

THIS DECLARATION is made this ____th day of _____, 2026 by Otter Pond Homeowners Association (OPHOA, "Association" or "the Association")

WITNESSETH:

WHEREAS, OPHOA represents a residential Planned Common Interest Community of certain real property located in Montrose County, State of Colorado; and

WHEREAS, in order to preserve and enhance the value and quality of the real property subject to this document, A Colorado non-profit corporation known as Otter Pond Homeowners Association, Inc. (OPHOA or Association or the Association) which will own and have responsibility for the maintenance and operation of the Common Elements (hereinafter defined), for the taking of such other actions and the performance of such other matters as are specified in this Declaration, and for the administration and enforcement of the Covenants, Conditions and Restrictions contained herein.

NOW, THEREFORE, OPHOA hereby declares that all the real property described as Lots 1 through 85 inclusive, Otter Pond Subdivision, according to the plat thereof, Montrose County, State of Colorado, is subject to the covenants, conditions, restrictions and easements herein contained which are for the purpose of establishing a general plan and of protecting and maintaining the value and unique desirability of Otter Pond Subdivision as a high quality single family residential development.

Additionally, OPHOA hereby submits the real estate to the provisions of the Colorado Common Interest Ownership Act, (CCIO) At, C.R.S. 38-33.3-101, et seq., as it may be amended from time to time (the "Act").

ARTICLE I: DEFINITIONS

Unless the context clearly requires another meaning, the following words and phrases shall have the following meaning throughout this document:

Section 1. "EXECUTIVE BOARD" or "BOARD" or "HOA BOARD" is the governing body of the Association.

Section 2. "ARTICLES OF INCORPORATION" shall mean the Articles of Incorporation of the Association, as amended from time to time.

Section 3. "BY-LAWS OF THE ASSOCIATION" or the "BY-LAWS" shall mean those By- Laws of the Association, which govern the administration, and operation of the Association, as amended from time to time.

Section 4. "COMMON ELEMENTS" shall mean all real property, including the open space and lake, improvements thereon, if any, now and hereafter, owned by the Association for the common use and enjoyment of the Owners, as designated on the Otter Pond Subdivision Plat or as acquired by the Association from time to time.

Section 5. ARCHITECTURAL REVIEW BOARD" or "ARB" shall mean the board which shall be appointed by the Association's Executive Board to approve additions, improvements and changes in building design, landscaping, and/or construction on the Lots within the subdivision.

"EXECUTIVE BOARD" or "BOARD" or "HOA BOARD or HOA is the governing body of the Association.

Section 6. "LOT" shall mean any plot of land designated upon any recorded Plat of the Otter Pond Common Interest Community by which is designed and intended for use as a residence and is synonymous with "Unit" as the term is used in the Act.

(a) "LAKEFRONT LOTS" refers to those lots which are immediately adjacent to Otter Pond Lake and are numbered as follows: 12, 13, 14, 15, 16, 18, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, and 54.

(b) "LAKE ACCESS LOTS" are all lots which are not Lakefront Lots.

Section 7. "MEMBER" shall mean every person who holds membership in the Association, including any beneficiary of a trust holding legal title to any Lot.

Section 8. "OWNER" shall mean one or more persons who own a fee simple title to any Lot and including contract purchasers but excluding those having only a security interest.

Section 9. "PERSON" shall mean a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 10. "PLAT OF SUBDIVISION" shall mean a plat of the Property, or any part thereof, subdividing or re-subdividing the same into Lots, and recorded with the Recorder of Deeds of Montrose County, Colorado.

Section 11. "PROPERTY" shall be all the real property above described and may also be referred to as the "Development" or the "Subdivision" or the "Common Interest Community".

Section 12- VIEW CORRIDOR(S). On lakefront lots, view corridors are defined as those areas adjacent to dwellings and other structures which permit a view of the lake from the streets surrounding the lake.

Section 13- RESOLUTION. An action of the board with regard to changes in fines, fees, interactions with realtors, changes in financial methods, and/or addressing additional needs not identified in this document.

Section 14- OPHOA. Otter Pond Homeowner's Association.

ARTICLE II: COMMON ELEMENTS, EASEMENTS AND USE RIGHT

Section 1. Easements of Use and Environment. Every Owner shall have a right and easement for ingress and egress on, over and across the Common Elements and shall be entitled to the use and enjoyment of the Common Elements. Such easements and right of use shall be appurtenant to and shall pass with the ownership of each Lot. Said right and easements shall be subject to the following Provisions:

- (a) The right of the Association to establish rules and regulations pertaining to the use, operation and maintenance of the Common Elements; and
- (b) The right of the Association, in accordance with the Articles of Incorporation and By-Laws, to borrow money for the purpose of improving or reconstructing the Common Elements.

Section 2. Delegation of Use. Any Owner may delegate his/her right of enjoyment to the Common Elements to such Owner's immediate family, current guests when owner is present or residing, and long term renters of the owner's Lot.

Section 3. Waiver of Use. No Owner may become exempt from personal liability for assessments duly levied by

the Association nor release the Lot owned by such Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Elements or by abandonment of such Lot, nor by conduct of family, guests, and/or their renters.

Section 4. Title to the Common Elements. OPHOA covenants for itself, its successors and assigns, that it will convey/or cause to be conveyed fee simple title to the Common Elements to the Association subject to:

- (a) The terms of this Declaration; and
- (b) Current real estate taxes, not yet due and payable as of the date of the conveyance.

The Common Elements have been duly assigned to the OPHOA

Section 5. Access to Lots and Common Elements. The Association and their respective agents, employees and independent contractors shall have, and there is hereby declared, an easement to enter upon any Lot or Common Element to the extent reasonably necessary to exercise any right or responsibility of the Association as set forth in this Declaration, as to the Lot or the Common Elements including, but not limited to the maintenance, repair or replacement of any utilities, landscaping, fences, or other improvements located on the Property.

Section 6. Reservation of Easements for Benefit of Lot Owner. Anything contained in this Declaration to the contrary notwithstanding, Lot owner and its agents, employees, contractors, sub-contractors, workers and material delivery personnel shall be permitted reasonable access to or through Common Elements upon prior approval of the Board for the purposes of constructing homes, garages and improvements, installing, completing, repairing, maintaining and inspecting the Development and for the purpose of exhibiting and selling Lots and improvements thereon.

Section 7. Exercise of Easement not a Trespass. The exercise of any access or easement described in this Article II shall not be a trespass upon having received prior approval by the Board and having been completed within any time frame designated by the Board.

Section 8. Easements.

