predecessor. Every Owner is responsible to determine what improvements have been made to the Lot and/or associated Common Areas by any predecessor-in-interest.

**Section 6.2**      **Additional Owner Responsibilities.** In addition, each Owner will have the responsibility:

- (a) to keep the Lot (including patio, balcony, and garage areas) in a neat, clean and sanitary condition, including keeping the balconies free and clear of snow, ice, and any accumulation of water or other debris;
- (b) to perform Owner's responsibility in a manner so as not to unreasonably disturb other persons in other Lots;

(c) to promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(d) to pay for the cost of repairing, replacing, or cleaning up any component of the Community which, although the responsibility of the Association or another Owner, is necessitated by reason of the willful or negligent act of the Owner, Owner's family, Residents or guests;

(e) to repair incidental damage to another Lot or the Common Area, resulting from performance of work that is the Owner's responsibility. Such repair and subsequent cleaning will be performed based upon a reasonableness standard.

Any maintenance, repair or replacement performed on or to the Lot or Common Area by an Owner or Resident which is the Association's responsibility (including, but not limited to landscaping of Common Area) will be performed at the Owner's or Resident's sole expense and the Owner or Resident will not be entitled to reimbursement from the Association even if the Association accepts the work.

**Section 6.3**      **By the Association.** The Association will maintain and keep in good repair as a Common Expense all Common Areas (including, but not limited to landscaping and irrigation systems on Common Areas, parking lots and private roads, outbuilding, clubhouse, pool, tennis courts, mail kiosks, and entry signage), and the portions of the Lot as identified below ("Areas of Common Responsibility"):

(a) maintain, repair and replace walkways, sidewalks, and porches to front doors;

(b) paint, maintain, repair and replace siding on the exterior of the buildings above grade;

(c) maintain, repair and replace roofs, roof decking, gutters and downspouts;

(d) repair and replace patios and balconies;

(e) maintain, repair and replace trees, shrubs, grass and other landscaping on the Lots, except for landscaping within an enclosed patio area, whether such enclosed area is on the Lot or Common Area;

(f) maintain, repair and replace garage doors, springs, rollers and tracks, and the pedestrian door providing access to the garage from outside the garage;

(g) maintain, repair and replace exterior light fixtures and bulbs; provided that the Owner is responsible for light switches and light bulbs in enclosed patio areas and in balcony areas;

(h) maintain, repair and replace fences, including fences enclosing patio or porch areas, except for gate hardware that is the Owner's responsibility;

(i) repainting, staining and/or cleaning of the exterior window frames, but only as part of the Association's regular painting schedule;

(j) painting, staining and/or cleaning of the exterior surface of entry doors and door frames, including the pedestrian access door to the garage and the interior pedestrian doors in garages that directly access the Residences;

(k) all pipes, lines, wires, ducts, conduits or other apparatus serving one Residence that are outside the boundaries of the Residence and those serving more than one Lot; and

(l) all communications, television, telephone, cable and electrical lines, receptacles and boxes serving more than one Lot.

The foregoing maintenance will be performed consistent with the Community-Wide Standard.

If, during the course of performing its maintenance responsibilities the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and the maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform the work on Owner's behalf and at the Owner's sole expense, without prior notice to the Owner, the maintenance repair or replacement being deemed an emergency situation.

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

**Section 6.4      Liability for Damage.** The Association will repair incidental damage to any Lot resulting from performance of work that is the Association's responsibility. The repair and subsequent cleaning will be performed based on a reasonableness standard. In performing its responsibilities, the Association has the authority to delegate any of its duties.

The Association is not liable for injury or damage to person or property caused by any other person, or resulting from any utility, rain, snow or ice that may leak or flow from any portion of the Areas of Common Responsibility except for injuries or damages arising after the Owner notified the Association of a specific leak or flow and the Association failed to exercise due care to correct the leak or flow. For example, the Association is not liable for mold in the Residence resulting from an unreported leak. The Association is not liable for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this article where the damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

**Section 6.5      Failure to Maintain.** If the Association determines that any Owner has failed or refused to discharge properly their obligation with regard to the maintenance, repair, replacement or improvement of items for which he is responsible, then it may give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide the necessary work at the Owner's sole cost and expense. The notice will set forth with reasonable particularity the maintenance, repair, or replacement the Association deems necessary.

Unless the Association determines that an emergency exists, the Owner will have 15 days to complete the work, or if the work is not capable of completion within this time period, to commence replacement or repair within 15 days. If the Association determines that: (a) an emergency exists, or (b) that an Owner has not complied with the demand given by the Association, then the Association may perform the maintenance, repair, or replacement at the Owner's sole cost and expense, and the costs will be added to and become a part of the Assessment to which the Owner is subject, will become the personal obligation of the Owner and a lien against the Lot, and will be collected as provided in this Declaration for the collection of assessments.

