

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
METZLER RANCH FILING NO. 1**

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THIS DECLARATION is made and entered into by BRE/METZLER L.L.C., a Delaware limited liability company ("Declarant") and the planned community formed by Declarant is to be named "METZLER RANCH FILING NO. I". Declarant intends to form a Colorado non-profit corporation for this planned community and lots to be created therefrom to be called "METZLER RANCH FILING NO. I HOMEOWNERS ASSOCIATION, INC."

WITNESSETH:

WHEREAS, Declarant is the owner of real property situated in the Town of Castle Rock, County of Douglas, State of Colorado, which is described on Exhibit B, attached hereto and incorporated herein by this reference. A plat or map entitled "Metzler Ranch Filing No. 1" showing and describing all of the lots that can be created, or which shall become a part of this planned community, shall be filed with the Clerk and Recorder for Douglas County, Colorado; and

WHEREAS, Declarant desires to subject and place upon the property described on the attached Exhibit A, consisting of four hundred and thirty five (435) lots that Declarant anticipates will be created and become a part of this planned community, certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions; and

WHEREAS, a common interest community in the State of Colorado may be created pursuant to the Colorado Common Interest Ownership Act, as amended, ("CCIOA"), as defined hereinafter, only by recording a declaration executed in the same manner as a deed. In such a case, the declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. If governed by the Act, no common interest community is created until the plat or map for the common interest community is recorded;

WHEREAS, Declarant has made provision for certain Permitted Exceptions to that property described in Exhibit D, which are neither Common Elements as described in Exhibit B, nor grants of public right of ways as shown and described on the plat map for "Metzler Ranch Filing No. 1".

NOW, THEREFORE, Declarant hereby declares that all of the real property described on that attached Exhibit A and B and which Declarant intends to be created through the exercise of Declarant's Rights of annexation shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein upon annexation.

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ARTICLE I.
DEFINITIONS

1. "Act" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended (previously referred to herein as "CCIOA"). The Community (as hereinafter defined) is subject to the Act, its benefits and responsibilities.
2. "Agencies" means the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any such entities.
3. "Allocated Interests" means the Common Expense Liability and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time.
4. "Association" means Metzler Ranch Filing No. 1 Homeowners Association, Inc., a community association of property owners that has such rights, powers, responsibilities and duties as are provided in this Declaration, the Articles of Incorporation and Bylaws of the Association for a nonprofit corporation subject to the Act.
5. "Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association to act on behalf of the Association.
6. "Builder" means any Member other than Declarant who acquires one or more Lots for the purpose of constructing a residence thereon, and who is designated as a Builder by Declarant in its sole discretion from time to time (including the right to withdraw such designation), with such designation to be made by a written instrument duly recorded in the office of the Clerk and Recorder of the County of Douglas, Colorado. At the time this Declaration is made, Declarant recognizes two Builders. As to Parcel II described in Exhibit A hereto, Melody Homes, Inc., a Delaware corporation, is a Builder. As to Parcel III described in Exhibit A hereto, KDB Homes, Inc., a Delaware corporation, is a Builder.
7. "Common Elements" means any property owned or leased by the Association other than a Lot or publicly dedicated property. The Common Elements at the time of recordation of this Declaration are described on Exhibit B attached hereto and incorporated herein by this reference.
8. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot and which Common Expense Liability for each Lot shall be equal to each Owner's proportional share according to the Allocated Interests of such Lot. There shall be a Common Expense Liability as to all Lots created and made a part of the Community.
9. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves. There shall be Common Expenses as to all Lots

created and made a part of the Community; and in addition, there shall be Common Expenses as to all Underdrain Lots created and made a part of the Community.

10. "Community" means real estate described in this Declaration, as supplemented and amended from time to time, with respect to which a Person, by virtue of such Person's ownership of a Lot, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in this Declaration. Declarant intends and declares that this is a "planned community" as that term is used and understood in and pursuant to the Act and that the "Annexable Property" described in the aforementioned Exhibit A is intended to include those Lots to be created and eventually become the Community.