- (a) Easements for the installation and maintenance of utilities and drainage facilities, if any, are hereby reserved by OPHOA itself and its assignees and are dedicated to the public as shown on the Plat of Subdivision. No conveyance of a Lot shall be deemed to be a conveyance or release of the foregoing easement in the absence of a specific expression of intent to do so. Subject to the rights of the City of Montrose as contained in the Certificate of Ownership and Dedication on the plat of Subdivision, the Association is hereby granted the right to grant and convey to any person or firm easements and rights of way in, on, over or under any portion of Association property in carrying out any duty or power belonging to the Association.
- (b) OPHOA expressly reserves for the benefit of all properties reciprocal easements for access, ingress, and egress for all owners to and from their respective lots; for installation and repair of utility services; for encroachments of improvements authorized by the Board over Association assets; for drainage of water over, across and upon adjacent lots and property of the Association resulting from the normal use of adjoining lots or property of the Association; and for necessary maintenance and repair of any improvement. OPHOA, its successors, assigns, the Association and all owners, their guests, tenants and/or invitees may need to utilize such easements.

Section 9. Lake Bank Use Rights and Restrictions. Lake front Lots have the exclusive right to the use of the Common Element area between the lake high water level and the lot line nearest the lake. Owners are alerted to the fact that the water level will fluctuate from time to time. Lakefront Lot owners are required to maintain and/or repair the lake shoreline, control vegetation on rock banks, and to keep in place the rock bank, liner, existing or future needed riprap to minimize erosion and damage to the lake, the dam and other appurtenance. Non-native pest trees such as Chinese elm and Russian olive as well as noxious weeds such as tamarisk and non-native nut-sedge, etc. must be controlled by lot owners and new trees of any sort are not to be planted or allowed to grow within the lake common element nor within 7 feet of shoreline. Mature trees of any species currently in or near the lake common area should not be uprooted and control if desired should be achieved with mechanical or specific chemical means. For trees currently in place, owners shall consult with ARB as to whether control or preservation is advised, in keeping with maintaining a high esthetic standard as well as minimizing deleterious effects on shoreline and other properties. Understory of trees on lake-front lots should be trimmed so as to enhance or preserve view corridors of the lake.

Lakefront Lots are each permitted to have a private dock or docking system, providing they are duly pre-approved by ARB. Docks and docking systems may not exceed 160 square feet measured from the general high water line. Docks and docking systems may include esthetic and safety features such as a floating portion, ladder, steps, dock, and/or ramp to facilitate water access. All dock design changes or extensions must be pre-approved by ARB. Any new or additional support systems for docks must be approved by ARB and must be designed so as not to damage shoreline and must protect the lake bottom, liner, and/or skirt from puncture. Supports may be located within the water under dock structures but shall not extend into the lake beyond the Dock. Docks shall be maintained so as to avoid unsound, unsafe, or unsightly conditions. Any additions or modifications to pond bank must have prior approval of ARB.

ARTICLE III: USE RESTRICTIONS

Section I. Establishment of Restrictions. No Owner shall cause, permit or allow any violation of any of the following restrictions, on such Owner's Lot or on the public streets and Common Elements within the Property:

- (a) Damage. Anything which will result in permanent injury or damage to trees, bushes, or shrubs in the Development is prohibited. Trimming to maintain the health or control the growth and/or appearance of trees or other planted materials is permitted. However, upon approval or request of ARB, removal of dead, dying, or nuisance trees or bushes is permitted. Removal of trees, shrubs, or bushes that are otherwise healthy is not generally permitted and requires ARB or Board approval. Exceptions with regards to invasive trees are cited in Article II Section 9, as are exceptions within the pond banks.
- (b) Insurance Rates. Any actions or additional features which will increase the rate charged for or cause the cancellation of any insurance maintained by the Association is prohibited.
- (c) Dwelling Cost, Quality and Size. All dwellings must be of a permanent nature constructed on site affixed to a permanent foundation, and no modular home, trailer house or mobile home shall be set upon any Lot within said Subdivision. All dwellings must be of workmanlike quality using materials of

the same or better quality than those which can be produced on the date these Covenants are recorded. Internal and external surfaces must be completely finished before occupancy. Completion must occur within one (1) year of issuance of a building permit.

Each new residential structure shall contain not less than two thousand (2,000) square feet of livable space but not more than five thousand five hundred (5,500) square feet, excluding garages and basements. If required set-backs and/or lot dimensions interfere with this standard, HOA board approval of a variance must be sought and obtained prior to initiation of construction. Because of the topography of Lots 17, 19, 20, 21, 23, 25, 27 and 31 a walkout lower level plan may be desired in which case the livable floor space for the above ground and walk out levels shall total not less than two thousand four hundred (2,400) square feet. The roof pitch for each residence shall be not less than six (6) inches of rise per twelve (12) inches of linear distance. The roof height shall not exceed thirty-five (35) feet from the mean ground level to the top of the highest ridge line. No house shall contain more than two (2) stories above ground.

(d) Exterior Lighting. All outdoor lighting is to conform to State and local statutes. As a general rule, outdoor fixtures must provide generally downward lighting and light produced on a lot must not be focused or directed towards any other lot. No security or large yard lights will be allowed to burn from 11:00 o'clock P.M. to 6:00 o'clock A.M. unless approved by the Board of Directors or its ARB. Mercury and sodium vapor fixtures are prohibited. Free standing or pole lights may not exceed eight (8) feet in height. Holiday lighting on dwellings must be turned off or not visible within 30 days of that holiday.

(e) Flags and Flagpoles. This Flag and Flagpole Policy is adopted pursuant C.R.S. § 38-33.3-106.1, and is intended to balance the statutory rights of Owners to display certain flags with the Association's authority to regulate the time, place, manner, and placement of flags and flagpoles to preserve community aesthetics, safety, and property values.

1. Permitted Flags. Notwithstanding any other provision of the Declaration, Bylaws, or Rules and Regulations, the Association **shall not prohibit** a Unit Owner from displaying the following flags, subject to reasonable regulation as set forth herein:
 - i. The flag of the United States of America;
 - ii. The flag of the State of Colorado;
 - iii. The official flag of any branch of the United States Armed Forces; and
 - iv. Any other flag expressly protected by applicable federal or Colorado law.
2. Flag Display Locations. A Unit Owner may display up to two (2) permitted flags on the Owner's Unit at any given time. Flags may be displayed from a pole or staff attached to the Unit or Limited Common Element, or from a freestanding flagpole located within the Owner's Property, if applicable.
3. Flagpole Regulations. The Association may regulate, but not prohibit, flagpoles as follows:
 - i. Height Limitation: Freestanding flagpoles shall not exceed twenty (20) feet in height above finished grade, unless otherwise required by law.