**Section 6.6      Party Wall Maintenance and Covenants.**

(a) Each wall built as part of the original construction of the Residence or Lots which serves and separates any two adjoining Lots or Residences is a party wall ("Party Wall"). The cost of maintenance, repair, alteration, improvement and replacement of each Party Wall is to be shared equally by the Owners of the Lots adjoining such Party Wall.

(b) The right of an Owner to contribution from another Owner pursuant to this Declaration is appurtenant to the land and such rights and obligations pass to the Owners' successors in title.

(c) If a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Lot adjoins such Party Wall may repair or restore it, and the other Owner is to immediately upon receipt of written demand, pay their portion of such costs to the Owner making such restoration or repair.

(d) Regardless of the above terms and provisions, an Owner who by negligence or willful act causes the Party Wall to be exposed to the elements or damaged in any manner, will bear the whole cost of furnishing the necessary protection against such elements or of making the necessary repairs or restoration.

(e) Party Walls may not be penetrated in a manner larger than appropriate to hang a normal or reasonably sized picture, painting, etc.

(f) Penetrations for loud speakers or other improvements are prohibited.

(g) In the event of a dispute, the aggrieved Owner will seek redress personally and the Association will not be obligated to enforce this section on behalf of any Owner.

## **ARTICLE 7. COVENANTS AND USE RESTRICTIONS**

**Section 7.1 Owner Responsibility for Compliance.** Each Owner is responsible for ensuring that the Owner's family, guests, invitees and Residents comply with all provisions of the Governing Documents. Each Owner and Resident will endeavor to observe and promote the purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, invitees or Residents as a result of the person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner.

### **Section 7.2 Use of Lots.**

(a) **Residential/Business Use.** Except as provided below, each Lot will be used for residential purposes only. No trade or business of any kind may be conducted in or from a Lot or any part of the Community, except that the Owner residing in the Residence, or the Resident, may conduct ancillary business activities within the Lot (but not in garages) so long as the business activity:

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

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

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

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

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

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

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

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

(b) Occupancy. If an Owner is a corporation, partnership, trust or other legal entity the entity will designate in writing to the Association the name(s) of the natural person(s) who will occupy the Lot. The designated person(s) to occupy the Lot may not be changed more frequently than once every six months without the express written consent of the Association.

**Section 7.3** Leasing. The Community is intended to be an owner-occupied community. However, any Owner has the right to lease or allow occupancy of a Lot upon terms and conditions the Owner deems advisable, subject to restrictions of this Declaration, any other restrictions of record, and the following:

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

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

(c) Leases must be for a term of at least six months in duration. Short term occupancies (of less than six months) of Lots are prohibited.

(d) All leases will be in writing and will provide that the lease is subject to the Governing Documents. Owners are required to provide Residents with copies of the current Declaration and Rules and Regulations.

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

(f) All leases will state that failure of the lessee, other Resident(s), invitees, or guests to comply with the Governing Documents is a default of the lease and this Declaration and the default is enforceable by either the Owner, the Association, or both, and if the lease does not incorporate this language, it will be deemed to be incorporated by virtue of this covenant.

(g) The Association may request that an Owner evict any tenant responsible for two or more violations of the Governing Documents within any consecutive 12 month period. An Owner will immediately evict any lessee (or the lessee's family, guests or other invitees who are responsible for any act or series of acts that endanger the life of any person or animal or who willfully and substantially endanger any Common Area or other property pursuant to the provisions of Colorado Revised Statute § 13-40-107.5. If the Association requests that the Owner evict the Resident, and the Owner fails to



commence action within 30 days of the date of the Association's written request and notice, the Association may commence eviction proceedings. If Owner fails to comply with the request to evict, the Owner delegates and assigns to the Association the power and authority to evict the Resident as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the Resident, any costs, including but not limited to attorney fees incurred and court costs associated with the eviction, will be an assessment and lien against the Lot.

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

(i) Each Owner is responsible for ensuring that their lessees have all applicable insurance, including insurance for their personal property and liability insurance.

(j) If a Lot is leased or occupied in violation of this section or if the Owner or Resident violates the Governing Documents, the Association will be authorized, in addition to all other available remedies, to levy fines against the Owner, and to suspend recreational facilities use privileges.

**Section 7.4      Use of Common Area.** There will be no obstruction of the Common Areas, nor will anything be kept, parked, or stored on or removed from any part of the Common Area without the Association's prior written consent, except as specifically provided for in the Governing Documents. The Association will not be liable to the Owner or Owner's Residents, guests, family members and invitees, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Area. Use of the Common Area is subject to the Rules and Regulations.

