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**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**BERRYMAN FARM**

**(a planned community)**

**Weld County, Colorado**

**April 20, 2004**

**AFTER RECORDING, RETURN TO:**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
BERRYMAN FARM**

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BERRYMAN FARM ("Declaration") is made on the date hereinafter set forth, by Proceeds, LLC, a Colorado limited liability company ("Declarant"), and fully supercedes and completely replaces that certain Declaration of Covenants, Conditions and Restrictions for Berryman Farm recorded on March 17, 2004 at Reception No. 3162652 in the real estate records of Weld County, Colorado ("Original Declaration").

**PREAMBLE**

WHEREAS, Declarant is the owner of certain real property located in the Town of Kersey, County of Weld, State of Colorado, as more particularly described on Exhibits A and B, both of which are attached hereto and incorporated herein by this reference. Declarant is the owner of all of such property, except for Lot 6, Block 8 as described on Exhibit A; and

WHEREAS, Declarant intends to create a residential community on the said real property together with other improvements thereon; and

WHEREAS, Declarant will convey the said real property, subject to the covenants, conditions, and restrictions, as hereinafter set forth; and

WHEREAS, Declarant intends that this Declaration fully amend and restate the Original Declaration; and

NOW THEREFORE, Declarant hereby submits the real property described on Exhibits A and B, together with all rights, and appurtenances thereto and improvements thereon to the provisions of the Colorado Common Interest Ownership Act, as it may be amended from time to time. In the event the said Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

Declarant hereby declares that this Declaration shall fully supersede and completely replace the Original Declaration. Upon the recordation of this Declaration, Declarant is the owner of 75% of the Lots subject to the Original Declaration. Declarant has undertaken to amend and replace the Original Declaration, by way of this Declaration, in accordance with the authority granted in Article XIV of the Original Declaration.

Declarant hereby declares that all of the said real property described on said Exhibits A and B shall be held and conveyed subject to the following covenants, conditions, and restrictions, all of



which are declared and agreed to be for the protection of the value of the said real property, and for the benefit of any persons having any right, title or interest in the said real property. Said covenants, conditions, and restrictions shall be deemed to run with the land and shall be a burden and a benefit to any persons acquiring such interest, their grantees, heirs, legal representatives, successors and assigns, and acceptance of such interest by any such persons shall constitute such person's agreement to be bound by the same.

**ARTICLE ONE: DEFINITIONS**

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ACT means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.*, as it may be amended from time to time.

1.2 AGENCIES means and collectively refers to the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD/FHA), 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 of the entities described in this paragraph 1.2.

1.3 ALLOCATED INTERESTS means the Common Expense Assessment Liability and the votes in the Association which are allocated to each of the Lots in the Planned Community. The formulas used to establish the Allocated Interests are as follows:

(a) *Common Expense Assessment Liability.* All Common Expenses shall be levied against Lots on the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Lots within the Planned Community at the time such expense is levied.

In the event that Declarant exercises its right to enlarge this Planned Community in Phases by submitting to the Planned Community additional real property in accordance with ARTICLE TWELVE hereof, the Common Expense Assessment Liability set forth above will be reallocated by Declarant in accordance with the above fraction, applicable to the number of Lots in the Planned Community as enlarged.

(b) *Votes.* Owners shall be entitled to one vote for each Lot owned within the Planned Community.

1.4 ARTICLES means the Articles of Incorporation of the Association.

1.5 ASSESSMENT means the (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, or (d) Fines levied pursuant to this Declaration. "Assessments" means more than one or all of the foregoing.





1.6 ASSESSMENT LIEN means the statutory lien on a Lot for any Assessment levied against that Lot together with all Costs of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

1.7 ASSOCIATION means BERRYMAN FARM HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation, its successors and assigns; the Articles of Incorporation, Bylaws and Rules of which, along with this Declaration, shall govern the administration of the Planned Community, the Members of which shall be all of the Owners of the Lots within the Planned Community.

1.8 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by Declarant as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association.

The term "Board of Directors" as used herein is synonymous with the term "Executive Board" as the latter term is used in the Act.

1.9 BUDGET means the annual budget of the Association prepared and adopted in accordance with Paragraph 4.10 hereof.

1.10 BYLAWS means the Bylaws which are adopted by the Board of Directors for the regulation and management of the Association.

1.11 CITY means the Town of Kersey, Colorado.

1.12 COMMON AREAS means the real property (including all Common Area Improvements located thereon) owned by the Association, all of which is held for the common use and enjoyment of the Owners, the description of which is more fully described on the attached Exhibit B. Declarant has reserved the right herein to create, identify, designate and annex additional Common Areas into the Planned Community.

The term "Common Areas" as used herein is synonymous with the term "Common Elements" as the latter term is used in the Act.

1.13 COMMON AREA IMPROVEMENTS means those Improvements located on the Common Areas, which are owned by the Association for the common use and enjoyment of the Owners and their Guests.

1.14 COMMON EXPENSE ASSESSMENTS means the funds required to be paid by each Owner, as more fully defined in Paragraph 5.2 hereof, in payment of such Owner's Common Expense Assessment Liability.



1.15 COMMON EXPENSE ASSESSMENT LIABILITY means the liability for the Common Expense Assessments allocated to each Lot determined in accordance with that Lot's Allocated Interests as set forth in Paragraph 1.3(a) hereof.

1.16 COMMON EXPENSES means expenditures made, or liabilities incurred, by or on behalf of the Association, together with allocations to reserves.

1.17 COSTS OF ENFORCEMENT means all fees, late charges, interest and expenses, including receiver's fees, and reasonable attorneys' fees and costs incurred by the Association in connection with the collection of Assessments, and the enforcement of the terms, conditions and obligations of the Project Documents.

1.18 COUNTY means Weld County, Colorado.

1.19 DECLARANT means Proceeds, LLC, a Colorado limited liability company, or its successors and assigns. A Person shall be deemed a "successor and assign" of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of the Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of the Declarant under this Declaration which are specifically designated in the written instrument.

1.20 DECLARANT RIGHTS means the development rights, special declarant rights and other rights granted to or reserved by Declarant for the benefit of Declarant as set forth in this Declaration and the Act.

1.21 DECLARATION means this Declaration, the Plat and any supplements and amendments thereto recorded in the Office of the County Clerk and Recorder.

1.22 DESIGN REVIEW COMMITTEE means the Committee formed pursuant to ARTICLE SIX hereof to review and approve or disapprove plans for Improvements as defined herein as more fully provided for by this Declaration.

1.23 DESIGN REVIEW GUIDELINES means the DESIGN REVIEW GUIDELINES FOR BERRYMAN FARM, as amended and supplemented. These guidelines may be adopted by the Design Review Committee to implement and interpret the Design Review/Architectural Approval provisions of ARTICLE SIX of this Declaration.

These guidelines may contain, among other things, guidelines that will clarify the design, materials, heights, size of structures and the maximum and minimum setbacks that will be considered in Design Approval.

1.24 DWELLING UNIT OR UNIT means the residence constructed on each Lot within the Planned Community and any replacement thereof. Dwelling Unit shall include the Lot upon which such Dwelling Unit is constructed.

1.25 ELIGIBLE MORTGAGEE means a holder, insurer or guarantor of a First Security Interest who has delivered a written notice to the Association containing its name, address, the legal description and the address of the Lot encumbered by its First Security Interest, and requesting that the Association notify them of any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.

1.26 FINES means those fines described in Paragraph 5.4(c) of this Declaration.

1.27 FIRST MORTGAGEE means any Person which owns, holds, insures or is a guarantor of a Security Interest as herein defined, which is a First Security Interest encumbering a Lot within the Planned Community. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the Seller, whether such contract is recorded or not.

1.28 FIRST SECURITY INTEREST means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.29 GUEST means (a) any person who resides with an Owner within the Planned Community; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Dwelling Unit within the Planned Community, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract purchaser of a Dwelling Unit.

1.30 IMPACTED OWNER means an Owner who would reasonably be affected by any proposed Improvement; excluding the Owner making the proposal to the Committee. Impacted Owners are identified by the Design Review Committee and take into account the physical proximity of their Lots to the proposed Improvement and as well as other factors deemed pertinent by the Committee.

1.31 IMPROVEMENTS means:

(a) all exterior improvements, structures and any appurtenances thereto or components thereof of every type or kind; and

(b) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, and change of drainage pattern; and

(c) all landscaping features, including, but not limited to, buildings, outbuildings, patios, patio covers, awnings, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, private drives, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, cooling, heating and water softening equipment; and



(d) any change, alteration, modification, expansion, or addition to any previously approved Improvement, including any change of exterior appearance, finish material, color or texture.

1.32 LOT means each platted lot shown upon the Plat of the Planned Community which is subject to this Declaration, together with all appurtenances and Improvements now or hereafter located thereon. Lot shall include any Dwelling Unit constructed thereon as the term Dwelling Unit is herein defined.

The term Lot as used herein is synonymous with the term Unit as the latter term is used in the Act.

1.33 LOTS THAT MAY BE CREATED means 235 Lots, or the maximum number of Lots allowed by any governmental entity having jurisdiction over the Planned Community pursuant to any development plan, including those Lots which shall be included when all of the property described on Exhibit C is annexed to the Planned Community and made subject to the Declaration. Declarant shall not be obligated to expand the Planned Community beyond the number of Lots initially submitted to this Declaration.

In the event that the process of entitlement for Declarant to obtain Building Permits is placed on "hold" (e.g., moratorium, anti-growth legislation, or otherwise by law) for reasons beyond the control of Declarant, the time limitations set forth herein shall be extended until the impediment to entitlement is removed.

1.34 MANAGING AGENT means any one or more persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

1.35 MEMBER means each Owner, as defined in Paragraph 1.37 hereof.

1.36 NOTICE AND HEARING means a written notice and an opportunity for a hearing before the Board of Directors in the manner provided in the Bylaws.

1.37 OWNER means the record Owner of the fee simple title to any Lot which is subject to this Declaration.

1.38 PERIOD OF DECLARANT CONTROL means that period of time as defined in Paragraph 4.7 hereof.

1.39 PERSON means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1.40 PHASE means each phase of development of the Planned Community as determined from time to time by Declarant.

1.41 PLANNED COMMUNITY means such real property and the improvements located thereon as more fully described on Exhibits A and B attached hereto, and such additional property added to the Planned Community pursuant to ARTICLE TWELVE hereof or as otherwise permitted hereunder or by law. The name of the Planned Community is BERRYMAN FARM.

1.42 PLAT means the Final Plat of the BERRYMAN FARM SUBDIVISION, a subdivision recorded in the records of the Weld County Clerk and Recorder's Office at Reception No. 2796688, and the Amended Plat of BERRYMAN FARM recorded in the records of the Weld County Clerk and Recorder's Office at Reception No. 3126670, and any supplements or amendments thereto. The Plat is hereby incorporated herein by this reference.

1.43 PROJECT DOCUMENTS means this Declaration, the Plat, the Articles and the Bylaws, the Design Review Guidelines, Rules (and other documents promulgated by the Board or the Design Review Committee) as they may be amended or supplemented from time to time.

1.44 RULES means the Rules and Regulations adopted by the Board of Directors for the regulation and management of the Planned Community as amended from time to time.

1.45 SECURITY INTEREST means an interest in real estate or personal property created by contract which secures payment of an obligation. The term includes a lien created by a deed of trust, contract for deed, land or sales contract and UCC-1.

1.46 SPECIAL ASSESSMENTS means those Assessments defined in Paragraph 5.4(d) hereof.

1.48 SUPPLEMENTAL DECLARATION means a written instrument containing covenants, conditions, and restrictions, which is recorded, amending this Declaration and/or annexing, in accordance with ARTICLE TWELVE hereof, a portion of the real property described on Exhibit C hereof to the Planned Community.

1.49 VA AND/OR FHA APPROVAL means that the Planned Community has been or may be approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Lots within the Planned Community.

In the event additional real property is made subject to this Declaration in the manner provided for in ARTICLE TWELVE hereof, certain terms defined above shall be expanded to encompass said additional property from the date such additional real property is made subject to this Declaration.

## ARTICLE TWO: SCOPE OF THIS DECLARATION

2.1 Property Subject to this Declaration. Declarant, as the Owner of fee simple title to the Planned Community, by recording this Declaration does hereby subject the Planned Community to the provisions of this Declaration.

2.2 Conveyances Subject to this Declaration. All covenants, conditions, and restrictions which are granted or created by this Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having any interest in the Planned Community, their respective heirs, successors, personal representatives or assigns.