- ii. **Location:** Flagpoles must be located wholly within the Owner’s Exclusive Use Area and comply with applicable setbacks, easements, and sight-line safety requirements, nor shall they imperil structures on neighboring properties.
- iii. **Design and Materials:** Flagpoles shall be constructed of commercially reasonable materials and maintained in good repair. Illumination, if any, shall be shielded and directed so as not to create a nuisance.
- iv. **Architectural Review:** Installation of a freestanding flagpole may be subject to architectural review for placement, height, and safety considerations only, and shall not be unreasonably delayed or denied.

4. **Time, Place, and Manner Restrictions:** Consistent with C.R.S. § 38-33.3-106.1, the Association may impose reasonable regulations, including but not limited to:

- i. Requiring flags to be displayed in a manner that does not create a safety hazard or violate local building codes;
- ii. Prohibiting flags that are torn, faded, or otherwise in a state of disrepair;
- iii. Prohibiting commercial advertising or signage displayed in the guise of a flag;
- iv. Regulating nighttime illumination to prevent light trespass or nuisance.

5. **Maintenance and Condition:** All flags, poles, mounting brackets, and related hardware shall be properly maintained by the Owner. Flags that are tattered, excessively faded, or in disrepair must be replaced or removed, and owner shall observe general and normal standards of flag display etiquette

(f) Signs. No permanent signs other than street number or resident surname may be erected on a residential lot and must be approved by ARB. Temporary signs advertising the sale, lease or rental of a building site or improvements thereon may be erected. The placement of political signs on property is limited to one (1) sign per political office, candidate or ballot issue in an upcoming election. Political signs may be placed no earlier than 30 days in advance of an election and must be removed within 5 days after said election. No sign of any kind may exceed five (5) square feet..

(g) Commercial and Industrial Activity Prohibited. The purpose of this Section is to permit limited home-based business activities that are compatible with a residential community while preventing uses that create traffic, noise, safety hazards, or other impacts inconsistent with residential living.

1. **Permitted Home Occupations.** Subject to the requirements below, an Owner or lawful occupant may conduct a Home Occupation within a Lot or Unit, provided that the activity:
 - i. Is incidental and secondary to the residential use of the Lot or Unit;
 - ii. Is conducted entirely within the interior of the dwelling;
 - iii. Does not alter the residential character or outward appearance of the Lot or Unit; and
 - iv. Complies with all applicable federal, state, and local laws and licensing requirements. (Typical permitted home occupations include, but are not limited to,

remote office work, consulting, professional services, tutoring (with limited traffic), and similar low-impact activities.)

2. **Prohibited Business Activities.** The following activities are not permitted as Home Occupations within the Community:

- i. Retail sales open to the general public;
- ii. Manufacturing, repair, or assembly involving equipment not customarily found in a residence;
- iii. Medical or dental practices involving on-site patient care;
- iv. Food preparation or catering for off-site sale requiring commercial licensing (except as allowed by law);
- v. Auto repair, body work, or similar vehicle-related businesses;
- vi. Daycare, boarding, or kenneling operations, except as expressly permitted by law and approved by the Association; or
- vii. Any business activity that creates a nuisance.

(h) Leasing of Dwelling Units: For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a dwelling on any Lot by any Person other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, rental payments. No structure on a Lot other than the primary dwelling shall be leased or otherwise occupied for residential purposes. No transient tenants may be accommodated in any dwelling or ancillary structures on any Lot. **No Lot shall be made subject to any type of time-sharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among members of a program on fixed or floating time schedule over a period of weeks, months, or years.** Every Owner shall cause all occupants, guests, and invitees of his or her Lot to comply with the Governing Documents and **shall be liable** for misuse of or damage to common elements by his or her lessees or guests, conduct contrary to these covenants, as well as maintenance of any leased property so as to adhere to restrictions, governing documents, and standards of the sub-division. Sub-leasing is not permitted. Owners shall relay name and contact info of any renters to HOA Board within 30 days of lessee occupancy. Likewise, owners are required to inform renters of HOA covenant requirements prior to allowing occupancy.

1. The long-term leasing of a portion of a dwelling to one additional party is allowed provided the owner maintains full-time residence in the dwelling & adheres to all other provisions regarding leasing cited herein.

2. Short-term rentals (defined as any leasing or renting of a dwelling for 30 days or less) are strictly prohibited on all lots.

- (i) Setback. In addition to set back requirements of ordinances of the city of Montrose, Colorado, it is required that all structures on each Lot shall be centered as nearly as possible in order to provide maximum separation and maintain view corridors between the structures. In addition, all structures on Lakefront Lots shall be set back at least fifty (50) feet from the lake high water line. Any exceptions must be reviewed and approved in writing by the ARB prior to construction.
- (j) A dwelling on any Lot within the Subdivision shall generally be designed for occupancy by one family. The Owner may also construct one garage attached to or within ten (10) feet of the residence, provided said garage is constructed of suitable material and design so as to be aesthetically compatible with the dwelling and approved by the Board of Directors or its ARB. Special restrictions exist and are described herein for garages on Lake Front Properties. **Sheds on lake-front properties are not permitted.**
- (k) Livestock. No agricultural activity shall be undertaken for any business or commercial purpose and no animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot in the Subdivision for business or commercial purposes. Homeowners may keep no more than two (2) dogs, provided they are properly and securely fenced, leashed, or under direct and demonstrable human control at all times. **Virtual in-ground type fences with radio collars for dogs are permitted if fully effective. Any fence of any type designed to restrain dogs must be maintained to prevent escape. Chaining of an unattended dog is specifically prohibited.** Up to two (2) cats are also permitted. Livestock exceptions may exist under state or local law, but are otherwise not permitted by OPHOA.
- (l) Temporary Structures. No structure of a temporary character such as shack, trailer, barn, garage, shed or other outbuilding visible from a road or common area shall be permitted either temporarily or permanently on any and all properties on any part of said Subdivision.
- (m) Repairs. Any building or improvement, which has been damaged by failed repair, fire or other casualty causing the same to be unsightly, shall be repaired or removed within one (1) year from the date of such casualty. All structures, buildings and improvements erected on Lots within said Subdivision shall at all times be kept in good repair and attractive.
- (n) Abandoned Vehicles and Parking. No abandoned vehicle shall be permitted to be visible on any Lot from any street or Common Element. A vehicle shall be considered abandoned if it is not operated during any period of thirty (30) consecutive days. Such "non-operative" vehicles include those which are regularly stored or parked outside a garage or other approved enclosure whether or not in working order. In such instance the Association shall send a letter requiring removal of the vehicle within thirty (30) days from the receipt of the letter. **Upon notification, owner must demonstrate that the vehicle has moved by sending a date stamped phone photograph or video to the Board. If the Owner does not comply within that period of time or any subsequent 30 day period, the Association may have the vehicle towed away at the violator's expense.** The Association's costs so incurred may be collected as an assessment and the Association shall be entitled to all collection and enforcement remedies and rights provided by this Declaration.