**Section 7.5      Use of Patios and Balconies.** Front porches and sidewalks will remain clear and unobstructed. Objects other than potted plants and patio furniture, except as the Association may authorize, will not be placed on a porch, patio, or balcony. The Association may adopt Rules and Regulations regarding patios and balconies.

**Section 7.6      Use of Garages.** Each building has a four car garage within the Lot lines of the "D" Residence. Garages will be used primarily to store vehicles and any other personal property belonging to the Owner or Resident in a manner that does not interfere with other Owner's use of the garage. Storage bins and shelves in garages may not interfere with the ability to park vehicles in the garage according to its design capacity. Vehicles should be turned off as soon as possible after entering the garage to limit exhaust fumes. Garages may not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated or disposed of in the garage, or if the garage becomes contaminated in any manner for which the Owner or Resident thereof is legally liable, Owner or Resident will indemnify and hold harmless the Association, the Board of Directors, and other Owners who have use of the garage from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid from settlement of claims, attorney's fees, consultant and expert fees, arising as a result of that contamination by Owner or Resident. No Owner or Resident may use the existing electrical outlets in the garage for an electric vehicle charging station. Any Owner who desires an electric vehicle charging station must make application to the Board as provided for in Article 8 of this Declaration. The Board may adopt Rules and Regulations for electric vehicle charging stations.

**Section 7.7      Compliance with Laws.** Nothing may be done or kept in the Community or part of the Community that would violate any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or that would increase Common Expenses.

**Section 7.8      Prohibition of Nuisance.** The Residences share common walls. As a result, noise and vibration may be detectable between Lots. An Owner or Resident may not conduct

activities in a manner that unreasonably interferes with or causes unreasonable disruption to another Owner's or Resident's use and quiet enjoyment of the Lot.

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

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

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

- (a) fighting, screaming, shouting, excessively loud talking, or playing music or television, raucous behavior or insobriety either outside a Lot at any time or within a Residence if the conduct can be heard in another Residence;
- (b) using any alarm, equipment, or device, mechanical or otherwise, that creates or produces excessively loud sounds or any vibrations either outside a Residence at any time or within a Residence if the sounds can be heard or vibrations felt in another Residence;
- (c) threatening or intimidating conduct towards any Resident, guest or pet in the Community;
- (d) conduct that creates any danger or risk of injury to others or damage to property in the Community;
- (e) conduct that creates any noxious or offensive odor if the odors can be detected in another Lot;
- (f) incessant or excessive pet noises, including dog barking, if the conduct can be heard in another Residence;
- (g) construction or similar activities on a Lot that can be heard within another Residence between the hours of 9:00 p.m. and 7:30 a.m.;
- (h) similar action or activity that interferes with the peaceful use and enjoyment of another Lot or the Common Areas by any other Owner, members of Owner's family, guests, invitees, or Residents; or
- (i) using or allowing the use of the Lot or the Common Areas in any manner that creates noise between the hours of 10:00 p.m. and 7:30 a.m. that can be heard in another Lot that will unreasonably interfere with the rights, comfort or convenience of any other Owner, members of Owner's family, guests, or Residents.

**Section 7.9      No Damage or Waste.** No Owner or agent of either may do any work that would jeopardize the soundness or safety of any structure within the Community, or would impair any easement or other interest in the Community. Damage to or waste of any portion of the Common Areas is prohibited. Each Owner and Resident will indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any damage or waste caused by the Owner or Resident, or the Owner's or Resident's guests, family members or invitees.

**Section 7.10      Pets.**

(a) An Owner or Resident may keep a reasonable number of generally recognized household pets on the Lot, as determined in the Board's reasonable discretion. For purposes of this section, the following are not considered household pets: poultry, fowl, bees, pigs, venomous snakes, or animals determined in the Association's sole discretion to be dangerous animals. The Association may adopt additional Rules and Regulations to supplement this section.

(b) No Owner or Resident may keep, breed or maintain any pet for any commercial purpose. No structure for the care, housing, or confinement of any pet may be constructed or maintained on any part of the Common Areas, including enclosed patio areas. Pets may not be kept in garages. Pets must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Areas; provided, however, dogs need not be leashed when within fenced patio or deck areas if attended by a person responsible for the dog. Feces left by pets upon the Common Areas, or on Lots, including the pet owner's patio area and balcony, must be removed promptly by the pet owner or other person responsible for the pet. Owners are responsible for ensuring that pets do not urinate on balconies.

(c) Owners are responsible for the cost of any damage to Association property caused by a pet, as a specific Lot assessment that may be collected as provided for in this Declaration and the Association's collection policy.