Any instrument recorded subsequent to this Declaration and purporting to establish and affect any interest in the Planned Community shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.3 Owner's Rights Subject to this Declaration. Each Owner shall own his or her Lot in fee simple and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

2.4 First Phase, Number of Lots. The number of Lots within the First Phase of the Planned Community is 24, plus 1 outlot Common Area, as indicated on Exhibits A and B. Declarant reserves the right but not the obligation to create additional Lots by the expansion of the Planned Community in accordance with ARTICLE TWELVE hereof.

2.5 Identification of Lots. The identification number of each Lot is shown on the Plat of the Planned Community.

2.6 Lot Boundaries. The boundaries of each Lot are located as shown on the Plat of the Planned Community.

### ARTICLE THREE: THE COMMON AREAS

3.1 Common Areas Dedication. Declarant has designated certain areas of the Planned Community as Common Areas, as more fully described on the attached Exhibit B. Declarant reserves the right, but has no obligation, to create, identify, designate and annex additional Common Areas into the Planned Community.

3.2 Transfer of Title to the Common Areas. Declarant hereby covenants that it will convey to the Association fee simple title to the Common Areas identified on Exhibit B prior to the conveyance of the first Lot within the Planned Community to an Owner other than Declarant. Declarant reserves the right, but has no obligation, to convey additional Common Areas (some of which are described on Exhibit C attached hereto) to the Association.

3.3 Duty to Manage and Care for the Common Areas. The Association shall manage, operate, care for, insure, maintain, repair, reconstruct, modify and improve all of the Common Areas and the Common Area Improvements located on the Common Areas, and keep the same in an attractive and desirable condition for the use and enjoyment of all of the Owners and their Guests.

3.4 Owner's Rights in the Common Areas. Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Areas which shall be appurtenant to

and shall pass with the title of the Lot to such Owner, subject to the Special Declarant Rights of Declarant reserved herein and the following rights of the Board of Directors:

(a) To borrow money to improve the said Common Areas and to mortgage said Common Areas as security for any such loan; provided, however, that the Association may not subject any portion of the said Common Areas to a mortgage or other security interest unless such is first approved by Owners to which at least 67% of the votes in the Association are allocated, including 67% of the votes allocated to Lots not owned by Declarant as more fully set forth in §38-33.3-312 of the Act.

(b) To convey or dedicate all or any part of the said Common Areas for such purposes and subject to such conditions as may be agreed to by the Owners to which at least 67% of the votes in the Association are allocated, including 67% of the votes allocated to Lots not owned by Declarant as more fully set forth in §38-33.3-312 of the Act.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Paragraph as more fully set forth in §38-33.3-312 of the Act.

(c) To promulgate and adopt Rules with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of an Owner for any period during which any Assessment remains unpaid and, for a period not to exceed 60 days, for any infraction of the Declaration, Bylaws or Rules.

(e) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(f) To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of Common Areas by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate (also see Paragraph 4.13(b) hereof).

(g) To close or limit the use of the said Common Areas temporarily while maintaining, repairing and making replacements in the Common Areas, or permanently if approved by Members to which at least 67% of the votes in the Association are allocated, including 67% of the votes allocated to Lots not owned by Declarant as more fully set forth in §38-33.3-312 of the Act.

(h) To make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(i) The rights granted to the Association and Board of Directors in Paragraph 4.13 hereof.



3.5 Delegation of Use. Any Owner may delegate his or her right of enjoyment to the Common Areas and Common Area Improvements to their Guests.

**ARTICLE FOUR: THE ASSOCIATION**

4.1 Name. The name of the Association is BERRYMAN FARM HOMEOWNERS ASSOCIATION, and it is a Planned Community.

4.2 Purposes and Powers. The Association, through its Board of Directors, shall own, manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and Common Area Improvements and keep the same in an attractive and desirable condition for the use and enjoyment of all of the Owners and their Guests. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Board of Directors shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association.

4.3 Board of Directors/Managing Agent. The affairs of the Association shall be managed by a Board of Directors. By resolution, the Board of Directors may delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws; also see Paragraph 17.6 hereof.

4.5 Membership. Members of the Association shall be every record Owner of a Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Where more than one person holds interest in any Lot, all such persons shall be Members.

The membership of the Association at all times shall consist exclusively of all Lot Owners or, following termination of the Planned Community, of all former Lot Owners entitled to distributions of the proceeds under §38-33.3-218 of the Act, or their heirs, personal representatives, successors or assigns.

4.6 Voting Rights. The Association shall have one class of voting membership. Owners shall be entitled to one vote for each Lot owned within the Planned Community.

The vote for such Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them unless an objection or protest by any other holder of an interest of the Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves. Should the joint owners of a Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on the issue at hand shall be lost.



4.7 Declarant Control of the Association. Subject to provisions of Paragraph 4.8 hereof, there is a "Period of Declarant Control" during which period Declarant may appoint and remove any officer of the Association or any member of the Board of Directors. The Period of Declarant Control is a length of time expiring on the date that is ten (10) years after the date of recording of this Declaration; provided, however, that the Period of Declarant Control in any event terminates no later than the earlier of:

- (a) 60 days after conveyance of 75% of the Lots That May Be Created to Owners other than Declarant; or
- (b) two years after the last conveyance of a Lot by Declarant in the ordinary course of business to Owners other than Declarant; or
- (c) two years after any right to add new Lots to the Declaration was last exercised.

In the event that the process of entitlement for Declarant to obtain Building Permits is placed on "hold" (e.g., moratorium, anti-growth legislation, or otherwise by law) for reasons beyond the control of Declarant, the time limitations set forth herein shall be extended until the impediment to entitlement is removed.

Declarant may voluntarily surrender, which surrender must be evidenced in a written instrument signed by Declarant, the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control. In that event, Declarant may require, for the remaining duration of the Period of Declarant Control, that specified actions of the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

4.8 Election by Owners. Not later than 60 days after conveyance of 25% of the Lots That May Be Created to Owners other than Declarant, at least one member, and not less than 25% of the members of the Board of Directors, must be elected by Owners other than Declarant.

Not later than 60 days after conveyance of 50% of the Lots That May Be Created to Owners other than Declarant, not less than 33 1/3% of the members of the Board of Directors must be elected by Owners other than Declarant.

Not later than the termination of the Period of Declarant Control as set forth in Paragraph 4.7 hereof, the Owners shall elect a Board of Directors consisting of at least three members, at least a majority of whom must be Owners other than Declarant. The Board of Directors shall elect the officers of the Association. The Owners' Board of Directors shall take office at the time of the termination of the Period of Declarant Control upon election.

4.9 Delivery of Documents by Declarant. Within 60 days after the Owners other than Declarant elect a majority of the members of the Board of Directors, as set forth in Paragraph 4.8 hereof, Declarant shall deliver or assign control or ownership of, without charge to the Board of Directors all

property of the Owners and of the Association relating to the Planned Community held by or controlled by Declarant, including, without limitation, the following items:

(a) The original or a certified copy of the recorded Declaration, with all amendments and supplements thereto, the Articles, together with a current Certificate of Good Standing issued by the Colorado Secretary of State, Bylaws, minute books, other books and records, including all income tax returns filed, and any Rules which may have been promulgated;

(b) An accounting of Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ended in accordance with §38-33.3-303(9)(b) of the Act;

(c) The Association funds or control thereof;

(d) An inventory of and all of Declarant's tangible personal property that has been represented by Declarant to be property that is owned exclusively by the Association or that is necessary for and has been used exclusively in the operation and enjoyment of the Common Areas and that is not otherwise leased or loaned from another party for use by the Association;

(e) A copy (for the exclusive use of the Association) of any plans and specifications in Declarant's possession used in the construction of any Common Area Improvements in the Common Areas;

(f) A copy of all insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;

(g) Copies in Declarant's possession of (i) any certificates of occupancy issued with respect to any Common Area Improvements and (ii) any other permits issued by governmental bodies applicable to the Planned Community and which are currently in force or which were issued within one year prior to the date on which Owners other than Declarant took control of the Association;

(h) Written warranties of the contractor, subcontractors, suppliers and manufacturers, if any, that are assignable to the Association and still effective (to the extent not already assigned);

(i) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records;

(j) A copy of any employment contracts in which the Association is a contracting party;

(k) A copy of any service contract in which the Association is a contracting party or in which the Association has any obligation to pay a fee to the persons performing the services; and

(l) A copy of recorded deeds conveying the Common Areas to the Association.

Upon delivery of such items, the Association shall execute and deliver a receipt thereof to Declarant.

4.10 Budget.

(a) *Annual Budget.* In accordance with §38-33.3-303 of the Act, the Board of Directors shall cause to be prepared a Budget for each calendar year. Within 30 days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget within a reasonable time after delivery of the summary.

Unless at that meeting Owners to which at least 67% of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(b) *Amended Budget.* If the Board of Directors deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Paragraph 4.10(a) above, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall be a reasonable time after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least 67% of the votes in the Association are allocated reject the amended Budget, the amended Budget shall be deemed ratified whether or not a quorum is present.

4.11 Association Agreements. Any agreement for professional management of the Planned Community or any contract providing for services of Declarant, may not exceed one year. Any of the foregoing agreements must provide for termination by either party without cause and without payment of a termination fee or penalty upon 90 days' written notice.

The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Period of Declarant Control unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the Period of Declarant Control has passed upon not more than 90 days' notice to the other party thereto.

4.12 Indemnification. As further set forth in the Bylaws, each Officer, Director and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been an Officer, Director or committee member of the Association, or any settlements thereof, whether or not he or she is an Officer, Director or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law.

4.13 Certain Rights and Obligations of the Association.

(a) *Attorney-in-Fact.* This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact as herein provided to deal with the Planned Community upon its damage, destruction, condemnation and/or obsolescence.

The Board of Directors is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the Common Areas so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Planned Community upon its destruction, condemnation or obsolescence as hereinafter provided.

Acceptance of any interest in any Lot by and Owner shall constitute an appointment by the Owner of the Board of Directors as attorney-in-fact as provided above and hereinafter. The Board of Directors shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Planned Community and to perform all of the duties required of it.

(b) *Contracts, Easements, and Other Agreements.* Subject to Paragraph 4.11 above, the Board of Directors shall have the right to enter into, grant, perform, enforce, cancel and vacate: contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use by Owners, their Guests, and other persons, concerning the Common Areas (see also Paragraph 3.4(f) hereof).

Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors, without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

(c) *Other Association Functions.* The Association may undertake any activity, function or service for the benefit of or to further the interests of all Members, some Members, or any Member on a self-supporting, Special Assessment or Common Expense Assessment basis.

(d) *Implied Rights.* The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.14 Certain Rights and Obligations of Declarant. So long as there are unsold Lots within the Planned Community owned by Declarant, Declarant shall enjoy the same rights and assumes the same duties as they relate to each individual unsold Lot, except to the extent said duties are modified by Declarant Rights herein.

4.15 Disclaimer Regarding Security. The Association may, but shall not be obligated to, take measures or maintain or support certain activities within the Planned Community designed to make the Planned Community more secure than it otherwise might be. Neither the Association nor Declarant, or any representative or agent or either of them, shall in any way be considered insurers or

guarantors of safety or security within the Planned Community, nor shall either of them be held liable of any loss or damage by reason of failure to provide adequate security or of the ineffectiveness of any such security measures taken. No representation or warranty is made that any fire protection system, burglar alarm system or to the security system cannot be compromised or circumvented, nor that any such systems or security measure undertaken will prevent loss or provide the detection or protection for which the system is designed or intended.

## ARTICLE FIVE: ASSESSMENTS

5.1 Obligation. Each Owner, including Declarant, shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Fines, (d) Individual Assessments, and (e) Costs of Enforcement, each and all of which shall be a continuing lien upon the Lot against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Lot shall be jointly, severally and personally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Lot.

The omission or failure of the Board of Directors to levy Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

No Owner may waive or otherwise escape liability for the Assessments provided for herein by the non-use of the Common Areas or the abandonment of such Owner's Lot.

5.2 Purpose of the Common Expense Assessments. The Common Expense Assessments levied by the Association shall be used exclusively for the purpose of promoting the welfare and interests of the residents of the Planned Community and the Members of the Association including, without limitation, (a) providing for the administration and management of the Planned Community, (b) providing for the upkeep, improvement, repair, maintenance and reconstruction for the Common Areas and Common Area Improvements, (c) providing blanket hazard insurance for the insurable Common Area Improvements, (d) providing liability insurance to cover incidents occurring on the Common Areas, (e) performing all other obligations of the Association hereunder and under the other Project Documents, and (f) satisfying any other purpose reasonable, necessary or incidental to such purposes.