All off-road vehicles including but not limited to recreational vehicles, horse trailers, snowmobiles,

boat trailers, etc. shall be stored or kept in such a manner as to not be visible from the street or lake except for a period necessary for unloading or loading, which shall not exceed 7 days for completion of either task. Likewise, slide in campers, camping trailers, and all recreational vehicles other than class B (van conversions no wider or taller than original base vehicle, not B+) recreational vehicles may not be stored in a manner visible from lake, streets, or Common Elements of the sub-division. However, furred vehicle-top tents that are secured to vehicle and pick-up “toppers” affixed to truck are allowed to be parked outside of the garage in the driveway. Such vehicles as may meet these requirements for visibly parked vehicles must also adhere to the definition of a non-abandoned vehicle in that they shall not rest in place unused for any period longer than 30 days.

Guest parking shall be permitted upon the platted streets and roads of the Subdivision for a period of time not to exceed 14 (fourteen) days, but must not present a traffic or pedestrian hazard.

Owners' operative street-legal vehicles must be kept parked in garages or in the driveway of their lot. Owner or resident may park on the street temporarily to accommodate access for home, driveway, or lot repairs or improvements previously approved by ARB, provided that an ungaraged vehicle must comply with state and/or city regulations regarding abandoned vehicles and may be subject to towing under such regulations.

Garages shall be equipped with doors. Doors must be kept closed at all times except when a vehicle is entering or exiting the garage or during periodic maintenance of the door or garage area, including project/shop work during daylight hours. Additionally, it is permitted to keep a garage door open a maximum of 1 foot from the ground to mitigate summer heat.

- (o) Waste and Trash Disposal. During and after construction, trash or garbage shall not be permitted to accumulate upon any site except in properly covered containers, which shall be emptied on a regular basis to avoid overflow and unreasonable odors or conditions resulting therefrom. Solid waste disposal is the responsibility of the individual homeowner or occupant. Open burning of trash shall not be permitted. This covenant shall not be construed to prohibit barbecue pits or fireplaces or open cooking on sites. Sewage disposal must be by connection to a public sewage system.
- (p) Weed Control. Prior to completion of landscaping as herein required, weeds must be cut often enough so as to not permit land within the Subdivision to become unsightly or a fire hazard due to the overgrowth of weeds. In the case of unoccupied Lots, non-resident or out of area Owners, or unmaintained occupied lots, if weed and vegetation control is not exercised by said Lot Owner, the Homeowners Association maintains the right to hire the weeds mowed, removed, or otherwise controlled and bill the individual Lot Owner for the expense of same. This cost plus any accrued interest may be collected as an assessment and the Association shall be entitled to all collection and enforcement remedies and rights provided by this Declaration.
- (q) Off Road Vehicles Prohibited. Except for lawn maintenance equipment or when utilized for snow removal, only "street legal" vehicles may be operated within the Subdivision and on the Lots and roads thereof; provided, however, that such vehicles may be operated for purposes of loading and unloading to be transported for usage outside the Subdivision. For purposes of this Declaration, “Non-Street-

Legal Vehicles” shall mean any motorized or self-propelled vehicle, device, or conveyance that is not lawfully registered, titled, and insured for operation on public streets and highways under Colorado law, or that otherwise does not meet the equipment and operational requirements of **Title 42, C.R.S.**, including but not limited to:

- i. All-terrain vehicles (ATVs);
- ii. Utility terrain vehicles (UTVs) and side-by-side vehicles;
- iii. Dirt bikes, trail bikes, electric motorcycles, and off-highway motorcycles;
- iv. Go-carts and racing carts;
- v. Dune buggies and sand rails;
- vi. Motorized scooters or mini-bikes not street legal; and
- vii. Any similar off-highway or recreational vehicle not approved for street use.

- (r) Mining and Drilling Activities Prohibited. Any use of the surface of any Lot within the Subdivision for water, oil, gas, mineral, geothermal or oil shale development, mining or drilling activities of any kind whatsoever is expressly prohibited.
- (s) No Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the Project nor shall anything be done or placed on or in any part of the Project that is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project that are or might be unsafe or hazardous to any Person or property. No sound shall be emitted on any part of the Project that is unreasonably loud or annoying. No odor shall be emitted on any part of the Project that is noxious or offensive to others. No light shall be emitted from any part of the Project that is unreasonably bright or causes unreasonable glare. No power equipment or tools which create excessive noise regularly or which cause interference with other appliances is permitted within the project. **Power equipment noise necessary for completion of Board approved construction is acceptable between sunrise and sunset for duly progressing construction, repairs, improvement and upkeep. Owners and their workers shall operate power lawn mowers and other exterior maintenance power equipment only between sunrise and sunset. Mechanical vehicle maintenance (other than that required in an emergency) is not permitted within the Otter Pond Sub-division unless taking place in a garage.**
- (t) No Unsightliness. No unsightliness or waste shall be permitted on or in any part of the Project. Without limiting the generality of the foregoing, no Owner shall keep or store anything (except in designated storage areas) on or in any of the Common Elements; nor shall any Owner hang, erect, affix or place anything upon any of the Common Elements (except for decorative items within his unit); and nothing shall be placed on or in windows or doors of Units which would or might create an unsightly appearance. **No outside antennae, transmitters, receivers, satellite dishes over 24 inches tall or wide, masts, or attached poles shall be constructed or installed by an Owner unless approved by ARB.**
- (u) Outdoor Laundry. **The hanging out to dry of any laundry, bedding or similar items must comply with**

the State of Colorado Right-to-Dry Law. As permitted in that law, the HOA shall retain all rights with respect to type and placement of hanging structures and request for such must be made through application to the ARB. A retractable clothesline which is retracted when not actively in use is permitted.

Section 2. Enforcement of Use Restrictions. The use restrictions set forth in this Article III shall be enforceable by any Owner or the Association **in** the manner provided in this Declaration, including the right to recover costs and attorney's fees incurred in enforcement.

ARTICLE IV: COVENANT FOR ASSESSMENTS

Section 1. Assessments of a Lien and Personal Obligation. Each purchaser of a Lot by acceptance of a conveyance of a Lot, whether or not it shall be so expressed in the conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments or charges and special assessments as authorized and limited by this Declaration as common expense assessments. Each assessment together with the interest thereon and costs of collection, including attorney's fees, shall be a charge and a continuing lien upon the Lot against which the assessment is made. Each assessment, together with interest and costs of collection, including attorney's fees, shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due and, when expressly assumed, of any subsequent purchaser of the Lot other than a first mortgagee or a purchaser at foreclosure sale.