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

**Section 7.11      Vehicles and Parking.**

(a) General. Parking is subject to the Rules and Regulations adopted by the Board. Each Lot has one garage space. No garage is to be used for storage if doing so prevents its use for parking the number of vehicles it is designed to hold. Vehicles must be parked so that they do not extend over the designated front line of the parking space for parking spaces between garage areas. Vehicles must not block walkways near garages.

(b) Prohibited Vehicles. Boats, trailers, oversized trailers, hauling trailers, pickup trucks over 1 ton, panel trucks, buses, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles), recreational vehicles (RVs, motor homes and self-contained motorized recreational vehicles, all-terrain vehicles, jet skis, and other types of recreational vehicles). Vehicles that use more than one parking space are prohibited.

No unlicensed vehicles may be parked on the Common Areas. No stored or abandoned or inoperable vehicles of any kind may be stored or parked on the Common Areas. An "abandoned or inoperable vehicle" is defined as any passenger car, truck, motorcycle, boat, trailer, camper house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which for a period of two days or longer, does not have an operable propulsion system installed therein, has one or more flat tires or has another condition preventing the regular and normal operation and movement of the vehicle. A vehicle

will be considered "stored" if it remains in the same location in the Community for 14 consecutive days or longer without prior written Board permission.

(c) **Commercial Vehicles.** Vehicles used primarily for commercial purposes and containing visible evidence of commercial use (such as tool boxes or tool racks), and vehicles with commercial writings on their exteriors are prohibited; provided, however, not more than one commercial vehicle that is not otherwise prohibited by subsection (b) above may be used as a personal vehicle by a Resident and may be parked within the Community, in such location(s) as more particularly provided in the Rules and Regulations, provided that the Resident's employer allows such vehicle to be used by the Resident during non-work hours. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors, shall be allowed temporarily on the Common Areas during normal business hours for the purpose of serving any Lot or the Common Area. However, without the written consent of the Board, no such vehicle shall be authorized to remain on the Common Area overnight unless parked wholly within a garage with the garage door closed.

(d) **Enforcement.** If any vehicle is parked on any portion of the Community in violation of this section or in violation of the Rules and Regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed. The notice will include the name and telephone number of the person or entity that will do the towing. If 72 hours after such notice is placed on the vehicle the violation continues, or occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle located in the Community is blocking another vehicle or garage, is obstructing the flow of traffic, is parked on any grassy area, blocks access to the trash enclosure, is parked in a designated handicapped space (if any) without the proper state-issued identification, is parked so as to interfere with delivery by postal workers to US Postal Service mailboxes, or otherwise creates a hazardous condition, no notice will be required and the vehicle may be towed immediately in accordance with the governmental regulations.

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

**Section 7.12** **Vehicle Repair.** Maintenance, repair, rebuilding, dismantling, repainting, or any kind of servicing of vehicles, trailers or boats may not be performed or conducted in the Community. Vehicle washing in the Community is prohibited.

**Section 7.13** **Heating of Residences in Colder Months** To prevent water pipes from breaking during colder months of the year resulting in damage to the Community, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Residences must be maintained with the heat in an "on" position and at a minimum temperature setting of 55° Fahrenheit (except during power failures or periods when heating equipment is being repaired) whenever the temperature is forecasted to or does reach 32° Fahrenheit or below. Owners and Residents must take all reasonable steps on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the colder months when the heating equipment is not working properly, the Owner or Resident must immediately inform the Association of the equipment's failure and of the time needed to repair the equipment. The Association may fine any Owner up to three times the Lot's monthly assessment for violating this section, in addition to any other remedies of the Association.

**Section 7.14** **Signs.** Except as provided for in this Declaration or as required by state law or legal proceedings, no signs, advertising posters, political placards or billboards of any kind may be

erected, placed, or permitted to remain in the Community without the Association's prior written consent. The following signs are permitted:

(a) one professional security sign not to exceed six inches by six inches in size may be displayed within a window;

(b) one professionally lettered "For Rent" or "For Sale" sign not to exceed three feet by two feet in size may be displayed within a window of a Residence actively being offered for sale or for lease; and

(c) political signs as allowed by Colorado law. The Association has the right to erect reasonable and appropriate signs on its behalf.

**Section 7.15 Trash and Garbage.** All trash and garbage must be regularly removed from the Residence and will not be allowed to accumulate or be stored on the Lot, including in the Owner's garage. Trash or garbage must not be placed on the Common Areas temporarily or otherwise. Trash and garbage must be disposed of in appropriate sealed bags and either placed in designated dumpsters for collection or otherwise removed from the Community. The Board of Directors may adopt Rules and Regulations regarding use of dumpsters.

**Section 7.16 Unightly or Unkempt Conditions** Activities that cause disorderly, unsightly, or unkempt conditions, must not be pursued or undertaken on any part of the Common Areas.