Such Common Expense Assessments shall include the establishment and maintenance of a Reserve Fund for those items which the Association has an on going duty to repair, maintain or reconstruct on a periodic basis, provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purposes of constructing capital improvements unless approved by a majority of Owners other than the Declarant..

5.3 Date of Commencement of the Common Expense Assessments; Declarant's Right Of Offset.  
The Common Expense Assessment shall commence as to all Lots no later than 60 days after the first Lot is conveyed to an Owner other than Declarant.

Until the commencement of the collection of the Common Expense Assessment, Declarant shall pay all of the expenses incurred and paid for by the Association. Declarant may at any time advance operating funds to the Association. Declarant shall be entitled to offset such amounts so paid or advanced as a credit against future Common Expense Assessments payable by Declarant.

5.4 Levy of Assessments and Fines.

(a) *Common Expense Assessments.* Common Expense Assessments shall be levied on all Lots based upon a Budget of the Association's cash requirements. The Common Expense Assessment Liability shall be allocated among the Lots in accordance with that Lot's Common Expense Assessment Liability as set forth in Paragraph 1.3 hereof and shall commence in accordance with Paragraph 5.3 hereof.

To the extent that any Common Expenses or a portion thereof benefit fewer than all of the Lot Owners, such expenses may be assessed exclusively against the Lots benefited as provided in C.R.S. §38-33.3-315(3)(b) of the Act. To this end and notwithstanding the first paragraph of this Section 5.4(a), Lots for which a certificate of occupancy has not been issued shall be assessed, for all purposes under this Declaration (i.e., for any form of Assessment), at a rate which is one-tenth (1/10<sup>th</sup>) of the rate of Lots that have received a certificate of occupancy.

(b) *Individual Assessments.* The Board of Directors shall have the right to individually levy upon any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges levied under Paragraphs 6.17, 7.5, 7.14, 7.15, 7.16, 9.2, 9.6, 10.2, 10.3, 11.3 and 11.5 hereof.

No Individual Assessment shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws. Individual Assessments shall be collected as part of the Costs of Enforcement.

Individual Assessments may be levied at any time as required and are exempt from any voting requirements by the membership required by other Assessments called for under the Declaration.

(c) *Fines.* The Board of Directors shall have the right to levy a Fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules. No such Fine shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws.

Fines may be levied in a reasonable amount as determined from time to time by the Board of Directors in its discretion and uniformly applied. Fines shall be collected as part of the

Costs of Enforcement. Fines may be levied at any time as required and are exempt from any voting requirements by the membership required for other Assessments called for under the Declaration.

(d) *Special Assessments.* In addition to the other Assessments authorized herein, the Board of Directors, subject to the requirements set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to, the cost of any construction, reconstruction, improvement, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Association provided that any such Assessment shall have the approval of a majority of Owners.

Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance with Paragraph 1.3 hereof, subject to Section 315(3)(b) of the Act and Section 5.4(a) above.

5.5 Due Date. Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

All other Assessments shall be levied on an annual basis and shall be due and payable in installments, in advance, in such frequency as the Board of Directors determines in its discretion from time to time, provided that the initial assessments shall be adjusted to reflect the time remaining in the Association's first fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a prorated share.

Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

Mortgagees are not required to collect Assessments.

5.6 Remedies for Nonpayment of Assessments. If any Assessment (which, for purposes of this section, shall include applicable Costs of Enforcement) is not fully paid within 10 days after the same becomes due and payable, then interest shall accrue at the default rate set by the Board of Directors on any amount of the Assessment in default accruing from the due date until date of payment, and the Board may assess a Late Fee in an amount as determined in the Board's discretion. In addition the Board may in its sole discretion:

- (a) accelerate and declare immediately due and payable all unpaid installments of the Assessment payable for the balance of the fiscal year during which such default occurred; and
- (b) bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and
- (c) proceed to foreclose its lien against the Lot pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments.

5.7 Assessment Lien. The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Board of Directors and for Costs of Enforcement levied against such Lot Owners when the Lot Owner fails to pay as required by the Declaration. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances on a Lot except the following:

- (a) liens and encumbrances recorded prior to the recording of this Declaration; and
- (b) real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and
- (c) the lien of any loan evidenced by a first mortgage or deed of trust, except to the extent the Act grants priority for Assessments to the Association.

The Act does not affect the priority of mechanic's or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may prepare, and record in the Office of the County Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If such a written notice of lien is filed, the cost of the preparation and filing thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Lot shall not affect the lien for said Assessments except that sale or transfer of any Lot pursuant to foreclosure by any First Mortgagee, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Assessment Lien to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.

Any First Mortgagee who acquires title to a Lot by virtue of foreclosing a first deed of trust or mortgage or by virtue of a deed in lieu of foreclosure will take the Lot free of any claims for unpaid Assessments and Costs of Enforcement against that Lot which have accrued prior to the time such First Mortgagee acquires title to the Lot, except to the extent the Act grants lien priority for Assessments of the Association.



In any action by an Association to collect Assessments and Costs of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage.

The Assessment Lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

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

5.8 Assignment of Assessments. The Board of Directors shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is approved in writing by Owners to which at least 67% of the votes in the Association are allocated, including 67% of the votes allocated to Lots not owned by Declarant.

5.9 Surplus Funds. Any surplus funds of the Association remaining at the close of the Association's fiscal year after payment of the Association's expenses and funding the Reserve Fund shall be retained by the Association as unallocated reserves and need not be credited to the Owners to reduce their liability for future Assessments.

5.10 Working Capital Fund. At the closing of the initial sale of a Lot to an Owner, other than Declarant, a non-refundable contribution shall be made by such Owner to the Working Capital Fund of the Association in an amount equal to two months Common Expense Assessment then in effect. Said contribution shall be collected and transferred to the Association at the time of closing of the sale of each Lot and shall be held by the Association for the use and benefit of the Association including meeting unforeseen expenditures or purchasing additional equipment or services.

Such contribution to the Working Capital Fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the later sale or transfer of his or her Lot, an Owner shall NOT BE ENTITLED to a credit from the Association for the aforesaid contribution. In the event that the Declarant contributes to the Working Capital Fund for a Lot(s)

prior to the closing of the initial sale of such Lot(s), then at the closing of such Lot(s) the purchaser will reimburse Declarant for such Working Capital Fund contribution.

Declarant is prohibited from using the Working Capital Fund to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficits during Declarant Control Period.

5.11 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owner's First Mortgagee upon written request by such party delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's Registered Agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot.

The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or First Mortgagee, delivered personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party, then the Association shall have no right to assert a priority lien upon the Lot for unpaid Assessments which were due as of the date of the request (See C.R.S. §38-33.3-316).

5.12 No Offsets. Except as specifically set forth in this Declaration, all Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

## **ARTICLE SIX: ARCHITECTURAL APPROVAL/DESIGN REVIEW**

6.1 Generally. Each Improvement must be constructed, and may thereafter be removed, altered or modified, in accordance with the "Design Review Guidelines", if available, and approved in accordance with this ARTICLE SIX.

The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Design Review Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

6.2 Committee Approval of Improvements Required. The approval by the Design Review Committee (the "Committee") shall be required prior to the commencement of the construction, alteration, modification, expansion, addition, removal, demolition or destruction of any Improvements on any portion of the Planned Community, including any change of exterior appearance, finish material, color or texture; except, in any such case, by Declarant with respect to any original first built Improvements constructed by or through Declarant. This approval of the Committee is in addition to the review and approval by the City or other political subdivision with jurisdiction over the premises.



A purchase of any Lot within the Planned Community does not grant any implied guarantee or other assurance of approval by the Committee of the Improvement to be located thereon.

No permission or approval shall be required to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Dwelling Unit.

6.3 Membership of the Committee. The Committee shall consist of up to three members, the initial number and the members of which shall be determined by Declarant in its sole discretion. Declarant shall have the continuing right to appoint and reappoint the members of the Committee, which right shall terminate at the option of Declarant but, in any event, shall terminate without further act or deed upon the completion of construction of the last Dwelling Unit within the Planned Community, the provisions of Paragraph 13.3 hereof notwithstanding. Thereafter, the Committee shall consist of three members, and the Board of Directors shall have the right to appoint the members of the Committee. Members of the Committee appointed by the Board of Directors must be Members of the Association.

Members of the Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

6.4 Address of the Committee. The address of the Committee shall be that of the principal office of the Association.

6.5 Submission of Plans/Design Review Fee. Prior to commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement ("Applicant") shall submit to the Committee, at its offices, or at such other place as the Committee may designate, such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Committee shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement.

The Committee may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed Improvement. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvements or that the fee shall be determined in any other manner, such as the estimated cost of the proposed Improvement. Said fee may be used to compensate any consultant as the Committee deems necessary to assist the Committee in the performance of its duties. Members of the Committee may be reimbursed for services rendered and for directly related out-of-pocket expenses.

The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement. Until receipt by the Committee of all required materials in connection with the proposed Improvement, the Committee may postpone review of any materials submitted for approval by a particular Applicant.

Except as provided in Paragraph 6.2 hereof, no Improvement of any kind shall be erected, altered, placed, or maintained within the Planned Community unless and until the final plans, elevations, and specifications therefore have received written approval by the Committee as herein provided.

6.6 Delegation/Waiver. The Committee may at its discretion delegate to the Board of Directors any of its powers granted to it by this ARTICLE SIX by written notice to the Board of Directors indicating what powers and authority are granted to the Board. Such delegation shall be effective from the date such notice is given.

The approval or consent of the Committee, any representative thereof, or the Board of Directors, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

The Committee may waive or grant reasonable variances or adjustments to any provision of this ARTICLE SIX in the event there is a practical difficulty or unnecessary hardship.

6.7 Criteria for Approval. The question of reasonableness and good faith is the standard applicable in reviewing plans for approval by the Committee. The Committee shall have the right to disapprove any proposed Improvement which is not in accordance with the Design Guidelines, or is not suitable or desirable in the Committee's opinion for aesthetic or other reasons.

In passing upon the Improvement the Committee shall have the right to take into consideration the suitability of the proposed Improvement and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the Improvement as planned on the outlook from the adjacent or neighboring Lots, and if it is in accordance with all of the provisions of this Declaration.

The Committee may disapprove the proposed Improvement if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials submitted to be contrary to the spirit or intent of the Declaration. The Committee may condition its approval of any proposed Improvement upon the making of such changes thereon as the Committee may deem appropriate.

6.8 Decision of the Committee. The decision of the Committee shall be made within 30 days after receipt by the Committee of all materials required by the Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Improvement, the reasons therefore shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee.

A majority vote of the Committee shall constitute the action of the Committee.



The Committee shall report in writing to the Board of Directors all final actions of the Committee if requested by the Board of Directors.

The Committee shall not be required to keep the materials submitted beyond two years from date of approval or two years from the date of the completion of the Improvement to be constructed, which ever shall be the last to occur.

6.9 Appeal to the Board of Directors. If the Committee disapproves or imposes conditions on the approval of a proposed Improvement, the Applicant (after the period of Declarant's control of the Committee has terminated) may appeal to the Board of Directors by giving written notice of such appeal to the Board of Directors and the Committee within 10 days after notice of such disapproval or conditional approval is given to the Applicant.

The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant and the Committee and shall decide, with reasonable promptness, whether or not the proposed Improvement or the conditions imposed by the Committee shall be approved, disapproved or modified.

If the Committee approves a proposed Improvement, any Impacted Owner affected by the Committee's decision may appeal the approval to the Board of Directors by giving written notice of such appeal to the Board of Directors, the Committee and the Applicant within ten days after such approval.

The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant, the Impacted Owner and the Committee. The Committee shall decide with reasonable promptness, whether or not the proposed Improvement's approval shall be upheld. The decision of the Board of Directors shall be final and binding on the parties concerned.

This appeal right to the Board shall only be available after the period of Declarant control of the Committee terminates.

6.10 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Committee within 30 days after the date of receipt by the Committee of all necessary materials as determined by the Committee.

6.11 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement, any materials submitted to the Committee in connection with the proposed Improvement and any conditions imposed by the Committee. Failure to complete any proposed Improvement within 12 months from the date of the commencement of construction (commencement of excavation) shall constitute a violation of this Article unless extended by the Committee.

6.12 Notice of Completion. Upon completion of the Improvement, the Applicant shall give written Notice of Completion to the Committee. Until the date of receipt of a Notice of Completion, the Committee shall not be deemed to have notice of completion of any Improvement.

6.13 Inspection of Work. The Committee or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion; provided that the right of inspection shall terminate 30 days after the Committee receives a Notice of Completion from the Applicant.