11. "Declarant" means BRE/Metzler L.L.C., a Delaware limited liability company, and any other Person(s) to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds). Any such document shall be deemed to be the designation of a "Builder," as hereinabove provided, unless the document is expressly an assignment of Declarant rights, which provides for assignment or transfer of one or more or all of the Declarant's rights under this Declaration.

12. "Declaration" means this Declaration of Covenants, Conditions and Restrictions recorded in the office of the Clerk and Recorder of Douglas County, Colorado, as amended, clarified and supplemented from time to time.

13. "Design Review Committee" means the committee appointed by the Declarant or by the Board of Directors to review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

14. "Development Rights" means any right or combination of rights reserved by a Declarant in this Declaration and assignable by Declarant to a Builder, as defined hereinabove, to:

- (a) add real estate to this Community and to create Lots or Common Elements within this Community in connection with the addition of such real estate; or
- (b) to withdraw real estate from this Community; and
- (c) do or refrain from doing acts referenced in this Declaration as Development Rights or Declarant Rights.

15. "Eligible Insurer" means an insurer or guarantor of a first Security Interest in a Lot. An Eligible Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a first Security Interest in a Lot. It must provide the Association with the lot and block numbers, and the address of the Lot on which it is the insurer or guarantor of a Security Interest. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XII herein.

16. "Eligible Mortgagee" means the holder of a first Security Interest in a Lot, when the holder has notified the Association, in writing, of its name and address and that it holds a first Security Interest in a Lot. The notice must include the lot and block numbers, and the address of the Lot on which it has a

first Security Interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XII herein.

17. "Improvements" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball hoops, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment, if any.
18. "Lot" means each platted lot shown upon any recorded subdivision map of the real property described on the attached Exhibit A, as the same may be re-subdivided or re-platted from time to time, or any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements and any publicly dedicated property. The total number of Lots, which may be created in this Community shall not exceed four hundred and eighty (480) .
19. "Managing agent" means that person or firm operating and managing this planned community as identified pursuant to Article III, Section 6, of this Declaration.
20. "Member" means each Owner; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.
21. "Owner" means the Declarant, Builder or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation.
22. "Period of Declarant Control" means a length of time expiring seven (7) years after initial recording of this Declaration in Douglas County, Colorado; provided, that the Period of Declarant Control shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots, which may be created and which have been transferred to the first Owner thereof other than Declarant or a Builder, two (2) years after the last conveyance of a Lot by the Declarant or a Builder in the ordinary course of business, or two (2) years after any right to add new Lots to the Declaration was last exercised.
23. "Person" means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.
24. "Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Article IV, Section 12 hereof, and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Article VI, Section 2 hereof, "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or

not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of Douglas County, Colorado, show the Administrator as having the record title to the Lot.

25. "Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Article IV, Section 12 hereof; and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Article VI, Section 2 hereof, the Administrator of Veteran's Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not in the land records of the Clerk and Recorder of Douglas County, Colorado, show the said Administrator as having the record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

26. "Special Declarant Rights" means rights reserved for the benefit of a Declarant to perform the following acts: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, and signs advertising the Community and sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate a Community of the same form of ownership; or to appoint or remove any officer of the Association or any Board of Directors member during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically on the earlier of the following events:

- (a) conveyance of the last Lot by Declarant or a Builder to an Owner other than Declarant or a Builder; or
- (b) seven (7) years from the date of recordation of this Declaration. Notwithstanding the foregoing, such rights shall not terminate automatically with respect to the appointment of officers and directors, which may only be exercised in accordance with Article III hereof.

ARTICLE II. MEMBERSHIP AND VOTING RIGHTS

1. Association. The Association has been or will be formed as a corporation under the Colorado Nonprofit Corporation Act, as amended. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs; except as otherwise provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, the Board of Directors shall be elected by the Members.

2. Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents