

NOTICE TO CLOSING AGENTS: THIS IS A FEE-ASSESSED SUBDIVISION.  
CHECK WITH THE HOMEOWNERS ASSOCIATION FOR FEE SCHEDULE.

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
CLYDESDALE PARK P.U.D.  
(a Common Interest Community)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CLYDESDALE PARK P.U.D. is made and entered into this \_\_\_\_\_ by Clydesdale Park LLC a Colorado Limited Liability Company, hereinafter referred to as the "Declarant."

RECITALS

A. The Declarant is the owner of that certain real property located in the County of Larimer, State of Colorado legally described on Exhibit "A" attached hereto and incorporated herein by reference (the "Real Estate").

B. The Declarant desires to create a Common Interest Community on the Real Estate, pursuant to the Colorado Common Ownership Act, Section 38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time (the "Act"), in which portions of the Real Estate will be designated for separate ownership and the remainder of which will be owned by an Association of Lot Owners.

C. The Declarant has caused to be incorporated under the laws of the State of Colorado CLYDESDALE PARK HOMEOWNERS ASSOCIATION, a nonprofit corporation, for the purpose of exercising the functions herein set forth.

ARTICLE I. SUBMISSION OF REAL ESTATE

The Declarant hereby publishes and declares that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, Declarant hereby submits the Real Estate to the provisions of the Act. In the event the Act is repealed, the Act on the date this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado, shall remain applicable.

ARTICLE II. DEFINITIONS

Section 1: "Allocated Interests" shall mean and refer to the Common Expense Liability and votes in the Association.

Section 2: "Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

Section 3: "Architectural Control Committee" shall mean and refer to the committee established to review and approve plans for the construction of improvements on Lots as set forth in Article IX of this Declaration.

✓ Clydesdale Park LLC  
3600 S. College Ave #201  
FTC, CO 80525

2

Section 4: "Assessments" shall mean and refer to all Common Expense Assessments, Special Assessments, Individual Assessments and Fines levied by the Executive Board pursuant to this Declaration, the Bylaws or the Rules and Regulations.

Section 5: "Association" or "Lot Owners' Association" shall mean and refer to CLYDESDALE PARK HOMEOWNERS ASSOCIATION, a Colorado Non-Profit Corporation, its successors and assigns, organized and existing under Section 38-33.3-301 of the Act.

Section 6: "Bylaws" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

Section 7: "Common Elements" shall mean and refer to any real estate, easements or real property interests within the Common Interest Community owned or leased by the Association or over which the Association has acquired easements, including drainage, utility, or other easements hereafter created pursuant to Article VIII, below, and any other property rights owned, leased or otherwise acquired by the Association. "Common Elements" shall also include any irrigation system, storm drainage improvements, detention, retention or storage ponds, structures or other facilities, or other public improvements installed or located (or to be installed or located) within the Common Interest Community, as well as related off-site improvements, structures or facilities used by or benefitting the Common Interest Community and/or installed pursuant to requirement of Larimer County as a condition to development of the Common Interest Community or any part thereof.

Section 8: "Common Expense Assessments" shall mean and refer to all Assessments made for Common Expenses.

Section 9: "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Lot pursuant to this Declaration.

Section 10: "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves. These expenses for the operation of the Common Interest Community include, but are not limited to:

- (a) expenses of administering, maintaining, leasing, securing, insuring or replacing the Common Elements;
- (b) expenses declared to be Common Expenses by this Declaration;
- (c) expenses agreed upon as Common Expenses by the Association;
- (d) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

Section 11: "Common Interest Community" shall mean and refer to the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference, together with any real property added thereto pursuant to Article 6, below.

Section 12: "Dealer" shall mean and refer to a Person in the business of selling Lots for such Person's own account.

3

Section 13: "Declarant" shall mean and refer to Clydesdale Park LLC, a Colorado Limited Liability Company, its successors and assigns.

Section 14: "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, plats of the Real Estate recorded in the Clerk and Recorder's office of Larimer County, Colorado.

Section 15: "Declaration of Annexation" shall mean and refer to a declaration prepared and recorded in accordance with the provisions of Article VI, below, to incorporate the Expansion Property within the Property governed by this Declaration.

Section 16: "Dispose" or "Disposition" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Lot, but the term does not include the transfer or release of a security interest.

Section 17: "Documents" shall mean and refer to this Declaration, the Plat, and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association as they may be amended from time to time.

Section 18: "Executive Board" shall mean and refer to the Executive Board of the Association.

Section 19: "Expansion Property" shall mean and refer to such additional real property owned by the Declarant or subject to an option to purchase held by the Declarant, as the Declarant may make subject to the provisions of this Declaration by duly recorded Declaration of Annexation. The real property identified as "Expansion Property" on the date of this Declaration is more particularly described on Exhibit "C" attached to this Declaration and may be supplemented as provided in Article VI, below.

Section 20: "Identifying Number" shall mean and refer to a symbol or address that identifies only one (1) Lot in the Common Interest Community.

Section 21: "Insurer" shall mean and refer to any governmental agency or authority that insures or guarantees a Mortgage and that has provided written notice of such interest to the Association.

Section 22: "Lot" shall mean and refer to a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Plat. The term "Lot" as used in this Declaration shall have the same meaning as the term "Unit" as used in the Act.

Section 23: "Lot Owner" shall mean and refer to the Declarant or other Person who owns a Lot but does not include a Person having an interest in a Lot solely as security for an obligation. The Declarant is the Owner of any Lot created in the Declaration until that Lot is conveyed to another Person. The term "Lot Owner" as used in this Declaration shall have the same meaning as the term "Unit Owner" as used in the Act.

Section 24: "Mortgagee" shall mean and refer to any Person who has a security interest in a Lot and who has provided written notice of such interest to the Association.

Section 25: "Person" shall mean and refer to a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or combination thereof.

Section 26: "Plat" shall mean and refer to the Plat of the Real Estate recorded in the office of the Clerk and Recorder of Larimer County, Colorado, and all recorded amendments thereto.

Section 27: "Purchaser" shall mean and refer to a Person, other than the Declarant or a Dealer, who, by means of a transfer, acquires a legal or equitable interest in a Lot, other than:

(a) A leasehold interest in a Lot of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

(b) A Security Interest.

Section 28: "Real Estate" shall mean and refer to the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference.

Section 29: "Residence" shall mean and refer to a single-family residential dwelling constructed on a Lot.

Section 30: "Residential Use" shall mean and refer to use of a Residence as a dwelling by a single family.

Section 31: "Rules and Regulations" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

Section 32: "Security Interest" shall mean and refer to an interest in real property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation. "First Security Interest" shall mean and refer to a Security Interest in a Lot prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Larimer County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community.

Section 33: "Single-family" shall mean and refer to any individual or group of persons related by blood or marriage or any unrelated group of not more than three (3) persons living together in a Residence.

Section 34: "Special Assessments" shall mean and refer to the special assessments for capital improvements, capital acquisitions and other items which are described in Article VII, Section 4 of this Declaration.

### ARTICLE III. COMMON INTEREST COMMUNITY

Section 1: Name. The name of the Common Interest Community is CLYDESDALE PARK P.U.D.

Section 2: Association. The name of the Association is CLYDESDALE PARK HOMEOWNERS ASSOCIATION.