- (a) Section 2. Annual Assessments. The annual assessments levied by the Association shall be used exclusively for its operating expenses and for the purpose of promoting the health, safety, welfare and enjoyment of its Members, and in this connection but without limitation, for: Maintenance, repair, replacement and/or improvement of the Common Elements;
- (b) Payment of premiums for the insurance which is the obligation of the Association;
Payment of taxes which are the obligation of the Association; and
- (c) For the providing of funds for the Association and ARB to carry on their duties as set forth herein or in the Articles of Incorporation or By-Laws.

Section 3. Calculation of Annual Assessments. The Board shall fix the annual assessment for each Lot for each annual assessment period at least thirty (30) days prior to the commencement of each annual assessment period. The annual assessment shall be delivered, mailed or emailed to each Owner showing the amounts and due dates for such assessment.

Section 4. Reasonable Reserves. The Association shall establish and maintain from annual assessments reasonable reserves for the costs of the obligations of the Association hereunder.

Section 5. Special Assessments. In addition to the annual assessments as authorized above, the Board may levy in any assessment year special assessments for the purpose of defraying in full or in part any expense not anticipated or provided for in setting the annual assessment for the year in which the expense occurs or prior years, or for the purpose of providing funds to the Association to carry on any of its duties set forth in this Declaration or in its Articles of Incorporation or By-Laws.

Section 6. Periodic Collections. Annual assessments may be collected on an annual, quarterly or monthly basis as determined by the Board.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence for any Lot within the Property on the day of the conveyance of that Lot and shall be prorated for the remainder of the calendar year of said conveyance.

Section 8. Annual Assessment.

- (a) The initial and ongoing annual assessment shall be established by the Board from time to time. The maximum annual assessment may be increased once each year by not more than fifteen (15%) above the maximum assessment for the previous year without a vote of the membership.
- (b) The maximum annual assessment may be increased above 10 percent (10%) over the previous year's amount by a vote of two-thirds (2/3) of members who are voting *in person* or by proxy at a meeting duly called for this purpose, providing that a quorum is present as described in section 9 below.
- (c) The Executive Board may fix the annual assessment at an amount less than the maximum.

Section 9. Notice and Quorum for an Action Authorized Under this Article IV. Written or e-mail notice of any meeting called for the purpose of taking any action authorized under this Article IV shall be sent to all Owners entitled to vote not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such annual meeting called, the sum of Owners present who are eligible to vote and of proxies entitled to cast votes must total at least sixty percent (60%) of Lot owners eligible to vote in order to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice. requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

ARTICLE V: EFFECT OF NONPAYMENT OF ASSESSMENTS & REMEDIES OF ASSOCIATION

Section 1. Delinquency. Any assessment provided for in this Declaration that is not paid when due shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association shall require the Owner to pay a " late charge " as a sum to be determined from time to time by the Executive Board and applied uniformly. Current fines and penalties may be found on the Otter Pond HOA website. The Association may, at its option, bring an action at law or in equity or both against the Owner personally obligated to pay the same or foreclose the lien against the Lot under the procedure applicable to judicial foreclosure of Deeds of Trust, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing such action and attorney's fees; in the event a Judgment is obtained, such Judgment shall include interest together with the cost of bringing the action. Each Owner vests in the Association or its assigns the right and power to bring all actions at law or lien foreclosure against such Owner and Lot for the collection of such delinquent assessments.

Section 2. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed. Sale or Transfer of any Lot shall not affect the said lien.

Section 3. Suspension of Voting and Use Rights. The Association shall have the right to suspend or usurp the

voting rights of a member for any period during which any assessment or fine against such Member's Lot remains unpaid and delinquent. The Association may also suspend a member's rights to use the Lake or other Common Elements for any infraction of the rules and regulations of the Association or violation of any provision of this Declaration. Such rules and regulations shall be uniform and nondiscriminatory. Each Owner agrees to accept and be bound by all such rules and regulations by virtue of ownership of a Lot.

Section 4. Homestead Waiver. Each Owner hereby agrees that the Association's lien on a Lot for assessments shall be superior to the homestead exemption provided by Colorado law as amended from time to time and each Owner hereby agrees that the acceptance of the deed conveying the Owner's Lot within the Property to him shall signify the Owner's waiver of the homestead right granted by said Colorado law

ARTICLE VI: ARCHITECTURAL REVIEW BOARD (ARB)

Section 1. ARB Approval Required. No residence, structure, driveway, fence, patio or other improvement shall be erected, placed, modified or altered on any Lot within the Property unless the building plans, specifications (including colors and materials) and plot plan showing the location and proposed erection, placement, modification or alteration of any such residence, structure, driveway, fence, patio or other improvement has been approved in writing by the Architectural Review Board. ARB may be abbreviated to "Board" for purposes of this article in view of ARB being an extension of the function and purposes of the governing board of Otter Pond HOA.

Section 2. Role of the ARB. The ARB is fully authorized in its sole discretion to approve or deny applications in total or to conditionally approve with requirements for specific revisions. The decisions of the ARB may be appealed to the HOA Executive Board providing such request is placed on board agenda in advance of regular board meeting and Executive Board may delay any decision pending additional fact finding. Every Owner, by acceptance of a deed or other conveyance for itself, its successors, assigns, agents and employees hereby expressly waives any claim against the ARB, the Executive Board or the Association or their respective members relating to or arising out of any action or inaction on the part of the ARB, including but not limited to any claim such Owner may have by reason of any changes which may be made in the guidelines (as hereinafter defined) or the rules or regulations (herein referred to) subsequent to the date the ARB has acted on the application of an Owner, which might have changed the nature or content of the Owner's application or which might have had the effect of a differing result on the Owner's application had action not taken place until after the occurrence of the change in the guidelines or in the rules and regulations.

Section 3. Membership and Appointment of the ARB. The ARB shall be a standing committee of the Association composed of from two to six (6) persons as determined by the Board. Members of the Committee shall be appointed and replaced by the Board and the Board shall have absolute authority to remove any person on the ARB, with or without cause. The committee will report monthly activity to the Board. In the event that ARB board is deadlocked on a decision or not fully staffed, then ARB decisions shall relegate to the Board

Section 4. Architectural Guidelines. Board may publish architectural guidelines and amendments thereto governing all improvements of the Lots. The guidelines shall be available for review at all reasonable times and downloadable by the Owners or other interested parties. Exceptions would include such occurrences as may

temporarily arise when website is being repaired or improved.