6.14 Notice of Noncompliance. If, as a result of inspections or otherwise, the Committee finds that any Improvement has been done without obtaining the approval of the Committee; or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Committee, or was not completed within 12 months from the date of the commencement of construction, the Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event within 30 days after the Committee has inspected the Improvement, but in no event no later than 30 days after the Committee's receipt of such Applicant's Notice of Completion. The Notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

6.15 Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Committee fails to notify the Applicant of any noncompliance within 30 days after receipt by the Committee of written Notice of Completion from the Applicant, the Improvement shall be deemed to be in compliance if the Improvement was, in fact, completed as of the date of Notice of Completion.

6.16 Appeal to the Board of Directors of Finding of Noncompliance. If the Committee gives any Notice of Noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Committee within ten days after receipt by the Applicant of the Notice of Noncompliance.

If, after a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Board of Directors and the Applicant within 30 days after delivery to the Applicant of a Notice of Noncompliance. In either event, the Board of Directors after Notice and Hearing shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof.

This appeal right to the Board shall only be available after the period of Declarant control of the Committee terminates.

6.17 Correction of Noncompliance. If the Board of Directors determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than 30 days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board's ruling within such period, the Board may, at its option, record a "Notice of

Noncompliance" against the Lot on which the noncompliance exists, or may remove the noncomplying Improvement or may otherwise remedy the noncompliance.

The Board may levy an Individual Assessment in accordance with Paragraph 5.4(b) hereof against the Owner of such Lot for such costs and expenses incurred as a result of such noncompliance. The right of the Board of Directors to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Board of Directors may have at law, in equity, or under this Declaration.

This appeal right to the Board shall only be available after the period of Declarant control of the Committee terminates.

6.18 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder.

6.19 No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors. Specifically, the approval by the Committee of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement or similar proposals, plans, specifications or other materials submitted with respect to any other Improvement.

6.20 Estoppel Certificates. The Board of Directors shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

6.21 Architectural Standards/Design Guidelines. The Committee may promulgate rules and regulations to interpret and implement the provisions of this Article. These rules and regulations shall be known as the "Design Review Guidelines" and shall contain, among other things, guidelines which will clarify the types of designs and materials that will be considered in design approval. The Applicant shall be responsible to apply for all permits and approvals required by the City. The Committee may review and revise the said Design Review Guidelines from time to time in its sole discretion so long as said guidelines are not discriminatory and are uniformly applied.

6.22 No Liability for Committee Action. There shall be no liability imposed on the Design Review Committee, any member of said Committee, any authorized representative of said Committee, the Association, any member of the Board of Directors or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee, if such party acted in good faith and without malice.

In reviewing any matter, the Committees shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters.

## ARTICLE SEVEN: LAND USE AND OTHER RESTRICTIONS

7.1 Limitations and Restrictions. All Lots and Common Areas shall be used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions for Declarant as set forth in this Declaration.

The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

7.2 Land Use and Occupancy. Each Owner shall be entitled to the exclusive ownership and possession of such Owner's Lot and Dwelling Unit. Subject to Declarant Rights reserved or described herein and the exemptions for Declarant set forth in Paragraph 7.25 hereof, no Dwelling Unit within the Planned Community shall be used for any purpose other than single-family residential purposes as generally defined, provided however, Owners may conduct business activities within their Dwelling Unit provided that all of the following conditions are satisfied in the sole discretion of the Board of Directors:

(a) the business conducted is clearly secondary to the residential use of the Dwelling Unit and is conducted entirely within the Dwelling Unit;

(b) the existence or operation of the business is not detectable from outside of the Dwelling Unit by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

(c) the business does not result in an undue volume of traffic or parking within the Planned Community, which determination shall be made by the Board of Directors in its sole discretion from time to time;

(d) the business conforms to all zoning requirements of the City and other governmental entity regulations with jurisdiction in the premises, and is lawful in nature; and

(e) the business conforms to any rules and regulations that may be imposed by the Board of Directors from time to time on a uniform basis.

Uses described as "day care" or "child care" facilities (licensed or unlicensed) are expressly prohibited except with the prior written permission of the Board of Directors.

7.3 Building Locations, Height Restrictions, and Lot Coverage. The Committee shall approve the location, height and square footage of any Improvement placed on any Lot. No Improvement shall exceed the height as set forth in the City's Building Code or approved Development Plan, if any.



Such approval must be obtained before commencement of any construction or alteration in accordance with ARTICLE SIX hereof.

7.4 Temporary Structures and Carriage Houses. No house trailer, tent, (except in accordance with Paragraph 7.15 hereof), detached garage, shed or other outbuilding shall be placed or erected upon part of the Planned Community except with the prior written approval of the Committee obtained in each instance.

No Dwelling Unit located upon the Planned Community shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any Dwelling Unit when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth.

Any carriage house (as defined by applicable zoning regulations) or related secondary dwelling located on a Lot may be leased by the Owner pursuant to Rules adopted by the Board; but title to such dwelling may not be conveyed separately from title to the Lot.

7.5 Restrictions on Garbage and Trash. Each Owner shall keep all of his or her trash, garbage, or other refuse in a container in his or her garage or in an enclosed area serving as a trash enclosure. The Association shall provide for trash and garbage removal services.

No trash, litter, garbage, grass, shrub or tree trimmings, scrap refuse or debris of any kind shall be permitted to remain exposed upon any Lot so it is visible from any neighboring Lot, Common Areas or from the street except that any container containing such material may be placed outside at proper times for garbage or trash pickup. No trash, garbage or other refuse shall be burned in outside containers, barbecue pits or the like.

The Board of Directors shall have the right and duty, through its agents and employees, after Notice and Hearing, to enter upon any Lot and remove such unsightly objects and materials. The cost of such removal shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.4(b).

7.6 Nuisances. No noxious or offensive activity shall be carried on upon the Planned Community or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or which is or may cause an unreasonable embarrassment, disturbance or annoyance to others, or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

7.7 No Annoying Lights, Sounds, or Odors. No light shall be emitted from any portion of the Planned Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Planned Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Planned Community except with the prior written approval of the Committee.

7.8 No Hazardous Activities. No activity shall be conducted on any portion of the Planned Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Planned Community and no open fires shall be lighted or permitted on any portion of the Planned Community except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

7.9 No Unsightliness. All equipment shall be stored within the Dwelling Unit or garage, including all bicycles, tractors, snow removal equipment and garden or maintenance equipment, except when actually in use.

No types of exterior refrigerating, cooling or heating apparatus shall be permitted unless approved by the Committee.

No laundry or other articles may be hung on or from decks or patios or any other portions of an Owner's Dwelling Unit.

7.10 Utilities. Except as provided in Paragraph 8.2 hereof, all electric, television, radio and telephone line installations and connections from the Owner's property line to the Dwelling Unit shall be placed underground and have the prior approval of the Committee. All types of exterior refrigerating, cooling or heating apparatus installed outside the Dwelling Unit must be approved by the Committee. All solar collector installations must be approved by the Committee prior to installation. All utility installations shall comply with all state laws and City ordinances.

7.11 Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Planned Community except such signs as may be approved in writing by the Committee which may include signs indicating protection by Security Systems and Neighborhood Watch Programs. One sign advertising a Lot for sale or for lease may be placed on such Lot or Dwelling Unit; provided however, that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Committee and shall comply with the local sign codes and with all other applicable statutes, ordinances and regulations.

Notwithstanding the foregoing, reasonable signs and advertising used by Declarant in connection with development of or construction on a Lot, shall be permissible.

7.12 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on the Planned Community which may result in an increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

7.13 Compliance with Laws. No unlawful use shall be permitted or conducted of any Lot or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Lots or any portion thereof shall be observed.

7.14 Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Planned Community; except that dogs, cats or other customary household pets may be kept thereon if they are not raised, bred or maintained for any commercial purpose, and are not kept in such number or in such manner as to create a nuisance or inconvenience to any resident of the Planned Community.

The Board of Directors shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Directors shall take such action or actions as it deems reasonably necessary to correct the violation to include, after Notice and Hearing, directing permanent removal of the pet or pets from the Planned Community.

Household pets shall not be allowed to run at large within the Planned Community, but shall at all times be under the control of such pet's Owner and such pets shall not be allowed to litter the Common Areas. Pets shall be on a leash or held while in the Common Areas.

Each Owner is responsible for cleaning up his or her pet's waste from any Lot or Common Areas within the Planned Community.

The Board of Directors is granted the authority to enforce the provisions of this Paragraph by the levy of Fines against the Owner in accordance with Paragraph 5.4(c) hereof.

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Planned Community or incurred by the Association in cleanup after such pets may be levied against such pet's Owner as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

No dog runs or animal pens of any kind shall be permitted on any Lot except with the prior written approval of the Committee or pre-approved plan.

7.15 Vehicular Parking, Storage, and Maintenance. No house trailer, camping trailer, horse trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than 3/4 ton, recreational vehicle or equipment, mobile home, or similar vehicle may be parked or stored anywhere within the Planned Community unless it is parked in a garage, unless otherwise approved by the Board of Directors, and unless they are being actively loaded or unloaded. This applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles". No emergency or temporary parking shall continue for more than 72 hours.

Parking is not allowed on landscaped, lawn areas or fire lanes.

No abandoned, unlicensed, wrecked or inoperable vehicles of any kind shall be stored or parked within the Planned Community except in garages or except in emergencies. Any "wrecked" vehicle shall be as determined by the Board of Directors in its sole discretion. Any "abandoned or

inoperable" vehicle shall be defined as any of the vehicles listed above or any other kind of passenger vehicle which has not been driven under its own propulsion for a period of two weeks or longer, or which does not have installed within it an operable propulsion system; provided however, that any vehicle belonging to any Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town so long as the Board has been notified.

The Board of Directors shall have the right to remove and store a vehicle in violation of this Paragraph after Notice and Hearing, the expenses of which shall be levied against the Owner of the vehicle as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

Each Dwelling Unit within the Planned Community shall include an enclosed garage of a size sufficient to accommodate a minimum of two full sized automobiles.

Subject to any Rules adopted by the Board, vehicle maintenance is allowed only in the garage or in the driveway of an Owner's Unit provided, in the latter case, it shall not last more than 24 hours. Car washing is not considered vehicle maintenance.

Owners are encouraged to keep their garage doors closed except when in use.

It was the intent of Declarant in designing the overall parking plan for the Planned Community that garages be used in such a manner so that vehicles would be parked within such garages. Therefore, any use of a garage that does not allow a vehicle to be parked within such space is expressly prohibited. The Board of Directors is granted the authority to enforce the provisions of this Paragraph by the levy of Fines against the Owner in accordance with Paragraph 5.4(c) hereof.

7.16 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property within the Common Areas, such Owner shall be liable and responsible for the payment of same.

The amount of such loss or damage, together with costs of collection and reasonable attorney's fees, if necessary, may be collected by the Board of Directors, from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 5.4(b) hereof.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 7.16 shall be made by the Board of Directors and shall be final.

7.17 Exterior Equipment Prohibition. No exterior equipment or fixtures, including, but not limited to, the following shall be permitted without the written consent of the Committee: air conditioning units, swamp coolers, or other ventilating equipment; and any type or kind of wiring, ducts, or pipes, excluding holiday wiring.

7.18 Antennas and Satellite Dishes. Except with the prior approval of the Committee, no satellite dishes, antennas, and similar devices for the transmission or reception of television, radio, satellite, or other signals of any kind shall be permitted, except that:



- (a) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter;
- (b) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or
- (c) antennas designed to receive television broadcast signals (collectively, "Permitted Devices")

shall be permitted, provided that any such Permitted Device for a Dwelling Unit is placed in the least conspicuous location on the Lot at which an acceptable quality signal can be received and is not visible from the street, Common Areas, or neighboring Dwelling Units, or is screened from the view from adjacent Dwelling Units in a manner approved by the Committee, and provided further that any such Permitted Device must be as small and unobtrusive as possible and, in the case of an antenna, may be installed on the exterior of a Dwelling Unit only if installation in the attic portion of the Unit is not physically possible or would impair reception.

This Paragraph is intended to comply with the Telecommunications Act of 1996 ("Act") and the rules and regulations promulgated by the Federal Communications Commission ("FCC"). Specifically, this Paragraph is not intended to unreasonably delay or prevent installation, maintenance or use of Permitted Devices; unreasonably increase the cost of installation, maintenance or use of Permitted Devices; or preclude reception of an acceptable quality signal.