Section 3: Planned Community. The Common Interest Community is a planned community.

Section 4: County. The name of every county in which any part of the Common Interest Community is situated is Larimer County, Colorado.

Section 5: Legal Description. A legal description of the Real Estate included in the Common Interest Community is set forth on Exhibit "A" attached hereto and incorporated herein by reference.

Section 6: Maximum Number of Lots. The maximum number of Lots that the Declarant reserves the right to create within the Common Interest Community is two hundred and twenty (220).

Section 7: Boundaries of Lots. The boundaries of each Lot are set forth on the Plat of the Real Estate. The Plat sets forth the Lot's Identifying Number.

Section 8: Allocated Interests. The Common Expense Liability and votes in the Association shall be allocated among the Owners as follows:

(a) Each Owner's share of the Common Expenses shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within the Common Interest Community.

(b) Each Owner shall be entitled to one (1) vote for each Lot owned.

Section 9: Recording Data. All easements and licenses to which the Common Interest Community is presently subject are shown on the Plat and on Exhibit "B" attached hereto. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to the terms of this Declaration.

Section 10: Notice. Notice of matters affecting the Common Interest Community may be given to Lot Owners by the Association or by other Lot Owners in the following manner: notice shall be hand delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. Such notice shall be deemed given when hand delivered or when deposited in the United States mail.

**ARTICLE IV. ASSOCIATION**

Section 1: Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are as follows: (a) to operate the Common Interest Community known as CLYDESDALE PARK P.U.D. located in Larimer County, Colorado, in accordance with the Act, as amended, and the Colorado Nonprofit Corporation Act, as amended; (b) to promote the health, safety, welfare, and common benefit of the residents of the Common Interest Community; and (c) to do any and all permitted acts, and to have and exercise any and

6

all powers, rights, and privileges which are granted to a common interest community association under the laws of the State of Colorado, this Declaration, and the Bylaws, Rules and Regulations, and other governing documents of the Association.

Section 2: Voting Rights and Assignment of Votes. The effective date for assigning votes to Lots created pursuant to this Declaration shall be the date on which this Declaration is recorded in the records of the Clerk and Recorder of Larimer County, Colorado.

Section 3: Authority. The business and affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by this Declaration and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association, as amended from time to time.

Section 4: Powers. The Association 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 Common Interest Community.

Section 5: Declarant Control. The Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board of the Association for a period of ten (10) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of Section 38-33.3-303(5) of the Act.

Section 6: Executive Board Powers and Duties. The Executive Board may act in all instances on behalf of the Association. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws.
- (b) Adopt and amend Rules and Regulations regarding the use and enjoyment of the Common Elements, and the activities of occupants thereon.
- (c) Adopt and amend budgets for revenues, expenditures, and reserves.
- (d) Collect Common Expense and other Assessments from Lot Owners.
- (e) Hire and discharge Managers.
- (f) Hire and discharge independent contractors, employees, and agents, other than Managers.
- (g) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Documents in the Association's name, on behalf of the Association, or two (2) or more Lot Owners on any matters affecting the Common Interest Community.
- (h) Make contracts and incur liabilities.
- (i) Regulate the use, maintenance, repair, replacement, and modification of the Common Elements.

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(j) Cause additional improvements to be made as a part of the Common Elements.

(k) Acquire, hold, encumber and convey in the Association's name, any right, title, or interest to real estate or personal property, but the Common Elements may be conveyed or subjected to a Security Interest only pursuant to this Declaration and the Act.

(l) Grant easements for any period of time, including permanent easements, leases, licenses, and concessions through or over the Common Elements, subject to the restrictions and limitations of this Declaration and the Act.

(m) Impose and receive a fee or charge for the use, rental, or operation of the Common Elements and for services provided to Lot Owners.

(n) Impose a reasonable charge for late payment of assessments and levy a reasonable fine for violation of the Documents.

(o) Impose a reasonable charge for the preparation and recordation of supplements or amendments to this Declaration and for statements of unpaid assessments.

(p) Provide for the indemnification of the Association's officers and the Executive Board and maintain directors' and officers' liability insurance.

(q) Assign the Association's right to future income, including the right to receive Common Expense Assessments, but only upon the affirmative vote of the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, at a meeting called for that purpose.

(r) Exercise any other powers conferred by the Documents.

(s) Exercise any other power that may be exercised in the State of Colorado by a legal entity of the same type as the Association.

(t) Exercise any other power necessary and proper for the governance and operation of the Association.

(u) By resolution, establish permanent and standing committees of Executive Board members to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Lot Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Lot Owner within forty-five (45) days of publication of a notice. If an appeal is made, the committee's action must be ratified, modified, or rejected by the Executive Board at its next regular meeting.

Section 7: Professional Management and Contract Termination Provisions. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon sixty (60) days' prior written notice. Any contracts, licenses, or leases entered into by the Association while there is Declarant control of the Association shall provide

for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of Declarant control of the Association, upon sixty (60) days' prior written notice; provided, however, that any contract entered into at any time by the Association providing for services of the Declarant shall provide for termination at any time by either party thereto, without cause and without payment of a termination fee, upon sixty (60) day's prior written notice.

Section 8: Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine their qualifications, powers, and duties or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

Section 9: Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration in the event that the need for maintenance or repair of the Common Elements or any improvements located thereon is caused by the willful or negligent act, omission, or misconduct of any Lot Owner or by the willful or negligent act, omission, or misconduct of any member of such Lot Owner's family or by a guest or invitee of such Lot Owner or any tenant or tenant's family, the costs of such repair and maintenance shall be the personal obligation of such Lot Owner, and any costs, expenses, and fees incurred by the Association for such maintenance, repair, or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall be a lien against such Owner's Lot as provided in this Declaration. A determination of the willful or negligent act, omission, or misconduct of any Lot Owner or any member of a Lot Owner's family or a guest or invitee of any Lot Owner or tenant or tenant's family and the amount of the Lot Owner's liability therefor shall be determined by the Association after notice to the Lot Owner and the right to be heard before the Executive Board in connection therewith, provided that any such determination which assigns liability to any Lot Owner pursuant to the terms of this section may be appealed by said Lot Owner to a court of law.

Section 10: Indemnification. To the full extent permitted by law, each officer and member of the Executive Board of the Association shall be and are hereby indemnified by the Lot Owners and the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party or in which they may become involved by reason of their being or having been an officer or member of the Executive Board of the Association, or any settlement thereof, whether or not they are an officer or a member of the Executive Board of the Association at the time such expenses are incurred, except in such cases where such officer or member of the Executive Board is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Association.

#### ARTICLE V. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 1: Special Declarant Rights. Declarant hereby reserves the right for a period of ten (10) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:



9

(a) Completion of Improvements. The right to complete improvements indicated on the Plat.

(b) Exercise of Developmental Rights. The right to exercise any Development Right reserved in Article VI of this Declaration.

(c) Sales Management and Marketing. The right to maintain one (1) sales office, one (1) management office, signs advertising the Common Interest Community, and models. The Declarant shall have the right to determine the number of models and the size and location of the sales office, management office, and models. The Declarant shall also have the right to relocate the sales office, management office, and models from time to time at his discretion. After the Declarant ceases to be the Owner of a Lot, the Declarant shall have the right to remove any sales office, management office, or model from the Common Interest Community.