Section 5. Construction Standards as set forth in the guidelines shall be deemed to be minimum requirements only. The ARB shall have the right to refuse to approve any plans or specifications submitted to it which are not suitable or desirable, in its sole opinion, for aesthetic or other reasons. The ARB shall have the right to consider the suitability of proposed buildings, the harmony thereof with the surroundings and the effect of the building on neighboring property or view corridors. The ARB shall not be arbitrary in its decisions but shall have broad discretion to assume continuity and harmony of design, appearance and location in relation to the other improvements on the property, view preservation, and finish grade elevations.

Section 6. Construction and Design Requirements and Miscellaneous Use Restrictions. In the event of conflict between the aforementioned guidelines and standards and these Covenants, Conditions and Restrictions; these Covenants, Conditions and Restrictions shall govern. In addition to any guidelines and standards that may be promulgated by the Board, the ARB or the rules and regulations of the Association, the following requirements are also applicable to the Development:

- (a) Basements. Due to the possibility of high water tables, all construction plans presented to the ARB providing for a basement must include an appropriate certification of a hydraulic engineer and shall have proper specifications for waterproofing, drains and sump pumps.
- (b) Roofs. For roofing material, Pro-panel 1 or similar smooth surface metal roofing is prohibited. No primary or bright roof colors are permitted.
- (c) Siding. For exterior siding material, no artificial 'stucco', panels are permitted. The use of any plastic or vinyl siding products must be approved by the ARB in order to assure proper quality. Earth tones, pastels and white are permitted exterior colors but primary or bright siding colors are prohibited.
- (d) Driveways. All Primary driveways must be concrete. Asphalt is prohibited for Primary Driveway use. Secondary Driveways to outbuildings or gated storage areas must be concrete, asphalt, gravel or a product approved by the ARB.
- (e) Garages. Garages on Lakefront Lots must be a minimum of two-car and a maximum of four-car capacity.. They must be attached to the residence by roofline. Permitted outbuildings on Lake Access Lots may contain additional detached garage space. Garage space on non-lake front lots must total at least a 2 vehicle capacity.
- (f) Outbuildings. One outbuilding is permitted on each Lake Access Lot but is prohibited on Lakefront Lots. Permitted outbuildings may not exceed two stories and must be limited in height to not more than thirty (30) feet above mean ground level measured at the road in front of the house to the top of the ridge line. Roof pitch, siding, color, roofing, placement on the Lot and architectural design must be compatible with the residence. No outbuilding may exceed fifty percent (50%) of the footprint occupied by the residence (garage space excluded).
- (g) Hedges and Fencing. All fence materials and styles must be approved by the ARB.
 - (i) On Lakefront Lots, hedges and fences may not exceed four (4) feet in height. No fence or hedge shall extend beyond the front corners of the residence. **View corridors are to be**

considered in fence design. All fences along the lakefront for containment of pets and children are to be constructed so as to be as unobtrusive and inconspicuous as possible.

(ii) On Lake Access Lots privacy fencing up to six (6) feet in height is permitted on back boundary lines and side boundary lines to the front corner line of the residence, but other a fencing approved by the board is not to exceed four (4) feet in height nor extend beyond the front corners of the residence.

(h) Exterior Maintenance. The Owner shall keep up the exterior of each residence and the prior completed landscaping on each lot to original or better conditions of construction and installation. Portions of a lot including back yards that are visible from common areas or other residences must be maintained and vegetation controlled. Rocked and xeriscaped areas must have weeds controlled. This requirement includes but is not limited to lawn mowing, watering, weed control and trimming, exterior repair, maintenance and painting of the residence and all other improvements on the lot; and includes such other reasonable steps as will be required to maintain Otter Pond as a high quality residential development as contemplated by this Declaration and to protect neighbors view rights. In the event an Owner fails to comply with these requirements, the Board shall submit written notice to the Owner detailing the deficiencies and stating the Association's intention to do the work necessary to bring the Lot and improvements into compliance with these requirements and in the event of the failure of the Owners so to do within thirty (30) days of the mailing of such notice, the Association may thereupon accomplish the work required and charge the cost thereof to the Owner. Said cost may be collected as an assessment and the Association shall be entitled to all collection and enforcement remedies and rights provided by this Declaration.

(i) Landscaping. Initial landscaping must be installed and completed within twelve (12) months of completion of the residence. A landscaping plan must be presented to the ARB and approved prior to completion of the residential structure. Landscaping shall consist of attractive grass, chips, bark, rock, bricks, pavers, landscape edging, pottery, statuary, flowering plants, garden plants, shrubs, ground cover vegetation and trees, or combinations thereof. Minimal water usage landscaping (xeriscaping) is permissible on a portion or the entirety of any lot, but shall not consist of bare dirt or sand or other products which would tend to generate excessive dust. Weeds and invasive plants must be controlled whether the landscaping is primarily covered in vegetation or is designed for minimal water usage. A durable weed barrier should be installed under all decorative rock, gravel, stone, chips, bark, and other non-vegetative areas to aid in weed and dust control. The area of the Lot that must be landscaped is the entire width and also running a distance of one hundred twenty (120) feet into the interior of the Lot from the adjacent subdivision street or to the end of the lot line. Trees must be maintained so as to minimize risk of damage to structures on adjoining property. On Lake Front Lots, the understory of trees must be trimmed to maintain or improve view corridors. **New trees may not be planted or allowed to grow within 7 feet of pond bank. Trees, shrubs, and other vegetation on any lot near roadsides must be trimmed so as to avoid creating a visual or physical impediment to traffic (i.e. "Blind Spots" on curves, etc) or affecting pedestrian safety whether on sidewalks or roads.** Disposal of yard waste shall

be governed by regulations per Montrose City, Montrose County, and State of Colorado as applicable. Yard waste shall not be deposited or blown into the lake, ditches, waterways, sidewalks or streets of the sub-division.

(j) Pools: Above ground swimming pools are prohibited.

(k) Site Rules.

(i) In recognition that Otter Pond is to be considered a wildlife sanctuary, wildlife, waterfowl nesting areas and the like are not to be disturbed. No hunting is to be permitted. All lake and Common Element uses are to be as compatible as possible with wildlife uses. Water toys, accessories and extraneous objects are not to be stored or left out on the lake bank but must be removed and stored out of sight when not in use.

(ii) Marina docks and boat ramp are for the exclusive use of owners, renters, and their families and guests. They are to be used for boat launch and lake access only and are available for all-day and overnight dockage. All watercraft are to be removed from the marina by November 1st each year. The boathouse is available for storage of watercraft on a first-come first-served basis as per application to boat-house overseer (manager) or the Board, but is not to be utilized for boat storage April to November except with express permission of the boathouse manager. Storage of water activity related items such as life vests and inflatable toys is not permitted to exceed the confines of duly assigned storage space.