In the event that any portion of this Paragraph is found to violate the Act or any rule or regulation of the FCC the portion of this Paragraph that is found to be in violation shall be stricken and the remaining provisions of this Paragraph shall remain in full force and effect.

**7.19 Lease of a Dwelling Unit.** An Owner shall have the right to lease his or her Dwelling Unit upon such terms and conditions as the Owner may deem advisable, subject to the following:

- (a) any such lease or rental agreement must be in compliance with applicable local, state and federal laws.
- (b) no Owner may lease or rent (i) less than his or her entire Dwelling Unit; (ii) for transient or hotel purposes; or (iii) for a term of less than six months in duration unless it is a lease extension;
- (c) any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, and the Articles and Bylaws, and the Rules of the Association;
- (d) such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of this Declaration, or the Articles or Bylaws or the Rules shall constitute a

default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them to include, but not be limited to, eviction of the lessee from the Dwelling Unit.

(e) the Board of Directors shall be furnished with a copy of the lease or rental agreement upon its request.

A first mortgagee who has acquired title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure, shall not be limited by the provisions of this Section 7.19.

7.20 Fences and Other Exterior Improvements. Except as otherwise approved by the Committee, only privacy fences enclosing rear patios and dog run fences in the rear yards that adhere to the Design Review Guidelines and are approved by the Design Review Committee will be allowed. Except as approved by the Committee, no basketball hoops, poles or backboards, other playground equipment, clotheslines, wood piles or storage areas or containers may be installed on any Lot. No mailboxes, landscaping, or other exterior improvements shall be constructed, installed, erected or maintained on any Lot unless approved by the Committee and except as were installed or permitted to be installed by Declarant in its construction of Dwelling Units on the Lots.

7.21 Window Coverings. Window coverings on all exterior windows of a Dwelling Unit must be installed by the Owner of the Unit (at the Owner's cost) within 60 days following the conveyance of title to the Dwelling Unit to the Owner thereof (whether by Declarant or a subsequent Owner).

Except as approved by the Committee, such window coverings, as seen from outside, must be a neutral color that blends with the exterior color of the Dwelling Unit and the building of which it is a part (i.e., white, off-white, light beige or wood tones). Tinting of exterior windows shall be subject to the prior approval of the Committee pursuant to the provisions of ARTICLE SIX hereof. No reflective glazing, silver foil or other similar sun screening material shall be allowed on any exterior windows of a Unit.

7.22 Rules. Every Owner and his or her Guests shall adhere strictly to the Rules as promulgated by the Board of Directors, as amended from time to time.

7.23 Exterior Lighting. Any exterior lighting installed on any Dwelling Unit shall be downward directed and of such controlled focus and intensity so as to not disturb residents of neighboring Dwelling Units.

7.24 Exemptions for Declarant. So long as Declarant owns a Lot within the Planned Community, Declarant shall be exempt from the provisions of this ARTICLE SEVEN to the extent that it impedes, in Declarant's sole discretion, Declarant's development, construction, marketing, sales, or leasing activities.

7.25 Enforcement. The Association, acting through its Board of Directors, shall have the standing and power to enforce all of the above land use and other restrictions.

## ARTICLE EIGHT: EASEMENTS

8.1 Generally. The Planned Community shall be subject to all easements as shown or created on the Plat, those of record, those provided in the Act and those set forth in this Article and in other provisions of this Declaration.

8.2 Utility Easements. There is hereby created and granted a blanket easement on, over, in, under and through the Common Areas for the installation, replacement, repair, operation and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity and satellite and cable systems. Said blanket easement includes future utility services not presently available to the Planned Community that may be reasonably required in the future.

Should any utility company furnishing a service covered by the easement herein created request a specific easement by separate recordable document, Declarant shall have, and hereby reserves, the right and authority to grant such easement upon, across, over or under any part or all of the Common Areas without conflicting with the terms hereof; provided, however, that such power shall cease upon termination of the Declarant Rights as provided in Paragraph 13.3, at which time such reserved right shall vest in the Association.

The easements granted in this Paragraph shall in no way affect, avoid, extinguish or modify any other recorded easement(s) within the Planned Community.

8.3 Easements for the Association. The Board of Directors (its agents, employees, and contractors) is hereby granted an easement on, over, in, under and through each Lot to perform its obligations pursuant to this Declaration.

8.4 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Planned Community, to enter upon any part of the Planned Community in the performance of their duties.

8.5 Recording Data Regarding Easements. Pursuant to §38-33.3-205(m) of the Act, the recording data for recorded easements and licenses appurtenant thereto, or included in the Planned Community or to which any portion of the Planned Community is subject to are identified on the attached Exhibit D, as of the date of the recordation of this Declaration.

8.6 Easement for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Areas, or upon another Lot, the Owner of that Lot shall and does have an easement for the existence of such encroachment and for the maintenance of same. The easement shall extend for whatever period of time the encroachment exists. Such easements for encroachments shall not be considered to be encumbrances either on the Common Areas or on a Lot. Encroachments referred to herein include, but are not limited to, unintentional encroachments caused by error in the original construction of Improvements, by error in the Plat, by settling, rising or shifting of the earth, or by

changes in position caused by repair or reconstruction of the Planned Community or any part thereof or by any other movement of any portion of the improvements located within the Planned Community.

8.7 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Lots owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

## ARTICLE NINE: INSURANCE/CONDEMNATION

9.1 Authority to Purchase/General Requirements. All insurance policies relating to the Association, the Common Areas and the Common Area Improvements shall be purchased by the Board of Directors. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, renewals of, or termination of insurance coverages obtained on behalf of the Association.

The Board of Directors shall not obtain any policy where under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the Association, Owner or First Mortgagee, or by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or the policy includes any limiting clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

Each such policy shall provide that:

(a) The insurer to the extent possible waives any right to claim by way of subrogation against Declarant, the Association, the Board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households.

(b) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner or his or her Guests or of any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent cure the defect and neither shall have so cured such defect within 30 days after such demand;

(c) Such policy, including any fidelity insurance of the Association referred to in Paragraph 9.4 hereof may not be canceled, or substantially modified by any party (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Board of Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy;



(d) Such policy must provide that no assessment may be made against a First Mortgagee, its successors or assigns and that any assessment made against others shall not become a lien on a Lot or Dwelling Unit superior to the lien of a First Mortgagee;

(e) Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner, if such coverage is available;

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "A" or better if reasonably available, or, if not reasonably available, the most nearly equivalent rating.

All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) in which it appropriately names the First Mortgagee in the policy, its successors and assigns, beneficiary.

9.2 Hazard Insurance. The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring any of the insurable improvements located on the Common Areas.

Such insurance shall at all times represent 100% of the current replacement cost based on the most recent appraisal of all insurable improvements in the Common Areas. The current replacement cost shall not include values for land, foundation, excavation and other items normally excluded therefrom and shall be without deduction for depreciation and with no provision for co-insurance. If available, the policy shall be endorsed with a "Guaranteed Replacement Cost Endorsement".

Such policies shall also provide:

(a) The following endorsements or their equivalent: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Cost of Demolition Endorsement, Increased Cost of Construction Endorsement, Agreed Amount Endorsement, and Inflation Guard Endorsement, if available.

(b) That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees, unless otherwise required by law.

(c) That 30 days written notice to the Association, and to each servicer that services a Fannie Mae-owned, HUD-insured or securitized mortgage, must be given before the policy can be canceled or substantially modified for any reason.

A certificate, together with proof of payment of premiums, shall be delivered by the insurer to any Owner and First Mortgagee requesting the same, within at least 30 days of the request therefor.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the Association. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors and provide that all claims are to be settled on a replacement cost basis.

The Association shall hold any insurance proceeds received in trust for the Owners and their First Mortgagees as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Areas. Owners and First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Areas have been repaired or restored. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the insurance proceeds.

The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, \$10,000.00 or one percent of the face amount of the policy whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's Reserve Funds and be so designated.

The Board shall have the authority to levy, after Notice and Hearing, against Owners causing such loss for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

9.3 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including eviction, libel, slander, false arrest and invasion of privacy) and property damage insurance covering all of the Common Areas, insuring each officer, director, the Managing Agent and the Association.

Such coverage under this policy shall include, without limitation, the legal liability of the insureds for property damage, bodily injuries and deaths of persons that result from the operation, maintenance or use of the Common Areas and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to the Planned Community similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Workmen's Compensation and Employer's Liability Insurance, Comprehensive Automobile Liability Insurance, Severability of Interest Endorsement.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury, including deaths of

persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

Absolute liability is not imposed on Owners for damage to Common Areas or Lots within the Planned Community.

The policy must include a provision that calls for 30 days written notice to the Association before the policy can be canceled or substantially modified for any reason. The same notice must also be given to each servicer that services a Fannie Mae-owned, HUD-insured or securitized mortgage in the Planned Community.

9.4 Fidelity Insurance. The Association shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its management agent at any time while the policy is in force; provided, however, in any event the aggregate amount of such insurance shall not be less than a sum equal to three months' aggregate assessments on all Lots, plus Reserve Funds.

The policy must include a provision that calls for 30 days written notice to the Association before the policy can be canceled or substantially modified for any reason. The same notice must also be given to each servicer that services a Fannie Mae-owned, HUD-insured or securitized mortgage in the Planned Community.

A management agent that handles funds for the Association should be covered by its own fidelity insurance policy which must provide the same coverage required of the Association.

9.5 Additional Insurance. If the Common Areas within the Planned Community are identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance for the Common Areas shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of the then current replacement cost of the Common Areas and the Common Area Improvements located thereon as shown on the current FEMA map.

If the Common Areas at the time of the recording of this Declaration are not identified as a Special Flood Hazard Area but become reclassified at a later date as such, the Board of Directors shall obtain flood insurance for the Common Areas in accordance with the above. Conversely flood insurance may be discontinued when the Common Areas are reclassified out of the Special Flood Hazard Area.

The Association may also maintain coverage for:

(a) Adequate Directors and Officers liability insurance, if reasonably available, and if deemed consistent with good business practices, for errors and omissions on all Directors and Officers to be written in an amount which the Board of Directors deems adequate;

(b) Worker's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter acquired by law;

(c) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to the Planned Community.

9.6 Payment of Insurance Premiums. The cost of the insurance obtained by the Association in accordance with this Article shall be paid from Association funds and shall be collected from the Owners as part of the Common Expense Assessment as provided for in Paragraph 5.4(a) hereof.

In the event there are not sufficient funds generated from the Common Expense Assessment to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Paragraph 5.4(b) hereof and such Assessment shall be exempt from any special voting requirements of the Membership. Such Assessment shall be prorated among Owners in accordance with the Owners' Common Expense Liability set forth in Paragraph 1.3 hereof, subject to Section 5.4(a).

9.7 Separate Insurance. No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Paragraph.

9.8 Damage to Property. Any portion of the Common Areas and Common Area Improvements that is damaged or destroyed and for which insurance is carried by the Association, shall be repaired or reconstructed by the Board of Directors in accordance with ARTICLE TEN hereof.

9.9 Condemnation. If a part of the Common Areas are acquired by condemnation, that portion of any award attributable to the Common Areas taken must be paid to the Association as attorney-in-fact to be held in trust for the use and benefit of the Association, the Owners and the holders of their Security Interests as their interests may appear. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the Condemnation Award.

## **ARTICLE TEN: RESTORATION UPON DAMAGE OR DESTRUCTION**

10.1 Duty to Restore Common Areas. In the event of damage or destruction to any portion of the Common Areas and/or the Common Area Improvements which is covered by insurance carried by the Association, the insurance proceeds shall be applied by the Board of Directors to such reconstruction and repair.



The Common Areas and its Improvements must be repaired and restored in accordance with either the original plans and specifications, or other plans and specifications which have been approved by the Board of Directors.

10.2 Use of Insurance Proceeds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage to the Common Areas, the Board of Directors shall levy an Individual Assessment in the aggregate amount of such insufficiency pursuant to Paragraph 5.4(b) hereof, and shall proceed to make such repairs or reconstruction. The amount of each Owner's Individual Assessment shall be such Owner's Common Expense Liability shall be determined in accordance with Paragraph 1.3 hereof, subject to Section 5.4(a).

If all of the damage to the Common Areas covered by the Association's insurance is not repaired or reconstructed, the insurance proceeds attributable to the damage shall be used to restore the damaged portion of the Common Areas to a condition compatible with the remainder of the Planned Community and the remainder of the proceeds shall be distributed to the Association.