(d) Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within Real Estate which may be added to the Common Interest Community.

(e) Master Association. The right to make the Common Interest Community subject to a master association.

(f) Merger. The right to merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership.

(g) Control of Association and Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member.

(h) Amendment of Declaration. The right to amend the Declaration in connection with the exercise of any Development Rights.

(i) Amendment of Plat. The right to amend the Plat in connection with the exercise of any Development Rights.

Section 2: Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 1 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

(a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility, irrigation, and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, open spaces, and irrigation of open spaces and properties adjacent to the Common Interest Community and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of and to serve the Lot Owners within the Common Interest Community and, in the case of irrigation ditches, the owners of the property served by such ditches.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, maintenance, improvement, or regulation of Common Elements, which may or may not be a part of the Common Interest Community for the benefit of the Lot Owners and/or the Association.

10

(c) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 3: Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Larimer County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

#### ARTICLE VI. RESERVATION OF DEVELOPMENT RIGHTS

Section 1: Reservation of Right to Expand. The Declarant reserves the right, but shall not be obligated, to expand the effect of this Declaration to include all or part of the Expansion Property. The consent of the existing Owners and holders of Security Interests shall not be required for any such expansion, and the Declarant may proceed with such expansion without limitation at its sole option. The Declarant shall have the unilateral right to transfer to any other Person this right to expand by an instrument duly recorded. The Declarant shall pay all taxes and other governmental assessments relating to the Expansion Property as long as the Declarant is the owner of such property.

Section 2: Incorporation of Additional Expansion Property. The Declarant also reserves the right to incorporate into the Real Estate real property that is not part of the Expansion Property, subject to the limitations of the Act.

Section 3: Declaration of Annexation. Any expansion may be accomplished by recording a Declaration of Annexation and one (1) or more supplemental Plats in the records of the Clerk and Recorder of Larimer County, Colorado, on or before the expiration of the Special Declarant Rights Period. The Declaration of Annexation shall describe the real property to be expanded, submit it to the covenants, conditions, and restrictions contained in this Declaration, and provide for voting rights and Assessment allocations as provided in this Declaration. Specifically, each such Lot shall be allocated one (1) vote and liability for the Common Expenses equal to the liability allocated to each of the other Lots, and the proportionate voting interest and allocation of Common Expenses for the other Lots will be adjusted accordingly. Such Declaration of Annexation shall not require the consent of Owners. Any such expansion shall be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one (1) supplemental expansion.

Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Common Interest Community as expanded. Such Declaration of Annexation may add Supplemental Covenants peculiar to the Expansion Property in question, or delete or modify provisions of this Declaration as it applies to the Expansion Property added. However, this Declaration may not be modified with respect to that portion of the Real Estate already subject to this Declaration, except as provided below for amendment.

Upon the annexation of any additional Common Elements or any other parcels of the Expansion Property or other real estate into the Common Interest Community, the obligations of the Association for the maintenance and operation of the Common Elements or other

11

properties maintained by the Association for the use or benefit of the Owners, and the Assessments levied to fund those functions, may be increased appropriately, subject to the budget procedures set forth in the Documents and the Act.

Section 4: Withdrawal of Property. The Declarant reserves the right to withdraw from the jurisdiction of this Declaration any parcel of the Property (including the Expansion Property), subject to the limitations of the Act. After withdrawal of any parcel from the regime of this Declaration, the Common Expenses and votes attributable to the Lots remaining in the Property shall be allocated in the manner set forth in this Declaration.

Section 5: Reciprocal Easements. If all or a part of the Expansion Property is not submitted to this Declaration, or if property is withdrawn from the Common Interest Community ("Withdrawn Property"):

(a) The Owners of the Expansion Property and/or Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Common Interest Community; and

(b) The Owners in the Common Interest Community shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Expansion Property and Withdrawn Property.

The Declarant shall prepare and record in the office of the Clerk and Recorder of Larimer County, Colorado, whatever documents are necessary to evidence such easements. Such recorded easements shall specify that the Owners of the Expansion Property and the Withdrawn Property and the Owners in the Common Interest Community shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one (1) of them on the other's property upon such reasonable basis as the Declarant shall establish in the easements. Preparation and recordation by the Declaration of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

Section 6: Termination of Development Rights. The Development Rights reserved to Declarant, for itself and its successors and assigns, shall expire ten (10) years from the date of recording this Declaration in the office of the Clerk and Recorder of Larimer County, Colorado, unless the Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the Development Rights by Declarant.

Section 7: Transfer of Development Rights. Any Development Right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in the office of the Clerk and Recorder of Larimer County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

#### ARTICLE 7. COVENANT FOR ASSESSMENTS

Section 1: Creation of Lien and Personal Obligation of Assessments and Special Assessments. The Declarant, for each Lot

12

owned within the Common Interest Community, shall be deemed to covenant and agree, and each Lot Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all Assessments and Fines, together with such interest thereon and costs of collection thereof as herein provided. Said Assessments, Fines, interest and costs of collection, including reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or Fine is made. Such Assessments and Fines, including reasonable attorneys' fees, shall be the personal obligation of the Person who was the Lot Owner of such Lot at the time when the Assessment or Fine fell due. The personal obligation for any delinquent Assessment or Fine shall not pass to his or her successors in title unless expressly assumed by them. No Lot Owner may become exempt from liability for payment of Assessments or Fines by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which Assessments are made.

Section 2: Purpose of Assessments. The Assessments levied by the Association through its Executive Board shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Common Interest Community; for the maintenance, repair and upkeep of the Common Elements and for any other maintenance obligations or common services which may be deemed necessary by the Association for the common benefit of the Lot Owners, or the maintenance of property values, or for the payment of expenses which may be incurred by virtue of an agreement with or requirement of any city, county or other local government authority, and to provide for all other expenses incurred by the Association in performing its duties under this Declaration and the Act. The Assessments shall further be used to provide adequate insurance of various types, and in such amounts deemed necessary by the Executive Board, with respect to the Common Elements located within the Common Interest Community. Further, the Assessments shall provide a reserve fund for replacements on a periodic basis as the Executive Board determines necessary to adequately provide for such replacements as may be required by this Declaration.

Section 3: Annual Common Expense Assessment. The total annual Common Expense Assessment against all Lots shall be based upon the Association's advance budget of the cash requirements, needed by it to provide for the administration and performance of its duties during such Common Expense Assessment year, which estimates may include, among other things:

- (a) Expenses of maintaining the Association and providing management for the Common Interest Community;
- (b) Premiums for all insurance which the Association is required or permitted to maintain;
- (c) Repairs and maintenance to or replacement of the Common Elements;
- (d) cost of providing irrigation water or other common utilities for the Common Elements as contemplated by this Declaration;
- (e) Wages for Association employees, if any;
- (f) Legal, accounting and property management fees,

13

(g) Any deficit remaining from a previous Assessment year;

(h) The creation of reasonable, replacement or contingency reserves, working capital and/or sinking funds; and

(i) Any other costs, expenses and fees, which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Lot Owners under or by reason of this Declaration.

Such Common Expense Assessments shall be collected at such intervals as is determined by the Executive Board but not less frequently than on an annual basis.

Section 4: Special Assessments.