**Section 7.17 Antennas and Satellite Dishes** Exterior television, satellite or other antenna are allowed only to the extent expressly permitted under applicable federal statutes or regulations ("Permitted Antennas"). Permitted Antennas are to be installed in the least conspicuous location available on the Lot which permits acceptable signals, without unreasonable delay or unreasonable increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding preferred location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulations, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Lot. The Lot Owner will be responsible for the cost of the Association removing and replacing the dish or antenna needed to allow the Association to perform its maintenance obligations and for the cost of repairing any damage to any Areas of Common Responsibility. Any cable for a satellite dish or antenna must be concealed from view to the extent feasible. However, the Association has the right to erect, construct and maintain these devices on the Common Areas.

**Section 7.18 Rules and Regulations.** The Association may adopt, amend and repeal Rules and Regulations concerning and governing the Residences, Lots, and Common Areas to further the provisions of this Declaration.

**Section 7.19 Use of the words Raintree East, Raintree East Community, and Raintree East Homeowners Association, Inc.** Without the Association's prior written consent, Owners or Residents will not use the words Raintree East, Raintree East Community, Raintree East Homeowners Association, Inc., or the logo of the Community or Association, if any, or any derivative thereof, if use is likely to cause confusion, mistake or deception, in the Association's sole discretion.

## **ARTICLE 8. ARCHITECTURAL CONTROLS**

**Section 8.1 Architectural Covenants.** Except as otherwise provided in this Declaration, by the Rules and Regulations or by law, no Owner, Resident, or any other person may, without first obtaining the Association's written approval:

- (a) make any changes that may affect the structural integrity of any Residence or affect the utilities, as more fully described in this article;
- (b) make any encroachment onto the Common Areas; or
- (c) make any exterior change, alteration, or construction to the Residence or other portion of the Lot.

**Section 8.2      Alteration of Lots.** Subject to the provisions of the Act and this Declaration, combination of Lots, relocation of the boundaries between adjoining Lots, and subdivision of Lots are subject to the following restrictions:

- (a) Combining Lots. If any Owner acquires an adjoining Lot, he will have the right (subject to the prior written approval of the Mortgage Holders involved) to combine the Lots in accordance with Section 211 (1)(c) of the Act, but no additional building site may be created.
- (b) Relocation of Lot Boundaries. Relocation of boundaries between Lots is prohibited.
- (c) Subdivision of Lots. Subdivision of Lots into smaller Lots is prohibited.

**Section 8.3      Architectural Standards.** Interpretation, application and enforcement of the architectural standards may vary as members of the Board of Directors change. The standard for approval of improvements includes, but is not limited to: (a) aesthetic consideration; (b) materials to be used; (c) compliance with the Community-Wide Standard, this Declaration, or the design guidelines which may be adopted by the Association, if any; (d) harmony with the external design of the existing Residences, Lots and structures and the location in relation to surrounding structures and topography; (e) visibility and location of the proposed modification in the Community; and (f) any other matter the Board of Directors deems to be relevant or appropriate.

**Section 8.4      Authority of Association to Engage Consultants.** The Board has the authority to select and engage professional consultants to assist in reviewing plans and specifications and/or to inspect any of the work performed. The cost of any consultants are to be paid by the submitting Owner, whether or not the application is approved. Prior to incurring consultant costs, the Association will notify the Owner of its belief that review and/or inspections by consultants are necessary. The Owner will then have the right to withdraw the submission. The Association may require payment of costs prior to approval.

**Section 8.5      Encroachments onto Common Areas.** The Board may provide written consent to allow an Owner to make encroachments onto the Common Areas as it deems acceptable. Any unauthorized exterior change, alteration or construction (including landscaping) upon the Common Area is at the Owner's sole cost and expense. The Association may require that any unapproved change, alteration or construction be removed from the Common Area or that it remain on the Common Area without reimbursement to the Owner for any expense incurred in making the change, alteration or construction.

**Section 8.6      Conditions of Approval.** As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of the Owner and the Owner's successors-in-interest, assumes all responsibilities for maintenance, repair, replacement and insurance of the change, modification, addition, or alteration, unless the Association otherwise agrees in writing. As a further condition of approval, an Owner may be required to execute an agreement setting forth the conditions of approval to be recorded in the Arapahoe County real property records.

**Section 8.7**      **Required Action by the Board of Directors.** The Association is the sole arbiter of the application and may withhold approval for any reason, including purely aesthetic considerations, provided the Association's decision may not be arbitrary or capricious. Applications for approval of architectural modifications must be in writing and provide any information the Association reasonably requires. If the Association fails to approve or to disapprove the application within 45 days after the application and all required supplemental information have been submitted, then the submitting Owner may send written notice, to the Association's president and the Association's managing agent, regarding the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within ten days of receipt of the Owner's notice, this section's requirements are satisfied and the approval is not required as to the items specifically identified in the application. However, no Owner may construct or maintain any structure or improvement that otherwise violates the Declaration, the design guidelines (if any), or the Rules and Regulations, or any applicable governmental requirements or laws.