10.3 Duty to Restore Dwelling Units. If due to casualty or for any other reason a Dwelling Unit located on a Lot is destroyed or so damaged that the Dwelling Unit is no longer habitable, then the Owner of such Lot shall, within a reasonable time not to exceed 120 days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the Dwelling Unit or demolish the same. All repair and reconstruction shall be in accordance with plans approved by the Committee in the event the plans and specifications differ from the original approved plans and specifications.

Demolition of a Dwelling Unit shall include removal of any foundation slab, basement walls and floors, regrading the Lot to a level condition and the installation of such landscaping as may be required by the Committee pursuant to a plan submitted to the Committee by the Owner of said Lot.

If an Owner does not either commence repair, reconstruction or demolition activities within a reasonable time as provided hereinabove and diligently pursue the same in conformance with plans approved by the Committee, then the Association may, in its reasonable discretion, after providing the Notice and Hearing, enter upon the Lot for the purpose of demolishing the balance of the Dwelling Unit and landscape the Lot in conformance with approved plans. The cost related to such demolition and landscaping shall be levied against the Owner as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

## ARTICLE ELEVEN: MAINTENANCE

11.1 Maintenance of the Common Areas and Common Area Improvements. The Association shall provide for the repair, maintenance and reconstruction of the Common Areas and Common Area Improvements. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the said Common Areas and its Improvements in an attractive, clean,



functional and in good repair and may make necessary or desirable alterations or improvements thereon or thereto or replacements thereof.

11.2 Maintenance of the Dwelling Units. All Dwelling Unit maintenance, repair and reconstruction shall be the sole responsibility and at the sole expense of the Owner.

11.3 Owner's Failure to Maintain, Repair, and/or Reconstruct. In the event that a Dwelling Unit is not properly maintained and repaired, the Board of Directors, after Notice and Hearing as set forth in the Association's Bylaws (and after a determination by the Board that the condition of such Dwelling Unit negatively impacts other Owners or the value of other Dwelling Units within the Planned Community) shall have the right to enter upon the Dwelling Unit to perform such work as is reasonably required to restore the Dwelling Unit to a condition of good order and repair and charge the cost thereof to such Owner as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

11.4 Maintenance of the Drainage Pattern. There shall be no interference with the established drainage pattern initially established by Declarant over any portion of the Planned Community, except as approved in writing by the Committee. Approval shall not be granted unless provision is made for adequate alternate drainage.

The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property is completed by Declarant and shall include any established drainage pattern shown on the plans approved by the Committee. The established drainage pattern may include the drainage pattern from the Common Areas over any Lots within the Planned Community and from any Lot within the Planned Community over the Common Areas, or from any Lot over another Lot. Any proposed alterations to the drainage pattern must be prepared, signed, and stamped by a qualified Professional Engineer registered in the state of Colorado.

11.5 Association Responsibility. The maintenance obligation on the part of the Association shall apply to such maintenance required by ordinary wear and tear and shall not apply to maintenance, repair and/or reconstruction resulting from willful neglect or destruction. In the event such repair, maintenance and/or reconstruction is resulting from the willful neglect or destruction by an Owner or such Owner's Guests, the Board of Directors shall have the right to charge the costs of such repair, maintenance and/or replacement, to such Owner by an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

Determination of whether such repair, maintenance and/or reconstruction is the obligation of the Association and the determination of when, the magnitude and the manner of the above described maintenance, repair and/or reconstruction shall rest solely with the Board of Directors and shall be final. The Board of Directors will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

11.6 Additional Association Maintenance Responsibilities. The Association shall maintain, to reasonable standards as determined by the Board, the landscaping contained within the medians located within the Planned Community on Park View Blvd., as shown on the Plat.

11.7 Board of Directors Access. Access to all of the Lots within the Planned Community to perform the said repair, maintenance and/or reconstruction by the Board of Directors, its agents and employees shall be made pursuant to the maintenance easement granted in accordance with ARTICLE EIGHT hereof.

## ARTICLE TWELVE: EXPANSION

12.1 Reservation of Right to Expand. Declarant reserves the right (without in any way being bound) to expand the Planned Community in Phases without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees, by submitting to the Planned Community from time to time a Supplemental Declaration adding any of the real property described in Exhibit C attached hereto.

12.2 Supplemental Declarations. Such expansion must be accomplished by the filing for record by Declarant in the Office of the County Clerk and Recorder, a supplement or supplements to this Declaration containing the legal description of the new real property to be included in such expansion. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

12.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded. For example, "Lot", "Common Areas" and "Planned Community" shall mean the Lots, Common Areas and the Planned Community described herein plus any additional Lots and Common Areas added by a Supplemental Declaration or Declarations, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Planned Community as expanded with additional references to the Supplemental Declaration.

12.4 Declaration Operative on New Properties. The new real property shall be subject to all the terms, covenants, conditions, and restrictions of this Declaration as amended or supplemented, by recording by Declarant in the Office of the County Clerk and Recorder of a Supplemental Declaration that adds the new property to the Planned Community.

12.5 Interests on Expansion. An Owner at the time of his or her purchase of a Lot which has been brought into the Planned Community by a Supplemental Declaration shall be a Member of the Association. Such Owner shall be entitled to the same non-exclusive use of the Common Areas and the same voting privileges as the Owners of the initial property brought into the Planned Community through this original Declaration and shall be subject to the same Assessments. The Assessments for each Phase shall commence for Owners within that Phase including Declarant upon the recording of the Supplemental Declaration for that Phase.

Whenever any additional property is brought into the Planned Community, the Assessment Liability of each Owner within the Planned Community after such addition will change and shall be reallocated by Declarant in accordance with Paragraph 1.3 hereof.

The Supplemental Declaration recorded at the time of the expansion shall set forth the new Assessment Liability of the existing Lots and the newly added Lots.

12.6 Project Treated as a Whole. For all purposes hereof, each of the Phases, after the recording of the Supplemental Declaration submitting each Phase to the Planned Community, shall be treated as a part of the Planned Community developed as a whole from the beginning, except to the extent expressly otherwise provided herein.

It is the express purpose hereof to provide that from and after the date of the submission of a Phase in accordance with the above, that such Phase shall be treated as though such Phase had been developed, owned, occupied and used by the Owners thereof as a single undivided Planned Community.

12.7 Termination of the Right of Expansion. The right of expansion shall terminate at the option of Declarant but, in any event, such right of expansion shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 13.3 hereof.

### ARTICLE THIRTEEN: DECLARANT RIGHTS

13.1 Reservation. Notwithstanding any provision herein to the contrary, Declarant reserves the following Declarant Rights which may be exercised, where applicable, anywhere within the Planned Community:

- (a) To complete the improvements as shown on the Plat;
- (b) To exercise any Declarant Rights reserved or described herein;
- (c) To maintain business/sales offices, parking spaces, management offices, storage areas, nursery, construction yard, signs, advertising and model Dwelling Units;
- (d) To maintain signs and advertising on the Common Areas and any model Dwelling Units to advertise the Planned Community and the sale of Lots therein;
- (e) To have and use, and to permit others to have and use, easements through the Common Areas as may be reasonably necessary for development, construction, marketing and sale within the Planned Community and for the purpose of discharging Declarant's obligations under the Act and this Declaration;
- (f) To amend the Declaration and/or the Plat in connection with the exercise of any Declarant Rights;
- (g) To expand, without in any way being bound, the Planned Community in Phases from time to time, by adding to the Planned Community any of the real property described in Exhibit C attached hereto, in accordance with ARTICLE TWELVE hereof;



- (h) To merge or consolidate the Planned Community with another planned community;
- (i) To appoint or remove any officer of the Association or a member of the Board of Directors during the Period of Declarant Control subject to the provisions of Paragraph 4.7 hereof; and
- (j) To exercise any other Declarant Right created by any other provisions of this Declaration or allowed under the Act.

13.2 Rights Transferable. Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the Declarant Rights transferred and recorded in the records of the County Clerk and Recorder. Such instrument shall be executed by the transferor Declarant and the transferee.

13.3 Limitations. Declarant Rights shall terminate at the option of Declarant, but in any event such Declarant Rights shall terminate without further act or deed seven years after the date of the recording of this Declaration except as provided for in ARTICLE SIX hereof regarding the Declarant's Right to appoint and remove members of the Design Review Committee.

13.4 Interference with Declarant Rights. Neither the Association, the Board of Directors nor any Owner may take any action or adopt any rule that will interfere with or diminish Declarant Rights without the prior written consent of Declarant.

13.5 Use by Declarant. The exercise of Declarant Rights by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Lot by any Owner nor the access, enjoyment or use of the Common Areas; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

13.6 Models, Sales Offices, and Management Offices. Declarant and its duly authorized agents, representatives and employees may maintain any Dwelling Unit or Dwelling Units owned, leased or licensed by the Declarant as a model Dwelling Unit or as a sales, leasing and/or management office (or may located a sales trailer within the Planned Community for any of such purposes).

13.7 Declarant's Easements. Declarant reserves the right to perform warranty work, and repair and construction work on Lots, Dwelling Units, Common Areas, and Common Area Improvements to store materials in secure areas, and to control and have the right of access to work, repair and store materials until completion. All work and storage performed by Declarant shall be without the necessity of consent or approval of the Board of Directors, Owners or First Mortgagees.

Declarant has an easement through the Common Areas as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising of Declarant Rights, whether arising under the Act or reserved in this Article.

13.8 Signs and Marketing. Declarant reserves the right for Declarant to post signs on the Common Areas, Lots owned by Declarant and on model Dwelling Units in order to promote sales of Lots and



Dwelling Units. Declarant also reserves the right for Declarant to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

13.9 Other Reserved Rights. The rights reserved in this ARTICLE THIRTEEN are in addition to all other rights reserved by or granted to Declarant in this Declaration or by the Act.

13.10 Exercise of Declarant Rights. The exercise of any or all of the Declarant Rights shall be at the sole option and discretion of Declarant. Declarant Rights may be exercised with respect to different Phases of the Planned Community at different times. No assurances are made with respect to the boundaries of the Phases of the Planned Community or the parcels of real property that may be subject to Declarant Rights nor the order in which Declarant Rights may be exercised. If Declarant exercises any Declarant Rights, such rights may, but need not, be exercised as to all or any other portion of the Planned Community.

Notwithstanding anything in this Declaration to the contrary, no consent or agreement of, or notice to, the Owners or any Eligible Mortgagee shall be required in order to allow Declarant to exercise any of its Declarant Rights, provided such exercise otherwise complies with the applicable provisions of this Declaration.

**ARTICLE FOURTEEN: FIRST MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, and insurers or guarantors of holders of first mortgages recorded against Lots within the Planned Community who qualify as an Eligible Mortgagee as defined by Paragraph 1.25 hereof. To the extent applicable, necessary, or proper, the provisions of this ARTICLE FOURTEEN apply to both this Declaration and to the Articles and Bylaws.

14.1 Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

(a) any material condemnation loss or any casualty loss which affects a material portion of the Planned Community or any Lot in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;

(b) any 60 day delinquency in the payment of Assessments or charges owed by an Owner of any Lot on which an Eligible Mortgagee holds a Security Interest;

(c) any lapse, cancellation, or material modification of any mandatory insurance policy or fidelity bond maintained by the Association; and

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

14.2 Amendment to Documents/Special Approvals.

(a) Except in cases of amendments that may be executed by the Declarant pursuant to ARTICLES TWELVE and THIRTEEN, Paragraph 16.3 or by law, the consent of Owners to which at least 67% of the votes in the Association are allocated and the consent of 51% of the Eligible Mortgagees shall be required to add to or amend any material provisions of this Declaration, or the Articles or Bylaws of the Association. A change to any of the following would be considered material:

- (i) voting rights;
- (ii) increase the Common Expense Assessment Liability allocated to a Lot, change the manner of the Assessment Liens, or the priority of the Assessment Liens;
- (iii) reduction in the reserve requirements for maintenance, repair and replacement of the Common Areas;
- (iv) responsibility for maintenance and repairs;
- (v) right to use the Common Areas;
- (vi) convertibility of Lots into Common Areas or vice versa;
- (vii) hazard or fidelity insurance requirements;
- (viii) imposition of any restrictions on the leasing of Lots;
- (ix) imposition of any restrictions on a Lot Owner's right to sell or transfer his or her Lot;
- (x) restoration or repair of the Planned Community (after damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (xi) any provision that expressly benefits mortgage holders, insurers or guarantors;
- (xii) subject to the provisions of this ARTICLE TWELVE, (a) the reallocation of interests in the Common Areas or rights to their use; or (b) the expansion of the Planned Community; or (c) the addition or annexation of property to the Planned Community; and



(xiii) a decision by the Board of Directors to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgagee.