(a) In addition to the Common Expense Assessments authorized above, the Association may at any time, from time to time, determine, levy and assess a Special Assessment for the purpose of defraying in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of the Common Elements or for "Capital Improvements" or "Capital Acquisitions." Any such Special Assessment made by the Executive Board must be approved by not less than sixty-seven percent (67%) of the Members who are voting in person or by proxy at a meeting duly called for that purpose. No Special Assessment for legal action pursued by the Association shall be required of the Declarant without the written approval of the Declarant. The amounts determined, levied and assessed pursuant hereto shall be assessed equally against each Lot.

(b) "Capital Improvements," as used herein, shall mean the construction, erection or installation of substantial structure(s) or other improvement(s) to the Common Elements in the Common Interest Community, but shall not include Common Elements which may hereafter be constructed, erected or installed on the Real Estate by the Declarant in its development of the Common Interest Community.

(c) "Capital Acquisitions" as used herein, shall mean the purchase, lease or other acquisition of real property interests in and about the Common Interest Community, including, but not limited to, access to private and/or public lands in the vicinity of the Common Interest Community or other property interests which will benefit and enhance the use and enjoyment of the Common Interest Community by the Lot Owners thereof but shall not include any capital acquisitions hereafter made by the Declarant in its development of the Common Interest Community.

(d) Notice in writing setting forth the amount of such Special Assessment per Lot and the due date for payment thereof shall be given to the Lot Owners not less than sixty (60) days prior to such due date.

(e) Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all Members not less than ten (10) nor more than fifty-nine (59) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies, if permitted, entitled to cast fifty percent (50%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, the meeting shall be continued to another date to be decided by the voting Members at the first meeting, and it will be called subject to the same notice requirements, and the

required quorum at the subsequent meeting shall be twenty-five percent (25%) of all votes of the membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5: Rate of Assessment. Except as otherwise provided in this Section 5 and in Section 13, each Owner shall be responsible for a fraction, the numerator of which shall be 1 and the denominator of which shall be equal to the number of Lots in the Common Interest Community, of all Common Expense Assessments, plus any Special Assessments which shall be allocated to each Lot. Notwithstanding the foregoing, any Common Expense Assessments or Special Assessments which benefit fewer than all Owners shall be assessed exclusively against the Lots benefited.

Section 6: Date of Commencement of Annual Common Expense Assessments and Budget. Common Expense Assessments shall commence as of January 1, 2002. The Executive Board shall fix the amount of the annual Common Expense Assessment against each Lot at least yearly. Written notice of the Common Expense Assessment shall be sent to every Lot Owner subject thereto. Common Expense Assessments shall be collected at such intervals and in such installments as the Executive Board shall determine, but not less often than annually. The due dates shall be established by the Executive Board. After the first budget year of the Association, within thirty (30) days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall provide a summary of the budget to each Lot Owner and shall set a date for a meeting of the Lot Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) nor more than fifty-nine (59) days after the mailing of the summary. Unless at that meeting a majority of all Lot Owners reject the budget, the budget shall be ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall continue until the Lot Owners ratify a new budget proposed by the Executive Board.

Section 7: Association Lien and Effect of Non-Payment of Assessments. The Assessments, charges, fees, Fines, impositions, interest, costs, late charges, expenses and reasonable attorneys' fees which may arise under the provisions of this Declaration, shall be burdens running with, and perpetual liens in favor of the Association upon the specific Lot to which such Assessments apply. Recording of the Declaration constitutes record notice and perfection of the Association's lien. Further recording of a claim of lien for an Assessment under this section is not required. Any Assessment, charge or fee provided for in this Declaration, or any installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the Default Rate from the due date, and the Association may assess a late charge thereon. In the event of default in which any Lot Owner does not make payment of any Assessment levied against his or her Lot within ten (10) days of the due date, the Executive Board shall have the right to declare all unpaid Assessments for the pertinent fiscal year immediately due and payable. Further, the Association may bring an action at law or in equity, or both, against any Lot Owner personally obligated to pay such overdue Assessments, charges or fees, or installments thereof, and may also proceed to foreclose its lien against such Owner's Lot.

An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid Assessments, charges or fees, or installments thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving, the Association's lien therefor. In the event that any such Assessment, charge or fee, or installment thereof, is not

fully paid when due and the Association shall commence such action (or shall counterclaim or crossclaim for such relief in any action) against any Lot Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Lot, then all unpaid Assessments, charges and fees, and all unpaid installments thereof, and any and all late charges and accrued interest under this section, the Association's costs, expenses and reasonable attorneys' fees incurred in preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings shall be taxed by the court as a part of the cost of any such action or foreclosure proceeding and shall be recoverable by the Association from any Lot Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Lot. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charge or fee, or installment thereof, which is not fully paid when due.

The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of Assessments becomes due, except that if an Owner of a Lot subject to a lien under this section files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until ninety (90) days after the automatic stay of proceedings under § 362 of the Bankruptcy Code is lifted. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Lot to collect all sums alleged to be due from the Lot Owner or a tenant of the Lot Owner prior to or during the pendency 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 Assessments, based on a periodic budget adopted by the Association.

Section 8: Subordination of Lien to Security Interests.

A lien under this section is prior to all other liens and encumbrances on a Lot except:

- (a) Liens and encumbrances recorded before the recordation of this Declaration;
- (b) A First Security Interest on the Lot recorded before the date on which the Assessment sought to be enforced became delinquent; and
- (c) Liens for real estate taxes and other governmental assessments or charges against the Lot.

A lien under this section is also prior to all Security Interests to the extent that the Assessments are based on the periodic budget adopted by the Association and which would have become due, in the absence of acceleration, during the six (6) months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest, and statutory liens recognized under Colorado law. If a holder of a First Security Interest in a Lot forecloses that Security Interest, the Purchaser at the foreclosure sale is not liable for any unpaid Assessments against the Lot which became due before the

14

sale, other than the Assessments which are prior to the Security Interest under this section of the Declaration. Any unpaid Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all Lot Owners, including the Purchaser. Sale or transfer of any Lot shall not affect the lien for said Assessment charges except that a sale or transfer of any Lot pursuant to foreclosure of any First Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contracts shall only extinguish the lien of Assessment charges which become due more than six (6) months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest, and statutory liens recognized under Colorado law. No such sale, transfer, foreclosure or other proceeding in lieu thereof, including deed in lieu of foreclosure, shall relieve any Lot from liability for any Assessment charges thereafter becoming due, nor from the lien thereof. This section does not affect the priority of mechanics' or materialmen's liens.

Section 9: Record of Receipts and Expenditures. The Association shall keep detailed and accurate records in chronological order of all of its receipts and expenditures, specifying and itemizing the maintenance and repair of expenses of the Common Elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available on request for examination by the Lot Owners and others with an interest, such as prospective lenders.

Section 10: Notice to Security Interest. Upon the request of a holder of a First Security Interest on a Lot, and upon payment of reasonable compensation therefor, the Association shall report to such party any unpaid Assessment or other defaults under the terms of this Declaration which are not cured by the Lot Owner within thirty (30) days.