**Section 8.8**      **Variances.** The Association may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration to overcome practical difficulties and unnecessary hardships with respect to topography, natural obstructions or aesthetic or environmental considerations arising from application of conditions and restrictions contained in the Declaration or in any design guidelines, provided that such variance is not materially detrimental or injurious to other Lots or the Common Areas and is based on unique circumstances. All variances must be in writing. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing will not be considered a hardship warranting a variance.

**Section 8.9**      **Commencement and Completion of Construction.** All changes, modifications and improvements approved by the Association must be commenced within six months from the date of approval unless the Association otherwise agrees. If not commenced within this time, then approval will be deemed revoked, unless the Association gives a written extension for commencing the work. All work approved by the Association must be completed in its entirety within 90 days from the date of commencement, unless the Association otherwise agrees in writing. All approved changes, modifications, and improvements must be completed in their entirety.

**Section 8.10**      **Limitation of Liability.** Neither the Association nor its directors, officers, committee members or agents will bear any responsibility for the design, quality, structural integrity or soundness of approved construction or modifications, nor for compliance with building codes, zoning regulations, and other governmental requirements. The Association, its directors, officers, and agents are not liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or to modifications to any Lot.

**Section 8.11**      **No Waiver of Future Approvals.** The Association's approval of any proposals, plans and specifications for any work done or proposed, or in connection with any other matter requiring the Association's approval, is not a waiver of any right to withhold approval as to any similar proposals, plans and specifications.

**Section 8.12**      **Enforcement.** The Association is entitled to stop any construction that does not conform to the approved plans. The Association is further entitled to stop any construction if the Owner fails to submit plans and specifications and/or obtain written approval prior to commencing construction. If an Owner fails to obtain prior written approval or constructs in a manner that does not conform to the approved plans, the Association may require the Owner to remove any improvement or modification, whether partial or complete, and restore the property to its prior condition. These remedies are in addition to all other remedies available under the terms of this Declaration, including the authority to levy a fine.

## **ARTICLE 9. INSURANCE**

**Section 9.1 Association's Property Insurance.** The Association will obtain and maintain at all times, as a Common Expense, property insurance as required in this Declaration. The Association will use reasonable efforts to secure a blanket hazard insurance policy providing "special form" coverage in an amount equal to full replacement cost, before application of deductibles. If "special form" coverage is not reasonably available at reasonable cost, the Association will obtain, at a minimum, broad form covered causes of loss, in like amounts.

The Association's insurance will cover the Common Areas. As to the Lots, the Association's insurance policy will be a bare walls policy that will rebuild the building structures. The Association's insurance policy will exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the Residence (i.e., paint, wallpaper, paneling, other wall coverings and window coverings, tile, carpet and any floor covering), appliances, cabinets, sinks, tubs, toilets, and similar fixtures inside the Residence. The Association's policy will also exclude improvements and betterments made by Owners and their predecessors-in-title. The Association has the right to increase the level of coverage under its policy from the standard outlined in this section by written Board resolution. If the level of coverage is changed, the Association will make such information available to all Owners by posting the information on the Association's website, if any, or by other written correspondence to the Owners.

All property insurance purchased by the Association will run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Owners and their respective Mortgagees, and all other persons entitled to occupy any Lot as their interests may appear.

All insurance coverage for the Association will be written in the name of the Association as first named insured and each of the Owners as additional insureds. The Association will periodically review the insurance to determine if the policy in force is adequate to meet its needs.

**Section 9.2 Other Association Insurance.** In addition to the insurance required above, the Association will obtain as a Common Expense:

- (a) Workers' compensation insurance if and to the extent necessary to meet the requirements of law;
- (b) General liability insurance on the Common Areas in amounts no less than \$1,000,000.00, and directors' and officers' liability insurance in such amounts as the Board may determine. The general liability insurance will contain a cross liability endorsement;
- (c) Fidelity insurance, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds in an amount as required by law, or if no such requirements, consistent with the Board of Directors' best business judgment;
- (d) To the extent necessary, equipment breakdown coverage endorsement with a minimum liability per accident equal to the lesser of \$2 million or the insurable value of the building housing the boiler or machinery. In the alternative, the Association may purchase separate stand-alone equipment breakdown coverage; and
- (e) Other insurance as the Board of Directors may determine necessary or desirable.