(iii) Swimming and wading activities are permitted from docks, boats, and Lakefront Lots but not in or around the spillway, inlet or marsh areas. These and related activities may be hazardous and are undertaken at the sole risk of the participants. The Association cannot and does not assume any responsibility for the conduct of Owners, their families, trespassers, renters, and/or bona fide guests. No lifeguard or other supervision is provided for any water activities.

(iv) Fishing in the lake is limited to Owners, renters, and their families and guests. Fishing is permitted from adjacent Common Elements, Lakefront Lots, boats and docks, provided that no trespass shall occur on private Lakefront property. Fishing is catch and release unless Board approved and posted otherwise.

(v) Boating is permitted on the lake but no jet skis, loud engines or gasoline engines of any kind may be used. Electric motors are permitted but all boating shall be wakeless so as to minimize erosion and hazard. All persons using watercraft within the lake must take precautions to prevent spread of Zebra mussels, Quagga mussels, New Zealand mud snails, and other invasive pests and non-native aquatic vegetation as per guidelines and regulations of Colorado Parks and Wildlife. Only Owners, renters, and their families and guests may use the lake. Boat size may not exceed twenty-one (21) feet in length or an eight (8) foot beam or a two (2) foot draft. Regardless of size, houseboats are not allowed on the lake. Boats may not be moored offshore in the lake but must be secured to a Lakefront Lot dock or at a marina dock when not in use. Boathouse may not be used for in-season storage of water-craft and/or water related accessories and toys unless approved by boathouse manager, and must be removed promptly

upon request to facilitate in-season maintenance of the boathouse

- (l) Otter Pond Park and other common areas: Plants, trees, or weeds growing through or over park fence may result in owner liability for any damage to split rail fencing beyond normal wear or degradation. Likewise, vegetation from any Owner lots shall not be allowed to damage other Common features and may also result in Owner liability. Additionally, vegetation on owner lots shall be controlled so as not to interfere with maintenance of adjoining Common features. For lakefront lots, vegetation on pond banks shall be controlled so as to allow pond bank to be visible from the water & view corridors.
- (m) Tennis/pickleball courts on Common Elements are for the use of Owners and their families and guests only. Rules for the use of courts as adopted by the Association will be posted at the courts.
- (n) Irrigation from the lake is permitted according to a permanent variance granted July 24, 1997.

ARTICLE VII: DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General. The Association shall have the power and duty to:

- (a) Pay any real property taxes and other charges assessed against the Common Elements; Adopt and enforce as well as interpreting any of the provisions hereof, reasonable rules and regulations for the purpose of ensuring compliance with this Declaration and for the purposes of controlling and limiting the use of the Common Elements;
- (b) Maintain such policies of insurance as the Executive Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members, officers and directors; and
- (c) Have all of the powers, authority and duties permitted by the Act.

The Association may employ a manager or other persons and contract with independent contractors, collection agents, and others to perform and effect all or any part of the duties and powers of the Association if deemed necessary by the Board, without regard to whether such person is a manager, employee, or independent contractor and provided that such contract does not provide for compensation above a level which is normal and customary within the industry. The Association may also establish such reserves as may be required hereunder, or as the Executive Board shall from time to time deem necessary to fulfill and further the purposes of the Association.

Section 2. Maintenance. The Association shall maintain, repair, and replace its assets in the Common Elements.

Section 3. Budget Process: Within thirty (30) days after adoption of any proposed budget for the subdivision, the Board shall mail by ordinary first class mail, email, or otherwise deliver a summary of the budget to all the lot owners or may make such budgetary information available on Otter Pond HOA website to lot owners.

Section 4: Volunteers. It is noted that historically and currently the neighborhood has had significant volunteer contributions involving labor, expertise, time, and financial commitments. The Board supports, applauds, and encourages further volunteer efforts. However, in the event that volunteer efforts are inadequate to meet the needs of the association, the Board reserves the right to incentivize volunteering and/or hiring labor and/or expertise by duly and transparently budgeting to meet those needs.

Section 5: Accounting. Board shall plan and account for expenditures and income from assessments and fees as well as address future needs that are reasonably foreseeable.

- (a) An annual accounting record shall be presented to all members at a general meeting of members held

within a 30-day period before or after the end of each calendar year, which will address the prior year's expenditures as well as projected expenditures for the succeeding year, election of Board officers, addressing the projected annual assessment, and review of reserve needs. Notice of such a meeting shall be provided to Owners via newsletter and/or email at least 30 days prior to the meeting date. Owners not able to be present may vote by proxy. Accounting records will be posted at least annually to the OPHOA website.

- (b) Purchasing. The Treasurer and at least one other board member shall be listed as able to be signatory on all financial accounts through which the Board and Association conduct financial business. All purchase invoices must be approved by the Board or be specifically noted as included in the annual document of projected expenditures as approved by the Owners. Treasurer shall in general promptly pay and duly record approved invoices unless temporarily not available for such duty, in which case a board member shall perform such duty.

Section 6: Communication. All members shall present an email address and phone # to the board for purpose of communication, which may include newsletter or individual email or phone query.

ARTICLE VIII: INSURANCE

The Association shall obtain and maintain a policy or policies of insurance:

- (a) Insuring the Association, their respective agents, its Board, officers, employees, invitees or licensees against claims for personal injury including death and property damage arising out of any occurrence in connection with the ownership, operation or maintenance of the Common Elements or any act or omission of or on behalf of the Association, its Executive Board, agents or employees.
- (b) The expense of insurance premiums paid by the Association hereunder shall be an expense of the Association to which the assessments collected by the Association from the Owners shall be applied

ARTICLE IX: GENERAL PROVISIONS

Section 1. Enforcement. Upon exhaustion of remedies identified within this document, any Owner, or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, fines, liens and charges now or hereafter imposed by the provisions of this Declaration and shall be entitled to costs and attorney's fees expended in enforcing the same against any Owner. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or abandonment of the right to do so thereafter. Breach of any of the provisions, restrictions or covenants shall not defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to said Lots, but such provisions, restrictions or covenants shall be binding and effective against any Owner of said Lots whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

B- Fines shall be imposed per most recent posting by action or resolution of the board on otter pond website. (otterpondhoa.com). Any and all prior resolutions pertinent to fines and fees shall be succeeded by such recent

website postings.

Section 2. Severability. Invalidation of anyone or more of these covenants or restrictions by Judgment or Court Order shall in no way effect any other provisions which shall remain in full force and effect.

Section 3. Records. Any Owner or first mortgagee of any Lot shall be entitled, upon reasonable written request, to receive for inspection from the Association current copies of this Declaration, the Articles of Incorporation, the By-Laws, records and financial statements of the Association. Alternatively, such documents may be made available on the Otter Pond website and persons requesting such information may be directed to utilize the website as a document resource.