Section 11: Certificate of Status of Assessments. The Association, upon written request to the Association's registered agent, personally delivered or delivered by certified mail, first class postage prepaid, return receipt requested, and upon payment of a reasonable fee, but in no event less than Ten Dollars (\$10.00), shall furnish to a Lot Owner or such Lot Owner's designee or to a holder of a Security Interest or its designee, a statement, in recordable form, setting out the amount of the unpaid Assessments against the Lot. The statement must be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Executive Board and each Lot Owner. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance. Omission or failure to fix an Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of a Lot Owner from his or her obligation to pay the same.

Section 12: Homestead. The lien of the Association Assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said lien.

Section 13: Common Expenses Attributable to Fewer than All Lots.

(a) If a Common Expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.



17

(b) Fees, charges, taxes, impositions, late charges, Fines, collection costs and interest charged against a Lot Owner pursuant to the Documents and the Act are enforceable as Common Expense Assessments.

(c) Any Common Expense or portion thereof benefitting fewer than all of the Lots must be assessed exclusively against all the Lots benefitted in the proportions determined by the Executive Board after considering the relative size and value that the Lots being benefitted bear to all Lots benefitted.

#### ARTICLE VIII.

##### MAINTENANCE OF STREETS, DRAINAGE FACILITIES & COMMON ELEMENTS

Section 1: Dedication of Common Elements. The Declarant hereby dedicates the Common Elements to the common use and enjoyment of Lot Owners as hereinafter provided.

Section 2: Dedication of Easements. Subject to the limitations and restrictions set forth in this Article VIII and all existing easements, reservations, restrictions, covenants and agreements of record, the Declarant does hereby establish, remise, release, sell, convey, quitclaim and dedicate unto the Association, its successors and assigns, for the use of the Lot Owners within the Common Interest Community, their family members, tenants, guests and invitees, the following perpetual non-exclusive easements in, over, across and upon real property located within the Property at the locations described below and/or depicted or described upon the Plat for the Property:

(a) Drainage and Utility Easement. A perpetual non-exclusive Drainage and Utility Easement located within the Access Easement described in Section 1, above, for stormwater drainage and for the installation, construction, maintenance, inspection, operation, replacement or removal of all utilities, including, but not limited to, water, sewer, telephone, natural gas, electricity and cable television, to the Lots within the Common Interest Community. All utilities located within the Drainage and Utility Easement shall be installed below ground unless the Declarant, upon receipt of professional engineering advice, reasonably determines that the installation of such utilities below ground is impractical or will result in excessive expense due to topographical, geological or environmental factors.

Section 3: Parks and Street Parks. Tracts A through G, as set forth on the Plat, which shall be used by the Association, for the benefit of the members, as open space, storage ponds and related uses. Said tracts shall be conveyed to the Association free and clear of all liens and encumbrances prior to the conveyance of the first Lot within the Common Interest Community. Those tracts comprising the Common Elements shall be transferred to the Association free and clear of all liens and encumbrances prior to the conveyance of the first Lot within the Common Interest Community; subject, however, to the provisions of this Declaration. Upon transfer by Declarant to the Association of said Tracts or any other Common Elements or any improvements or facilities installed in, on or under any of the Common Elements, as contemplated by this Declaration, the Association shall be deemed to have fully accepted same, in its then present condition, and the Association shall thereafter be fully responsible for due and proper operation, repair and maintenance of same.

Section 4: Streets. The Association shall be responsible for maintaining all streets, drainage facilities, the irrigation system and Common Elements within the Common Interest Community. The Declarant will improve the streets with pavement

18

and other improvements to meet the standards of Larimer County, Colorado. The streets, drainage facilities, irrigation system and Common Elements shall be maintained in good condition by the Association at all times for the benefit of all Lot Owners.

Section 5: Installation of Improvements Within Common Elements by Declarant. The Declarant shall at its sole cost and expense, be responsible for the construction, installation or placement of the following Improvements within the Common Interest Community:

(a) An irrigation system ("Irrigation System") providing for irrigation of landscaping on the Common Elements. The Irrigation System may consist of such equipment and facilities, and be supplied with water from such sources, as determined to be necessary or appropriate by Declarant and its engineers, in their sole discretion. Without limiting the foregoing, the Irrigation System may be supplied with water from East Larimer County Water District or through non-potable water systems supplied by water rights provided by Declarant.

In either event, all costs and expenses incurred by the Association in obtaining and providing for irrigation water and maintaining the Irrigation System shall constitute Common Expenses. The Irrigation System to be supplied by Declarant will not be designed to provide for irrigation of landscaping on individual Lots and the cost of installing, operating, repairing and maintaining any irrigation facilities on the Lot of an individual Owner (and obtaining water for same) shall be the responsibility of the Owner of each such Lot.

The Association shall indemnify Declarant against, and hold it harmless from any liability whatever for any personal injury or property damage claim relating to the condition of the Irrigation System or quantity or quality of the irrigation water arising from any circumstance or incident occurring after the Irrigation System is installed and ownership transferred to the Association.

Declarant shall convey to the Association, which shall hold same as a Common Element, such water rights, if any, as may be determined by Declarant to be reasonably adequate to supply the Irrigation System. The Association shall be responsible for the cost of delivering and storage of such water, and of any applicable assessments, augmentation fees or similar charges allocable to such water. Such costs shall constitute Common Expenses.

Section 6: Force Majeure. Notwithstanding the foregoing, in the event any delays are caused in the installation, construction or placement of such Improvements as a result of strikes, transportation delays, partial or total destruction of the Improvements or property, unavoidable casualties, unavailability of materials, acts of God, war, or adverse or inclement weather conditions, or any causes beyond the reasonable control of the Declarant, the time for completion of such Improvements shall be extended for a period equal to the actual delay in the construction work so caused. Except as set forth herein, the Declarant shall have no obligation to install any other Improvements within the Common Interest Community.

Section 7: Maintenance and Regulation of Common Elements. After the installation of any Common Elements, the Irrigation System and other Improvements as required of the Declarant pursuant to the terms of this Declaration, such Improvements shall be deemed Common Elements, and such improvements, together with any other Common Elements, shall be maintained, repaired and replaced as necessary by the Association

so that the Common Elements present an aesthetically attractive appearance to serve the purpose for which they were installed; provided, however, the Association shall have no responsibility to maintain electrical lines or telephone lines to the extent operated, maintained, repaired and serviced by utility providers.

Notwithstanding anything to the contrary contained herein, in the event the need for the Association to maintain, repair or replace a Common Element is caused by the willful act or gross negligence or misconduct of a Lot Owner or a member of such Lot Owner's family, or a guest, invitee or tenant of a Lot Owner or a member of such tenant's family, the costs of such repair, replacement or maintenance, to the extent not covered by the Association insurance, shall be a personal obligation of such Lot Owner, and any costs, expenses and fees incurred by the Association for same shall be assessed to such Lot Owner and added to Owner's Common Expense Assessment. The Association shall have a lien for the payment of such Assessment as provided in the Act and in this Declaration.

The Association may adopt such Rules and Regulations with respect to its Members, their family members, tenants, guests, invitees, contract users, contractors, subcontractors and agents as shall be necessary for the proper regulation of the use of the Common Elements in order to allow the Owner of each Lot the full use and enjoyment of the Common Elements provided herein in a manner which shall not unreasonably disturb or interfere with the use of the Common Elements by Persons who own a Lot within the Common Interest Community.