### **Section 9.3 Standards for Association Policies.**

- (a) The Association will use reasonable efforts to obtain policies that provide the following:



(i) Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Areas or membership in the Association;

(ii) The insurer's waiver of subrogation of claims against directors, officers, the managing agent, the individual Owners and their respective household members;

(iii) No act or omission by any Owner not under the Association's control will void the policy or be a condition to recovery under the policy;

(iv) Ordinance or law coverage, demolition cost coverage and increased cost of construction coverage;

(v) Any "other insurance" clause contained in the master policy will expressly exclude individual Owners' policies from its operation;

(vi) The master policy may not be canceled, substantially modified, or subjected to non-renewal without at least 30 days prior notice in writing to the Association and all Mortgagees of Lots, except in instances of nonpayment of premiums, which will require at least ten days prior written notice;

(vii) The casualty insurance may not contain a "co-insurance" provision;

(viii) All insurance policies of the Association are primary over other insurance in the Owner's name;

(ix) An inflation guard endorsement.

(b) All insurance policies will be written with a company licensed to do business in Colorado. The company will provide insurance certificates to each Owner and Mortgagee upon request. The Association's Board of Directors has the exclusive authority to adjust losses under the Association's policies; provided, however, no Mortgagee having an interest in any losses may be prohibited from participating in the settlement negotiations, if any.

(c) The Association's insurance is not required to include liability insurance for individual Owners for liability arising within the Lot.

**Section 9.4 Insurance Deductibles.** Unless otherwise specified in written guidelines or a written Board resolution, any required deductible on the Association's policy will be an expense to be paid by the person(s) who would be responsible for the repair or maintenance of the loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Areas, the Board may equitably apportion the cost of the deductible among the parties suffering loss in proportion to the total cost of repair. However, if the insurance policy provides that the deductible will apply to each Lot separately or to each occurrence, each Owner will be responsible for paying the deductible pertaining to the Owner's Lot, if any.

If more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Lot Owner a pro rata share of any deductible paid by the Association based on the cost of repair to the Owner's Residence. The Association may also assess deductibles equally among all Lots for covered causes of loss to roofs and siding. If any Owner(s) fails to pay the deductible required under this section, the Association may pay the deductible and assess the cost to the Owner pursuant to Article 5 of this Declaration. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Lot Owners causing a loss or benefiting from the repair or restoration all deductibles paid by the Association or another Owner.

**Section 9.5**      **Owners' Insurance.** Every Owner is obligated to obtain and maintain at all times insurance covering those portions of the Lot to the extent not insured by the Association's policies, including, but not limited to, finished surfaces (of walls, floors and ceilings), flooring, cabinetry, fixtures, appliances, betterments and improvements made by Owner or Owner's predecessors-in-interest. Each Owner is also responsible for obtaining insurance covering Owner's personal property and coverage for liability arising within the Lot and any enclosed area adjacent to the Residence, whether on the Lot or Common Area. The Association has no liability for an Owner's failure to maintain required insurance. Upon request, the Owner must furnish a copy of the Owner's insurance policies to the Association.

**Section 9.6**      **Owner's Right to Review Association Insurance Policies.** The Association will make a copy of its insurance policies available for review by Owners to assess their personal insurance needs. Each Owner has the right to obtain additional coverage at Owner's own expense.

**Section 9.7**      **Source and Allocation of Proceeds.** If the insurance proceeds are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain coverage as provided in this Declaration, the additional cost will be a Common Expense. If, for any other reason, the insurance proceeds are not sufficient to defray the costs of reconstruction and repair, as determined by the Association, the additional costs will be assessed against the Owners of the Lot(s) damaged in proportion to the damage to the Lots, or against all Owners equally in the case of insufficient funds to cover damage to the Common Areas or Areas of Common Responsibility. This assessment will not be considered a special assessments as provided in this Declaration. If there are surplus funds after repair and reconstruction is completed, those funds will be common funds of the Association to be used as directed by the Association.

**Section 9.8**      **Repair and Reconstruction Requirements.** In the event of damage to or destruction of all or any part of the Community as a result of fire or other casualty, the Association will arrange for and supervise the prompt repair and restoration of the structure unless Owners holding at least 67% of the total Association vote, including the Owner(s) of any damaged Lot(s) and Mortgage Holders that represent at least 51% of the votes of Lots that are subject to mortgages held by Mortgage Holders, vote not to proceed with the reconstruction and repair of the structure. In the event of substantial damage or destruction, each holder of a first Mortgage will be entitled to written notice of the damage, and nothing in these documents will be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Lot.

**Section 9.9**      **Construction Fund.** The net insurance proceeds collected on account of a casualty and the funds collected by the Association from assessments against Owners on account of the casualty will constitute a construction fund. The Association will use and disburse the funds to pay the cost of reconstruction and repair in appropriate progress payments to the contractor(s), supplier(s), and personnel performing the work or supplying materials or services.

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

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

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

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

(i) imposition of reasonable monetary fines, after notice and opportunity for a hearing, which will be a lien upon the violator's Lot;

(ii) suspension of voting rights;

(iii) suspension of the Owner's rights to use the recreational facilities (as well as the rights of the Owner's family, guests and Residents to use the recreational facilities);

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

(v) exercise of self-help or action to abate any violation of the Governing Documents in a non-emergency situation, subject to any requirements as may be set forth in this Declaration, including those related to maintenance, repair or replacement;

(vi) requiring an Owner, at the Owner's expense, to remove any structure or improvement in the Lot or the Common Areas in violation of the Governing Documents and to restore the Lot or Common Areas to its previous condition and, upon the Owner's failure to do so, the Association has the right to enter the Lot or Common Areas, remove the violation and restore the Lot or Common Areas to substantially the same condition as previously existed and any action is not deemed a trespass;

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

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

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

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

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

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

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

**Section 10.2** Failure to Enforce. The Association has the discretion to pursue enforcement action in any particular case, except that the Association may not be arbitrary and capricious. The Association's failure to enforce any provision of the Governing Documents is not deemed a waiver of its right to do so thereafter. No claim or right of action exists against the Association for failure of enforcement where: (a) the Association determines that its position is not strong enough to justify taking enforcement action; (b) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (c) the Owner or party requesting enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so.

## **ARTICLE 11. AMENDMENTS**

**Section 11.1 Amendment by Owners.** This Declaration may be amended by the affirmative vote, written agreement, or any combination of affirmative vote and written agreement of the Owners holding at least 67% of the total Association vote.

If a proposed amendment will be considered at a Member meeting, notice of the meeting will state the general subject matter of the proposed amendment. No amendment will be effective until certified by the Association's president and secretary and recorded in the real property records.

**Section 11.2 Amendments by Board of Directors.** The Board of Directors, without the necessity of a vote by the Owners, may amend this Declaration to correct any scrivener's errors, to comply with any applicable local state or federal law, and/or to bring the Community into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") or any successor governmental agencies pursuant to federal law.

**Section 11.3 Validity.** Any action to challenge an amendment's validity must be brought within one year of the effective date of the amendment.

## **ARTICLE 12. GENERAL PROVISIONS**

**Section 12.1 Security.** The Association may, but is not required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community. However, each Owner, for their Residents, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and the Association does not have a duty to provide security in the Community. Furthermore, the Association does not guarantee that non-Owners and non-Residents will not gain access to the Community and commit criminal acts in the Community nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or Residents. Each Owner is responsible to protect their person and property and all responsibility to provide security lies solely with each Owner. The Association is not liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

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

**Section 12.3 Interpretation.** The provisions of this Declaration will be liberally construed to effectuate their purposes of providing a uniform plan for the Community and of promoting and effectuating the fundamental concepts set forth in the recitals of this Declaration. This Declaration will be construed and governed under the laws of the State of Colorado.

**Section 12.4 Conflicts.** In case of conflict between the Declaration and the Articles of Incorporation or the Bylaws the Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

**Section 12.5 Electronic Records, Notices and Signatures.** Notwithstanding any other portion of this Declaration, records, signatures and notices will not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws govern the giving of all notices required by this Declaration.

**Section 12.6**      **Duration.** The covenants and restrictions of this Declaration run with and bind the Community perpetually unless otherwise terminated as provided in C.R.S. § 38-33.3-218.

**Section 12.7**      **Severability.** A judgment, court order or similar adjudication invalidating any one of these covenants or restrictions will not affect the application of the provision to other circumstances or affect any other provision(s), which will remain in full force and effect.

**Section 12.8**      **Public in General.** The rights and burdens created in this Declaration do not, are not intended to, and will not be construed to create any rights and burdens in or for the benefit of the general public.

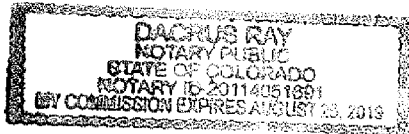
**Section 12.9**      **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and do not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article.

**Section 12.10**      **Singular Includes the Plural.** Unless the context otherwise requires, the singular includes the plural, and the plural includes the singular, and each gender referral is deemed to include the masculine, feminine and neuter.

[Signatures on following page]

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

This 8<sup>th</sup> day of May, 2018.



RAINTREE EAST HOMEOWNERS ASSOCIATION, INC.

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

*Mary Schieferecke*

STATE OF COLORADO

COUNTY OF Arapahoe

) ss.  
)

The foregoing Declaration was acknowledged before me by Mary Schieferecke,  
President of the Association, on this 8<sup>th</sup> day of May, 2018.

My commission expires: August 25, 2019

Notary Public

*Darius Ray*