(b) The Association may not take any of the following actions without the consent of Owners to which at least 67% of the votes in the Association are allocated and the approval of at least 51% of the Eligible Mortgagees:

- (i) Reconstruct or repair the Planned Community after damage due to an insurable hazard or a partial condemnation in a manner other than specified in the Project Documents.
- (ii) Merge or consolidate the Planned Community with any other Planned Community or subject it to a Master Association. Such action shall also require the written approval from the Federal Housing Administration and/or the Veterans Administration if the Planned Community has been or may be approved by such agencies.
- (iii) Not repair or reconstruct, in the event of substantial destruction, any part of the Common Areas.

(c) Any action to terminate the legal status of the Planned Community after substantial destruction or condemnation occurs must be agreed to by Owners to which at least 67% of the votes in the Association are allocated, and by 51% of the Eligible Mortgagees.

(d) Any action to terminate the legal status of the Planned Community for reasons other than substantial destruction or condemnation occurs must be agreed to by Owners to which at least 67% of the votes in the Association are allocated, and by 67% of the Eligible Mortgagees.

14.3 Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after said Eligible Mortgagee receives proper notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested.

14.4 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Association's Bylaws.

## ARTICLE FIFTEEN: MANDATORY DISPUTE RESOLUTION

15.1 Statement of Clarification. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to

proceed further through the assertion of a "Claim" as defined herein, that the Mandatory Dispute Resolution provisions contained in this Article are activated.

15.2 Alternative Method for Resolving Disputes. Declarant, the Association, its officers and directors; all Owners; design professionals; builders, including any of their subcontractors and suppliers; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each of the foregoing entities being referred to as a "Party"), agree to encourage the amicable resolution of disputes involving the Planned Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims each may have to the procedures set forth in this ARTICLE FIFTEEN and not to a court of law.

15.3 Claims. Except as specifically excluded in Paragraph 15.4, all claims, disputes and other controversies arising out of or relating to the:

- (a) any Agreement for Sale and Purchase between Declarant and any Owner (except as may be expressly provided otherwise therein);
- (b) Property (as defined in any such Agreement) or the Dwelling Unit;
- (c) purchase of the Property or the Dwelling Unit;
- (d) interpretation, application or enforcement of this Declaration;
- (e) the soils of any property that lies within the Planned Community;
- (f) land development, design, construction, and/or alteration of the Improvements within the Planned Community and/or any alleged defect therein;
- (g) any rights, obligations and duties of any Party under this Declaration;
- (h) any breach of any of the foregoing; or
- (i) any personal injury or property damages that Purchaser alleges to have sustained on the Property;

all of which are hereinafter referred to as a "Claim", shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by Mandatory Binding Arbitration all in accordance with this ARTICLE FIFTEEN and not in a court of law. Notwithstanding the foregoing, no Claim may be asserted or brought unless there is either (i) actual physical damage to or actual loss of use of tangible real or personal property or (ii) bodily injury or wrongful death.

15.4 Claims Subject to Approval. Unless Owners to whom at least 67% of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this ARTICLE FIFTEEN:

(a) any suit by the Association against any Party to enforce the provisions of ARTICLE FIVE (Assessments);

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of ARTICLE SIX (Architectural Approval/Design Review), or ARTICLE SEVEN (Land Use and Other Restrictions);

(c) any suit by an Owner to challenge the actions of Declarant, the Association, Declarant acting as the Design Review Committee, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of ARTICLE SIX (Architectural Approval/Design Review); and

(d) any suit between or among Owners, that does not include Declarant or the Association.

15.5 Notice of Claim. Any Party alleging a Claim ("Claimant") against any other Party ("Respondent") shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

(a) the nature of the Claim, including a list of any alleged construction defects, the Persons involved and Respondent's role in the Claim;

(b) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) the date on which the Claim first arose;

(d) the name and address of every Person, including without limitation any current or former employees of Respondent, whom Claimant believes does or may have information relating to the Claim; and

(e) the specific relief and/or proposed remedy sought.

15.6 Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen and, in any event, no later than two years after the Claim arises.

15.7 Right to be Heard. Upon receipt of a Claim and prior to the Association or any Owner asserting the Claim commencing any mediation or arbitration, Respondent shall have the right to make a written response and be heard by Claimant, affected Owners, and Association in an effort to resolve the Claim.

15.8 Right to Inspect and Repair. If the Claim is based on the land development, design, construction and/or alteration of any Improvements within the Planned Community then, upon reasonable notice to any affected Owners (or the Association if the affected area is owned by the Association), Respondent shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of, including but not be limited to, any investigative or destructive testing.

The Association shall have the same right to inspect for any Claims by Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the Party causing the inspection to be made ("Inspecting Party") shall:

- (a) be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected ("Affected Property");
- (b) minimize any disruption or inconvenience to any person who occupies the Affected Property;
- (c) remove daily all debris caused by the inspection and located on the Affected Property; and
- (d) in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and materials from the Affected Property and repair and replace all damage, and restore the Affected Property to the condition of the Affected Property as of the date of the inspection, unless the Affected Property is to be immediately repaired.

The repair, replacement and restoration work shall include, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Affected Property that were damaged, removed or destroyed by Inspecting Party.

In the event the Inspecting Party wishes to make repairs to resolve the subject matter of the Claim, the Inspecting party shall have the right, at its option, to do so and to enter the Affected Property at a reasonable time(s) and upon reasonable notice for such purpose.

The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect and/or repair to accrue against or attach to the Affected Property. The Inspecting Party shall indemnify, defend and hold harmless the Affected Owners, or the Association if the Affected Property is owned by the Association, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and reasonable attorney's fees, resulting from any breach of this Article by the Inspecting Party.

15.9 Good Faith Negotiations. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may be represented by attorneys and independent consultants (at such Party's cost) to assist such party in negotiations and to attend meetings.

15.10 Mediation.

(a) If the Parties do not resolve the Claim through negotiations within 30 days after the date of submission of the Claim to Respondent(s), as may be extended upon agreement of all affected Parties, Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service reasonably acceptable to all Parties. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and all Respondent(s) shall be released and discharged from any and all liability to Claimant on account of such Claim.

(b) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties.

(c) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(d) Within 10 days after issuance of a Termination of Mediation, Claimant shall make a final written Settlement Demand to the Respondent(s), and the Respondent(s) shall make a final written Settlement Offer to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Claim shall constitute the Settlement Demand. If the Respondent(s) fail to make a Settlement Offer, Respondent(s) shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(e) Each Party shall bear its own costs, including attorney's fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.

(f) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this ARTICLE FIFTEEN, and any Party thereafter fails to abide by the terms of such agreement, then any other affected Party may file suit to enforce such agreement without the need to again comply with the procedures set forth in this ARTICLE FIFTEEN. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including, without limitation, reasonable attorney's fees and court costs.





15.11 Arbitration.

(a) If the Parties do not reach a settlement of the Claim within fifteen days after issuance of any Termination of Mediation, and reduce the same to writing, the Claimant shall have fifteen additional days to submit the Claim to binding arbitration in accordance with the Arbitration Procedures contained in Exhibit E hereof and deliver an Arbitration Notice to all Respondent(s).

(b) The Parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Party may have liability with respect thereto, all Parties including any third Parties agree that the third Parties may be joined as additional Parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all arbitrations. It is the intent of the Parties to resolve all rights and obligations of all interested Parties at one time in one forum rather than in multiple proceedings.

(c) Within 60 days after submission of the Claim, Claimant shall file with the arbitrator and deliver to Respondent(s) a certified list of matters (including specific construction defects) that are the subject of the Claim, which list shall be signed by the attorney for Claimant, or if Claimant does not have an attorney, by Claimant, and shall include:

(i) a statement that (A) the attorney for Claimant, or Claimant if Claimant does not have an attorney, has consulted with a Person not a Party to the Claim with expertise in the area of each construction defect that is the subject of the Claim (the "Construction Consultant") and (B) the Construction Consultant has inspected the improvements for which the construction defects are claimed, has reviewed the known facts, including such records, documents and other materials the Construction Consultant has found to be relevant to the construction defects, and has concluded that the Claim has substantial justification based on the Construction Consultant's inspection and review of the known facts;

(ii) a certification that the Construction Consultant can demonstrate by competent evidence that, as a result of training, education, knowledge and experience, the Construction Consultant is competent to testify as an expert and render an opinion as to the alleged construction defects;

(iii) a certification signed by the Construction Consultant stating: (A) such Person's name, address, qualifications and credentials that render him or her competent to express an expert opinion as to the alleged construction defect; (B) that he or she has inspected each improvement and reviewed the known facts, including such records, documents and other materials which he or she has found to be relevant to the construction defects at issue; and (C) as to each improvement for which a construction defect Claim is asserted, an identification of the owner of the improvement, the location and date of construction of the improvement, and an identification of each claimed construction defect and its specific location;

(iv) a computation of the damages alleged for each construction defect;

(v) an identification, with respect to each improvement and construction defect, of each Party alleged to be responsible for such defect;

(vi) a certification that each Party alleged to be responsible for the alleged construction defect has been given written notice of the defect and an opportunity to remedy the defect under the foregoing provisions of this Article and that the defect has not been remedied; and

(vii) a copy of the notice of Claim served by Claimant on each Person that is named as a Party to the Claim.

(d) If the Claim is not timely submitted to arbitration, if Claimant fails to appear for the arbitration proceeding, or if Claimant fails to file and deliver the certified list of construction defects as provided in subparagraph (c) above, the Claim shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims

(e) The award rendered by the Arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in the County in accordance with applicable law and judgment obtained thereon, and execution may issue. The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.

(f) Claimant shall notify Respondent(s) prior to retaining any Person or entity as an expert witness for purposes of any arbitration or authorized litigation.

15.12 Consensus for Association Action. Except as provided for in Paragraph 15.4 hereof, the Association shall not commence any action, mediation or arbitration against Declarant or other Party for a Claim unless the Owners to which at least 67% of the votes in the Association are allocated agree to such proceedings. However, such Owner consent must be obtained by the Association only after the Board of Directors delivers written notice to all Members of the Association in accordance with the procedures set forth in the Bylaws with respect to meetings of Members. Such delivery shall include:

(a) a description of the nature of the Claim and the relief sought;

(b) a copy of any written response thereto, including any settlement proposal;

(c) a statement advising Owners of their duties to disclose to prospective purchasers and lenders the Claim that the Association proposes to assert;

(d) a statement that any recovery from the action may not result in receipt of funds to pay all costs of remedying the Claim as estimated by experts retained by the Association;

(e) an estimate of the expenses and fees to the Association that the Board anticipates will be incurred in prosecuting the claim; and



(f) a description of the agreement with the attorneys whom the Board of Directors proposes to retain to prosecute the cause of action.

15.13 Liability for Failure to Maintain an Action Against Declarant. No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was acting in good faith; and (c) the act or omission was not willful, wanton or grossly negligent.

15.14 Utilization of Funds Resulting from the Cause of Action. In the event the Association receives funds as a result of any settlement, mediation, arbitration or judgment based upon a cause of action, after payment of fees and costs incurred in connection with prosecution of such action, the Association shall: (a) deposit the proceeds in a special, interest-bearing account; and (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the Claim or otherwise for purposes of remedying the Claim.

15.15 Exclusive Remedy. The provisions contained in this Article shall be the sole and exclusive remedy that the Association and other Parties shall have against Declarant for any Claim, and Declarant, the Association and each Owner expressly waives any right it may have to seek resolution of any Claim contemplated by this Article in any court of law or equity and any right to trial by jury.

Should any Party commence litigation or any other action against any other Party, in violation of the terms of this Article, such Party shall reimburse the costs and expenses, including attorneys' fees, incurred by the other Party seeking dismissal of such litigation or action. If Claim involves Declarant or the Association, no Party shall record a memorandum or notice of *lis pendens* or similar instrument that would encumber or create a lien on real property owned by either Declarant or the Association, and any recording of the same shall be null and void and of no force or effect.

15.16 Binding Effect. This ARTICLE FIFTEEN and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction in the County to the fullest extent permitted under the laws of the State of Colorado.

15.17 Amendment. Neither this ARTICLE FIFTEEN nor Exhibit E may be amended unless such amendment is approved by a majority of the Board of Directors and Owners to whom at least 67% of the votes in the Association are allocated. Any amendment made without the requisite Board and Owners' vote shall be null and void and shall have no effect, and the last paragraph of Paragraph 16.2 hereof shall not apply.

#### **ARTICLE SIXTEEN: DURATION, AMENDMENT, AND TERMINATION OF THE DECLARATION**

16.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Paragraph 16.7 herein.