Section 8: Owners' Easements of Enjoyment. Each Lot Owner shall have a right and easement of enjoyment in and to the Common Elements and such easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(a) The right of the Association to promulgate and publish reasonable Rules and Regulations as provided in this Declaration.

(b) The right of the Association to suspend voting rights and the right to use Common Elements by a Lot Owner for any period during which any Assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days from any infraction of it published Rules and Regulations.

(c) The right of the Association to dedicate or transfer any part of the Common Elements, to any public agency, authority, utility or other entity for such purposes and subject to such conditions as may be agreed upon by the Members, provided that no such dedication or transfer shall be effective unless the Lot Owners entitled to cast at least sixty-seven percent (67%) of the votes of the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by the Declarant, agree to such dedication, transfer, purpose or condition. Written notice of the proposed agreement and action thereof shall be sent to every Lot Owner at least thirty (30) days in advance of any action taken. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause. An agreement to dedicate, transfer or convey all or any part of the Common Elements must be evidenced by execution and recordation of an agreement or ratification thereof, in the same manner as a deed by the requisite number of Lot Owners. Such agreement must specify a date after which the agreement will be void unless recorded before that date.

(d) The right of the Association to close or limit use of the Common Elements while maintaining, repairing and making replacements in the Common Elements, provided that the Association shall attempt to minimize any interference with access to Lots within the Property.

Section 9: Larimer County Requirements. Pursuant to the requirements of the Subdivision Resolution of Larimer County, Colorado, the Declarant hereby states that, in the event the Association should for any reason fail to perform its duties to maintain the Common Elements, streets, or drainage facilities within the Common Interest Community, Larimer County may, in accordance with the provisions of the Larimer County Subdivision Resolutions, after notice as provided therein, undertake to maintain such facilities and the costs of such maintenance shall be required to be paid by the Owners of the Lots within the Common Interest Community, collectible by assessments through the Larimer County Treasurer in the manner provided by law for collection, enforcement, and remittance of general property taxes.

Section 10: Duration of Maintenance Provisions. The provisions contained in this Article and all other provisions of this Declaration relating to the responsibility to maintain the streets, drainage facilities and common elements within the Common Interest Community (including, without limitation, provisions authorizing assessments in the establishment and enforcement of liens for nonpayment of assessments) shall not expire or be deleted through amendment of the Declaration and shall be perpetual unless specifically released by Larimer County, Colorado, or a municipality in the event the Common Interest Community is annexed by such municipality at some future date. In addition, in no event shall the expiration of this Declaration in any way alter, affect, or terminate any easements within the Common Elements or the rights and duties of Lot Owners with respect to the Common Elements as provided in this Declaration. Said bylaws state that the Association cannot be dissolved without written consent of Larimer County.

ARTICLE IX. ARCHITECTURAL CONTROL

Section 1: Architectural Control Committee.

(a) Membership. The Architectural Control Committee shall consist of three (3) persons. The members of the Architectural Control Committee shall be appointed by the Declarant. At such time as the Declarant is no longer the Owner of one or more Lots within the Common Interest Community, then the members of the Architectural Control Committee shall be appointed by the Executive Board from among the Owners.

(b) Purpose. The Architectural Control Committee is established for the purpose of maintaining within the Common Interest Community a consistent and harmonious general character of development and a style and nature of building design and visual appeal consistent with the natural beauty and features of the Common Interest Community.

(c) Term. Each member of the Architectural Control Committee shall serve at the pleasure of the person or entity appointing such member. In the event of the death or resignation of any member of the Architectural Control Committee, the person or entity that appointed such member shall appoint a successor.

(d) Decisions. All decisions of the Architectural Control Committee shall be by a majority vote of those members of the Committee present at a meeting at which a

27

quorum is present. A majority of the members of the Architectural Control Committee shall constitute a quorum.

(e) Compensation. The members of the Architectural Control Committee shall not be entitled to any compensation for services performed pursuant to this Declaration but shall be entitled to reimbursement by the Association for all costs and expenses incurred in performing their duties pursuant to this Declaration.

(f) Delegation. The Architectural Control Committee shall have the power to delegate the responsibility for reviewing any application submitted to the Architectural Control Committee to a professional architect, landscape architect, engineer, or other professional person who is qualified to pass on the issues raised in the application. The Architectural Control Committee shall also have the power to require that the applicant pay the fees reasonably incurred by the Architectural Control Committee in retaining such professional to review the application submitted.

(g) Nonliability. No member of the Architectural Control Committee shall be liable to the Association or to any Owner or member for any loss, damage, or injury arising out of or in connection with the performance of the duties of the Architectural Control Committee under this Declaration, unless such action constitutes willful misconduct or bad faith on the part of the Architectural Control Committee. Review and consideration of any application submitted to the Architectural Control Committee shall be pursuant to this Declaration, and any approval granted shall not be considered approval of the structural safety or integrity of the improvements to be constructed or conformance of such improvements with building codes, zoning resolutions, subdivision regulations, or other governmental rules and regulations applicable to the Common Interest Community.

Section 2: Control. No construction, alteration, addition, modification, exterior decoration, exterior redecoration, or reconstruction of any building, fence, wall, structure, or other improvement within the Common Interest Community shall be commenced or maintained until the plans and specifications thereof shall have been approved by the Architectural Control Committee.

Section 3: Submission. Each application for approval shall include the following:

(a) Two (2) complete copies of a site plan of the Lot. The site plan shall show the following information with a scale of one (1) inch on the plans for each twenty (20) feet of actual distance on the Lot:

- (1) Finished elevation of the improvement.
- (2) A building footprint with dimensions from front, rear, and side boundary lines of the Lot.
- (3) Driveways and walkways located or to be constructed on the Lot.
- (4) Any existing structures on the Lot.
- (5) Location of improvements with respect to utility lines and facilities.

22

(b) Two (2) complete sets of construction plans and specifications. Said plans and specifications shall include the following minimum information:

(1) Floor plans of all levels of any Residence, which plans shall contain sufficient detail to describe the elements of the floor plan design.

(2) Total square footage for each level of any Residence.

(3) Building elevations on all sides of the proposed structure containing sufficient detail to determine roof form and material, window locations, siding material, and door placements.

(4) A written description of the materials to be used in the roof and exterior walls of the structure.

(5) The size, type, and material to be incorporated in any fencing to be located on the Lot.

(6) The color of any paint or stain to be applied to the improvements and the color of the roofing material.

Section 4: Rules and Guidelines. The Architectural Control Committee may issue rules setting forth procedures for the submission of plans for approval and may also issue guidelines ("Design Guidelines") setting forth the criteria that the Architectural Control Committee will use in considering plans submitted to it for approval. The Architectural Control Committee may amend, vary, repeal and augment the Design Guidelines from time to time, in the Architectural Control Committee's sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of the Common Interest Community or other factors as necessary or desirable to fulfill the intent of the Design Guidelines. The Design Guidelines shall be binding on all Lot Owners and other persons governed by this Declaration.

The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

(a) Standards establishing and dictating an architectural theme and requirements pertaining to building style and design, construction materials and site planning.

(b) Procedures and fees for making application to the Architectural Control Committee for design review approval, including the documents to be submitted and the time limits in which the Architectural Control Committee must act to approve or disapprove any submission.

(c) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Design Guidelines.

(d) Establishment and designation of a building envelope on a Lot, establishing the maximum developable area of a Lot and set-back or view corridor requirements.