Section 4. Sales and Construction Activities. No commercial activity to promote sales of property shall be permitted on any lot within the subdivision except for real estate sales signage as per size and location(s) herein described as well as common real estate activities such as occasional "open houses" and home showing as is typical with real estate sales endeavors

Section 5. Notice of Sale, Lease or Mortgage. In the event an Owner sells, mortgages or otherwise disposes of any Lot, the Owner or Owner's agent shall promptly furnish to the Association in writing the name and address of such purchaser, mortgagee or transferee. Likewise, the Association shall be informed by owners as to the presence of renters.

Section 6. No Trespass. Whenever the Association and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, replace, preserve or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

Section 7. Term. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of the Association and the Owners and their respective legal representatives, heirs, successors and assigns for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless terminated or amended by an instrument signed by Owners comprising not less than sixty- seven percent (67%) of the total votes collectively held by the Members.

- (a) To bring the Declaration into compliance with any applicable laws which may affect the same, or to correct any typographical or scrivener's error therein.
- (b) In furtherance of the foregoing, a power coupled with an interest is hereby reserved to the Association to so amend the Declaration as provided herein, and each deed, mortgage or other instrument with respect to a Lot and acceptance thereof shall be deemed a grant and acknowledgement of and a consent to such power to said Board. Any amendment must be recorded with the Recorder of Deeds of Montrose County, Colorado.

Section 8. Waiver of Damages. Neither the Association nor the Board shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities reserved, granted or delegated to it by or pursuant to this Declaration whether or not such claim

- (a) Shall be asserted by an Owner, occupant, the Board, the Association or by any person or entity claiming through any of them;

- (b) Shall be on account of injury to person, damage to or loss of property wherever located and however caused; or
- (c) Shall arise out of a contract, either express or implied without limitation to the generality of the foregoing, the foregoing enumeration includes all claims for or arising by reason of the Property or any part thereof containing any patent or latent defects, or by reason of any act of failure to act of any Owner, occupant, the Board, the ARB or the Association and their respective agents, employees, guests and invitees or by reason of any neighboring property or personal property located on or about the Property or by reason of the failure to function or the disrepair of any utility service.

Section 9. Variances. The Executive Board or its ARB if appointed as herein authorized shall have the authority to grant variances from the terms and conditions contained in this Declaration so long as such variances do not result in conditions which are inconsistent with the general concept, harmony and values with the Property.

Section 10. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, emailed, or delivered to the last known address of the person who appears as such Owner of the records of the Association at the time of such mailing. Each Owner shall keep the Association informed of any mail, email, or phone contact changes.

Section 11. Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

Section 12. Liberal Construction. The provisions of this Declaration shall be liberally construed to promote and effectuate the purposes hereof.

Section 13 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

Section 14. Amendment. This Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners. Any amendment must be recorded.

Section 15. Rules and Regulations. The Board of Directors shall have authority to adopt reasonable rules and regulations for the purposes of ensuring compliance with this Declaration and interpreting any of the provisions hereof as well as governing use of the property of the Association. The Board of Directors shall also have the right to suspend the voting rights of any Owner who is delinquent in payment of assessments or for infraction of such rules and regulations or any provision of this Declaration and may elect to execute a proxy for the vote of a suspended member in matters related to Owner vote in any manner deemed appropriate by unanimous decision of the Board

Section 16. Variances. The Board of Directors or its ARB if appointed as herein authorized shall have the authority to grant variances from the terms and conditions contained in Article V hereof so long as such variances do not result in conditions which are inconsistent with the general concept, harmony, and values within the Subdivision.

Section 17. Association Property. Association shall govern the Common Elements (open space and lake) as shown on the Otter Pond Subdivision plat. Other public use areas are dedicated to the City of Montrose, State of Colorado, for the use of the public as shown on the plat of Subdivision. Such conveyance shall take place not later

than the date the first Lot described above is conveyed to an Owner. At the time of the conveyance, the property shall be free of any mortgages, judgment liens or similar liens or encumbrances. The Association shall hold such property, its successors and assigns, to lay, install, construct and/or maintain utilities in the areas designated on the Subdivision plat for utility purposes and reserves the right to enter upon any property conveyed to the Association for the purpose of construction or completing the construction of improvements or landscaping thereon. The property conveyed to the Association shall be held by it for the use, benefit and enjoyment, in Common, of each Owner. The Association shall supervise, manage, repair and maintain its property at its own cost and expense.

ARTICLE X: SPECIAL RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 1. The Board reserves the following additional rights (the “Additional Reserved Rights”):

- (a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, skyways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Property.
- (b) Use Agreements. The right to enter into, establish, execute, amend and otherwise deal with contracts, and agreements for the use, lease, repair, maintenance or regulation of parking
- (c) Colorado Common Interest Ownership Act. House Bill 91-1292 enacted the Colorado Common Interest Ownership Act by addition of a new Article, 33.3 to Title 38, Colorado Revised Statutes which took effect on July 1, 1992. Board reserves the right to amend this Declaration to comply with the requirements of the Colorado Common Interest Ownership Act and it recognizes that the act or additional municipal, county, state, or federal law may affect or invalidate specific provisions of this document, without negating valid provisions herein.
- (d) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 2. Rights Transferable. Board rights may be transferred to any Person by an instrument describing the right and transferred and recorded in County in which any portion of the Property is located. Such instrument shall be executed by the transferor and the transferee.

ARTICLE XI: ALLOCATED INTERESTS

The undivided interest in the Common Elements, the liability for assessments and votes in the Association allocated to each lot are one 85th of the whole calculated on the basis of an equal share therein of every lot in the Property numbered one (1) through eighty-five (85) subject to the Board voting rights and control rights as specified herein and subject to revision of these proportions upon the re-subdivision of Lot 85 as herein authorized.

IN WITNESS THEREOF, This Declaration to be executed by its duly authorized officer of the HOA Board the

date and year above written. This document shall replace and negate all prior covenant and resolution documents with the exception of any resolutions made in 2025, and may be amended or clarified without necessitating the review or rewrite of the document per se. Any such amendments, resolutions, or clarifications may be posted promptly and maintained on the OPHOA website for Owner and public access or otherwise be made available to owners via e-mail or USPS. In any case, municipal, county, or state law shall have precedence over provisions of this document.

OTTER POND, A LIMITED LIABILITY COMPANY

By: _____
Kevin Dawson, President
Otter Pond Homeowner Association

STATE OF COLORADO)

) ss.

COUNTY OF MONTROSE)

The forgoing instrument was acknowledged before me this ____ day of _____, 2026 by Kevin Dawson as President of Otter Pond Homeowners Association, a Limited Liability Company.

Witness my hand and official seal
My commission expires _____

Notary Public