16.2 Amendments by Owners. Except in cases of amendments that may be executed by the Board and by Declarant pursuant to ARTICLE TWELVE and Paragraph 16.3 and except as restricted by Paragraphs 14.2, 14.3, and 15.17 hereof, this Declaration may be amended by the written agreement by Owners of Lots to which at least 67% of the votes in the Association are allocated.

Any such amendment shall be effective upon the recording of the amendment together with a notarized Certificate of an officer of the Association certifying that the requisite number of Owners and First Mortgagees or Eligible Mortgagees, if required, have given their written consent to the amendment. Such officer shall further certify that originals of such written consents by Owners and Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in the Office of the County Clerk and Recorder.

Signatures of Owners on an amendment need not be notarized.

All signatures shall be irrevocable even upon the death of an Owner or the conveyance of the Lot, except that if an amendment is not recorded within three years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association.

Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of this Declaration, or the Articles or the Bylaws unless it is commenced within one year from the effective date of said amendment, unless fraud or willful negligence is asserted and proven and except as otherwise provided in Paragraph 15.17 hereof.

16.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners or Eligible Mortgagees, this Declaration, the Articles and the Bylaws, at any time within the limitations set forth in Paragraph 13.3 hereof, as follows:

(a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.

(b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages.

(c) To comply with any requirements of the Act or governmental agencies.

16.4 Amendment Terminology. As used in this Declaration or any of the Project Documents, the word "amend" or "amendment" shall be deemed to also mean alter, vary, change, waiver, delete, abandon, terminate, supplement, add to or otherwise modify in any manner the language of this Declaration or the Project Documents.

16.5 Consent of Declarant Required. As long as Declarant has any rights or obligations under or pursuant to this Declaration or any of the other Project Documents, any proposed amendment of any provision of this Declaration shall require Declarant's written consent to such amendment. Any amendment made without Declarant's written consent as required herein shall be null and void and shall have no effect and the last paragraph of Paragraph 16.2 hereof shall not apply.

The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 13.3 hereof.

16.6 Consent of Eligible Mortgagees Required. Amendments may be subject to the consent requirements of Eligible Mortgagees as more fully set forth in ARTICLE THIRTEEN hereof.

16.7 Termination. The Planned Community may be terminated only in accordance with Paragraph 14.2(c) and (d) hereof.

The proceeds of any sale of real estate together with the assets of the Association shall be held by the Association as trustee for Owners and holders of liens upon the Lots as their interests may appear, as more fully set forth in §38-33.3-218 of the Act.

## ARTICLE SEVENTEEN: GENERAL PROVISIONS

17.1 Right of Action. Subject to the provisions of ARTICLE FIFTEEN, the Association and any aggrieved Owner shall have an appropriate right of action against an Owner for such Owner's failure to comply with this Declaration or the Articles, Bylaws or the Rules and Regulations of the Association or with decisions of the Board of Directors which are made pursuant thereto. Owners shall have a similar right of action against the Association.

17.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association and each Owner and their heirs, personal representatives, successors and assigns.

17.3 Severability. If any part of any provision of this Declaration shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Declaration.

17.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.



17.5 Registration by Owner of Mailing Address: Notices. Each Owner shall register his or her mailing address with the Association. Except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all notices intended to be served upon an Owner pursuant to this Declaration, shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or at the address of such Owner's Lot if there is no registered mailing address for such Owner on file at the Association.

All notices, demands or other notices intended to be served upon the Board of Directors or the Association shall be sent by certified mail, postage prepaid, to the Registered Agent for the Association on file in the Office of the Secretary of State, State of Colorado.

17.6 Conflicting Provisions. The Project Documents are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act (collectively, the "Governing Acts"). If there is any conflict between any provision of the Project Documents and any mandatory provision of either of the Governing Acts, the mandatory provision of the applicable Governing Act shall control and neither Declarant nor the Association shall have any liability for actions taken in conformity with such Governing Act. If there is any conflict between any provision of the Project Documents and any permissive or non-mandatory provision of either of the Governing Acts, the provision of the Project Documents shall control. In the event of any conflict between this Declaration and any other Project Documents, this Declaration shall control. In the event either the Articles or Bylaws conflict with this Declaration, this Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

17.7 Captions. The captions and headings in this Declaration are for Convenience only, and shall not be considered in construing any provision of this Declaration.

17.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

17.9 Mergers. The Planned Community may be merged or consolidated with another Planned Community of the same form of ownership by complying with §38-33.3-221 of the Act.



3173114 04/22/2004 03:46P Weld County, CO  
 63 of 69 R 346.00 D 0.00 Steve Moreno Clerk & Recorder

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 20 day of April, 2004.

**PROCEEDS, LLC,**  
 a Colorado limited liability company

By: Bret Hall

Printed Name: Bret Hall

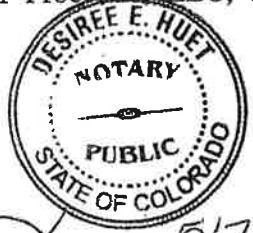
Title: Manager

STATE OF COLORADO )  
 ) SS.  
 COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 21 day of April, 2004 by Bret Hall as Manager of Proceeds, LLC, a Colorado limited liability company.

My commission expires: 5/7/07

WITNESS my hand and official seal.



Desiree E. Huett  
 Notary Public  
 My Commission Expires: 5/7/07

3173114 04/22/2004 03:46P Weld County, CO  
64 of 69 R 346.00 D 0.00 Steve Moreno Clerk & Recorder

**EXHIBIT A**  
**TO THE DECLARATION OF COVENANTS,**  
**CONDITIONS, AND RESTRICTIONS**  
**OF**  
**BERRYMAN FARM**

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**LEGAL DESCRIPTION OF THE REAL PROPERTY**  
**SUBMITTED TO THE DECLARATION OF COVENANTS,**  
**CONDITIONS, AND RESTRICTIONS OF**  
**BERRYMAN FARM**  
**(FIRST PHASE)**

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**Lots 4, 5, and 6, Block 8;**  
**Lots 4, 5, 6, 7, 8, and 9, Block 11;**  
**Lots 4, 5, 6, 7, 8, 9, 10, and 11, Block 14;**  
**Lots 1, 2, 3, 4, 5, 6, and 7, Block 15;**

**Berryman Farm Subdivision**  
**Town of Kersey**  
**County of Weld**  
**State of Colorado**

**Pursuant to the Amended Plat of Berryman Farm**  
**Recorded on November 14, 2003 at Reception No. 3126670**  
**In the Clerk and Recorder's Office of Weld County, Colorado**





3173114 04/22/2004 03:46P Weld County, CO  
65 of 69 R 346.00 D 0.00 Steve Moreno Clerk & Recorder

**EXHIBIT B  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
OF  
BERRYMAN FARM**

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**LEGAL DESCRIPTION OF THE COMMON AREAS  
SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS OF  
BERRYMAN FARM  
(FIRST PHASE)**

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**Outlot C;**

**Berryman Farm Subdivision  
Town of Kersey  
County of Weld  
State of Colorado**

**Pursuant to the Amended Plat of Berryman Farm  
Recorded on November 14, 2003 at Reception No. 3126670  
In the Clerk and Recorder's Office of Weld County, Colorado**

**EXHIBIT C  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
OF  
BERRYMAN FARM**

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**LEGAL DESCRIPTION OF THE REAL PROPERTY  
WHICH MAY BE SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS OF  
BERRYMAN FARM  
IN LATER PHASES**

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**Lots 4 through 11, inclusive, Block 1;  
Lots 1 through 19, inclusive, Block 3;  
Lots 1 through 12, inclusive, Block 4;  
Lots 1 through 17, inclusive, Block 5;  
Lots 1 through 16, inclusive, Block 6;  
Lots 1 through 16, inclusive, Block 7;  
Lots 7, 8, and 9, Block 8;  
Lots 1 through 6, inclusive, Block 9;  
Lots 1 through 6, inclusive, Block 10;  
Lots 1 through 6, inclusive, Block 12;  
Lots 1 through 6, inclusive, Block 13;  
Lots 8 through 13, inclusive, Block 15;  
Lots 1 through 17, inclusive, Block 16;  
Lots 1 through 17, inclusive, Block 17;  
Lots 1 through 16, inclusive, Block 18;  
Lot 1, Block 19;  
Lots 1 through 6, inclusive, Block 20;  
Lots 1 through 15, inclusive, Block 21;  
Outlots 1, 2, 3, 4 and 6;**

**Up to three additional outlots that may be created, by an amendment to the Plat (below referenced),  
encompassing the medians located within Park View Blvd., as shown on said Plat,**

**Berryman Farm Subdivision  
Town of Kersey  
County of Weld  
State of Colorado**

**Pursuant to the Amended Plat of Berryman Farm  
Recorded on November 14, 2003 at Reception No. 3126670  
In the Clerk and Recorder's Office of Weld County, Colorado, as amended from time to time**

**EXHIBIT D  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
OF  
BERRYMAN FARM**

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**THE RECORDING DATA FOR RECORDED EASEMENTS,  
LICENSES AND OTHER MATTERS OF RECORD  
WHICH THE PLANNED COMMUNITY  
IS OR MAY BECOME SUBJECT TO:**

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1. Easements and other matters shown on plat of said subdivision, as revised from time to time.
2. The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted and a right of way for ditches or canals constructed by the authority of the United States as reserved in Patent recorded in Book 57 at Page 375.
3. Terms, conditions, provisions, agreements and obligations specified under the Agreement by and between Town of Kersey and Victor R. Klein recorded August 28, 1980 in Book 912 at Reception No. 1834343.
4. An Oil and Gas Lease from Victor R. Klein and Freda F. Klein as Lessor(s) to Cody Nordell, Inc. as Lessee(s) dated September 30, 1981, recorded October 20, 1981 in Book 950 at Reception No. 1872321, and any and all assignments thereof or interests therein.
5. An undivided 100% interest in all oil, gas and other minerals conveyed to William T. Klein, et al. by Mineral Deed, recorded April 18, 1985 in Book 1065 at Reception No. 2006361, and any and all assignments thereof or interests therein.
6. Terms, conditions, provisions, agreements and obligations specified under the Subdivision Agreement by and between Town of Kersey and Kathleen Berryman and Alan Berryman recorded September 28, 2000 at Reception No. 2796687.
7. All matters shown on that map recorded March 25, 1999 at Reception No. 2682322.
8. Agreement for utility easements recorded February 1, 1980 in Book 894 at Reception No. 1815983 and 1815984.

9. The effect of instrument recorded December 15, 1987 in Book 1180 at Reception No. 2124868.

NOTE: The following notices pursuant to CRS-9-1.5-103 concerning underground facilities have been filed with the Clerk and Recorder. These statements are general and do not necessarily give notice of underground facilities within the subject property.

- (a) Mountain Bell Telephone Company, recorded October 1, 1981 in Book 949 at Reception No. 1870705.
  - (b) Colorado Interstate Gas Company, recorded August 31, 1984 in Book 1041 at Reception No. 1979784.
  - (c) Associated Natural Gas, Inc., recorded April 10, 1989 in Book 1229 at Reception No. 2175917.
  - (d) Western Slope Gas Company, recorded March 9, 1983 in Book 990 at Reception No. 1919757.
10. An interest in all royalty rights to the oil, gas and minerals on subject property as reserved by Berryman Farm Company, a Colorado corporation, recorded July 9, 2002 at Reception No. 2967572.

All recordings are in the records of the Weld County Clerk and Recorder's Office, Colorado.

**EXHIBIT E**  
**TO THE DECLARATION OF COVENANTS,**  
**CONDITIONS, AND RESTRICTIONS**  
**OF**  
**BERRYMAN FARM**

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**ARBITRATION PROCEDURES**

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1. All Claims subject to arbitration shall be decided by a single private party arbitrator to be appointed by the parties.
2. If the parties are unable to agree upon an Arbitrator within 30 days from the date of the Arbitration Notice, the presiding judge of the District Court in which the Planned Community is located shall appoint a qualified arbitrator upon application of a party.
3. No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator within 14 days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.
4. The Arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the County in which the Planned Community is located unless otherwise agreed by the Parties.
5. Except as modified herein the arbitration shall be conducted pursuant to the then current Construction Industry Rules of Arbitration of the American Arbitration Association to the extent applicable, but shall not be conducted or administered by the American Arbitration Association.
6. No formal discovery shall be conducted in the absence of an order of the Arbitrator or express written agreement among all the Parties.
7. Unless directed by the Arbitrator, there will be no post-hearing briefs.
8. The Arbitration Award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing and shall be signed by the Arbitrator.
9. The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.