(e) Minimum and maximum square foot areas of living space that may be developed on any Lot.

23

(f) Limitations on the height of any Residence or other Improvement.

(g) Specifications for the location, dimensions and appearance or screening of any fences, accessory structures, antennae or other Improvements.

(h) Landscaping regulations, including limitations and restrictions prohibiting the removal or requiring the replacement of existing trees; guidelines encouraging the use of plants indigenous to the locale and compatible with the design theme for the Common Interest Community; and other practices benefitting the protection of the environment, aesthetics and architectural harmony of the Common Interest Community.

(i) General instructions for the construction, reconstruction, refinishing or alteration of any Improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits upon a Lot, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformers and meters.

Section 5: Review of Plans and Specifications. The Architectural Control Committee shall consider and act upon any and all requests submitted for its approval. The Architectural Control Committee shall approve plans and specifications submitted to it only if it determines that the construction, alteration, or additions contemplated thereby, and in the location as indicated, will comply with this Declaration, will serve to preserve and enhance the values of Lots within the Common Interest Community, and will maintain a harmonious relationship among structures, vegetation, topography, and the overall development of the Common Interest Community. The Architectural Control Committee shall consider the quality of workmanship, type of materials, and harmony of exterior design with other Residences located within the Common Interest Community. Should the Architectural Control Committee fail to approve or disapprove the plans and specifications submitted to it by an Owner of a Lot within thirty (30) days after complete submission of all required documents, then such approval shall not be required; provided, however, that no building or other structure shall be erected or allowed to remain on any Lot which violates any of the covenants or restrictions contained in this Declaration. The issuance of a building permit or license for the construction of improvements inconsistent with this Declaration shall not prevent the Association or any Owner from enforcing the provisions of this Declaration. Approval by the Architectural Control Committee shall be in writing or by endorsement on the plans.

Section 6: No Waiver of Future Approval. The approval by the Architectural Control Committee of any proposal or plans and specifications for any work to be done on a Lot shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans, specifications, drawings, or other matter subsequently or additionally submitted for approval by the same Owner or by another Owner.

Section 7: Land Use and Building Type. No building or other structure shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family Residence per Lot, with attached or detached garage for a minimum of two (2) automobiles and such other structures as may be approved by the Architectural Control Committee.

24

Section 8: Driveways. All driveways shall be constructed of or concrete pavement or other hard surfacing approved by the Architectural Control Committee. The Owner of each Lot shall install a culvert at the entrance to his or her driveway as required by the Larimer County Engineer.

Section 9: Building Location. Except as otherwise provided in this Section, and except for Lots 1 through 33, Filing No. 1, to which this Section shall not apply, no Residence or other structure shall be constructed or placed upon any Lot nearer to the front Lot line, side Lot line, or rear Lot line than the following minimum setback requirements:

(a) Front Lot Line: No building shall be located on any Lot nearer than twenty (20) feet from the front Lot line.

(b) Side Lot Line: No buildings shall be located on any Lot nearer than five (5) feet to the side Lot line unless an easement adjacent to the side Lot line is in excess of said twenty (20) feet, in which event no building shall be located or placed on said easement and the minimum side Lot line shall increase accordingly.

(c) Rear Lot Line: No building shall be located on any Lot nearer than twenty (20) feet to the rear Lot line.

For purposes of this section, building corners, eaves, steps, open porches (roofed or not roofed), or other components of a building shall be considered as part of the Residence. The Architectural Control Committee (or in the absence of action by the Architectural Control Committee, the Executive Board of the Association) reserves the right to designate which streets are front streets and which property lines are front Lot lines, side Lot lines, and rear Lot lines. Any "reverse corner Lots" (i.e., those Lots having streets on two [2] sides of the Lot) shall be required to satisfy the front Lot line setback requirements set forth above on both sides of the Lot abutting such streets regardless of which direction the building thereon faces. The Architectural Control Committee may grant relief from the provisions of this Section for good cause shown.

Section 10: Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot unless it is placed at least thirty (30) feet from the intersection of both streets. No tree or obstruction shall be permitted to remain on a corner Lot unless the foliage line is maintained to sufficient height to prevent obstruction of sight lines.

Section 11: Construction. Construction of a Residence or other structure approved by the Architectural Control Committee shall commence within three (3) months after approval of the plans and specifications, and the Owner shall thereafter proceed diligently with such construction. The exterior of any such structure shall be completed within six (6) months of the date of commencement of construction. The Architectural Control Committee may grant an extension of the foregoing time periods for good cause and when such extension is requested by the Owner. Each Owner shall provide portable toilet facilities and trash dumpster during construction of the Residence on such Owner's Lot.

Section 12: Fences. The Architectural Control Committee shall establish design criteria for all fences to be installed and erected upon a Lot.



Section 13: Landscaping. Each Lot shall be fully landscaped within six (6) months after the issuance of a certificate of occupancy for a Residence on the Lot. Each Owner shall plant a minimum of five (5) trees: two (2) evergreen trees with a minimum height of five (5) feet, and three (3) deciduous trees with a minimum caliper of two (2) inches.

Section 14: Signs. No sign of any character shall be displayed or placed upon any Lot, with the following exceptions: (a) one (1) sign per Lot of not more than six (6) square feet in total area advertising a Lot for sale shall be permitted on any Lot; (b) the Declarant or the Association shall have the right to place a permanent sign at the entrance to the Common Interest Community identifying the development; (c) until such time as the Declarant is no longer the Owner of a Lot, the Declarant or its agents shall have the right to place one or more signs on the Common Interest Community, without limitation of size, offering Lots within the Common Interest Community for sale; and (d) additional signs may be permitted if approved by the Architectural Control Committee.

Section 15: Liability. The Architectural Control Committee shall not be liable to any Owner for any loss, cost, expense, or damage, including attorney's fees, suffered by such Owner as a result of any decision made by the Architectural Control Committee unless such action is taken in bad faith or with malice against an Owner.

Section 16: Clotheslines. No clothesline may be installed on any Lot.

Section 17: Antennas. All external radio antennas, television antennas, satellite dishes or other external signal receiving devices shall be installed or erected in such a manner and with appropriate screening as shall be required by the Design Guidelines. The Design Guidelines shall encourage the use of screening, unobtrusive placement, planting, painting and other measures to ensure that the aesthetics of the Common Interest Community are protected and to ensure the safety of the installation of any such devices. In no event shall any satellite dish in excess of eighteen (18) inches in diameter be permitted within the Common Interest Community. The Design Review Committee may promulgate reasonable Rules and Regulations to regulate the proposed locations and require screening or painting to minimize visual intrusion of such devices, provided that no such rules and regulations shall impair dish or antenna reception nor result in an unreasonable cost or delay in the installation and maintenance of a satellite dish or antenna.

Section 18: Storage Tanks and Containers. No elevated tanks of any kind shall be erected, placed, or permitted to remain on any Lot. All air-conditioning, refrigeration, cooling, heating, or other mechanical equipment or system which is located outside of a Residence or other structure on a Lot shall be screened from view from other Lots and from the streets by fencing or landscaping approved by the Architectural Control Committee. Window air-conditioning units and swamp coolers shall not be permitted.

Section 19: Damage or Destruction of Improvements. In the event any Residence or other structure constructed on a Lot is damaged, either in whole or in part, by fire or other casualty, said Residence or other structure shall be promptly rebuilt or remodeled to comply with this Declaration; or in the alternative, if the Residence or other structure is not to be rebuilt, all remaining portions of the damaged structure, including the

26

foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Residence or other structure.

Section 20: Address Numerals. Address numerals shall be visible from the street fronting the property through the use of 6" numerals on a contrasting background. This requirement shall be specified in the covenants for the project and enforced by the Association.

Section 21: Variances. The Architectural Control Committee may authorize variances from compliance with any provisions of this Declaration when circumstances such as natural obstructions, hardships, aesthetics or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Control Committee. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of the variance shall not operate to waive any provisions of this Declaration for any purpose except as to the particular property and the particular provision hereof covered by the variance, nor shall the granting of a variance affect in any way the Lot Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

#### ARTICLE X. USE RESTRICTIONS

Section 1: Trash Collection. The Association, acting through its Executive Board, shall have the right to require that any trash collection within the Common Interest Community be performed by one company and that trash be collected from all Lots by such company on the same day of each week. The Executive Board shall select the trash company based on competitive bids. The cost of trash collection shall be paid by each Owner directly to the trash collection company, and the Association shall not have the duty to assess the cost of trash collection as a Common Expense. Nothing herein contained shall be construed to prohibit an Owner from personally disposing of trash from his Lot. This section shall not apply to a contractor during the construction of a Residence or other improvements on a Lot. The contractor may dispose of trash, rubbish, debris, and other construction materials from the Lot either personally or by contracting with a trash collection company. The trash collection company may remove trash, rubbish, debris, and other construction materials from the Lot during the construction of the Residence as often as the contractor deems appropriate.

Section 2: Mineral Extraction. No mining or extraction of oil, gas, gravel, or other minerals shall be permitted on any Lot.

Section 3: Resubdivision. No Lot may be further subdivided without the approval of the Architectural Control Committee. This provision shall not be construed to prohibit or prevent the dedication or conveyance of any portion of a Lot as an easement for public utilities.

Section 4: Restrictions on Leasing. No Lot Owner shall lease his or her Residence to any group of people other than a "single family" as defined in Article I hereinabove nor shall any lease be for a period of less than thirty (30) days. All such leases shall be in writing and shall contain a covenant by the

tenant or tenants that their use and occupancy of the Residence pursuant to the terms of the lease are subject to the terms and conditions set forth in this Declaration and that such tenant will abide by the terms contained herein as well as all Rules and Regulations promulgated by the Association.

Section 5: Household Pets. No animals, livestock, poultry, venomous reptiles, or bees of any kind shall be raised, bred, kept, or boarded upon any Lot, except that dogs, cats, or other household pets, as the same may be defined and determined by the Association, may be kept. No more than three (3) adult dogs and three (3) adult cats may be kept on any Lot. Household pets shall be subject to all Rules and Regulations adopted by the Association and all governmental ordinances or laws applicable to the Common Interest Community. Dogs shall at all times be confined by fence, leash, or under voice command. Each Owner of a pet shall be responsible for the prompt clean up and removal of such pet's excrement from his or her Lot.

Section 6: Use of Common Elements. All use of the Common Elements shall be subject to and governed by the Rules and Regulations adopted by the Association. No damage or waste shall be committed to the Common Elements by Lot Owners, their families, tenants, guests, and invitees.

Section 7: Occupancy of Lot. In addition to any other restrictions imposed upon Lot Owners by the County of Larimer, Colorado, with regard to the completion of a Residence and notwithstanding the issuance of a temporary or permanent certificate of occupancy for the Residence by the appropriate governmental entity, no Residence shall be occupied until all buildings, fences, walls, structures, and other improvements as are set forth in the plans and specifications submitted to and approved by the Architectural Control Committee shall first be constructed and installed, including, but not limited to, the rough grading of the Lot and the installation of driveways and sidewalks thereon.

Section 8: General Prohibition. No use shall be made of an Owner's Lot which will in any manner violate the statutes or rules and regulations of any governmental authority having jurisdiction over the use of said Owner's Lot.

Section 9: Maintenance of Lots and Improvements. Owners of Lots shall keep or cause to be kept all buildings, fences, and other structures and all landscaping located on their Lot in good repair. Rubbish, refuse, garbage, and other solid, semi-solid, and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate on any Lot, and shall be disposed of in a sanitary manner. No Lot shall be used or maintained as a dumping ground for such materials. All containers shall be kept in a neat, clean, and sanitary condition and shall be stored inside a garage or other approved structure. No trash, litter, or junk shall be permitted to remain exposed upon any Lot and visible from adjacent streets or other Lots. Burning of trash on any Lot shall be prohibited. No lumber or other building materials shall be stored or permitted to remain on any Lot unless screened from view from other Lots and from the streets, except for reasonable storage during construction. If any Lot Owner fails to maintain the exterior surfaces or Lot in accordance with the foregoing requirements, the Association may give the Lot Owner written notice to perform such work within not less than fifteen (15) days, and if the Lot Owner fails to perform such work within that time, the Association may have such work done at the expense of the Lot Owner. If the work is done by the Association at the Lot Owner's expense, the Owner shall pay for such work within three (3) days after notice is given in writing to the Lot Owner as to

the cost of such work. If the Lot Owner fails to pay within that time and if the Association thereafter incurs reasonable attorneys' fees and costs in collecting such amount from the Lot Owner, all such attorneys' fees and costs incurred shall likewise be a debt owing by the Lot Owner to the Association.

Section 10: Nuisance. Nothing shall be done or permitted on any Lot which is or may become a nuisance. No obnoxious or offensive activities or commercial businesses or trades shall be conducted on any Lot, except home occupations as defined and permitted by the applicable zoning resolution of the governmental entity having jurisdiction over the Common Interest Community. In addition to any restrictions imposed upon Lot Owners by the County of Larimer with regard to home occupations or businesses, no Owner shall conduct any business activity or home occupation upon his or her Lot which shall involve the sale or storage of merchandise upon the Lot, the delivery of merchandise or materials to the Lot by commercial vehicles more often than once a month, or the use of more than fifteen percent (15%) of the space within a Residence for such business or home occupation. Notwithstanding the foregoing, the Architectural Control Committee shall have the right to authorize prohibited business activities or home occupations upon any Lot, provided that it shall first determine that such home occupation or business shall not unreasonably interfere with the use and enjoyment of the Common Interest Community by other Lot Owners and provided further that the Owner conducting such business activities or home occupation agrees to such reasonable Rules and Regulations as may be imposed upon him or her by the Architectural Control Committee.

Section 11: Temporary Structures. No structure of a temporary character, including, by example and not limitation, trailers, converted trailers, shacks, basements, tents, garages, or accessory buildings, shall be used on any Lot as a Residence, temporarily or permanently.

Section 12: Restriction of Use. No motor-driven, engine-powered, or other mechanically propelled vehicle, including, by example and not limitation, automobiles, trucks, motorcycles, all-terrain vehicles, and snowmobiles, may be used or operated within or upon any of the Common Elements, except in the event of an emergency.

Section 13: Storage of Vehicles. Boats, campers, recreational vehicles, snowmobiles, all-terrain vehicles, motor homes, trailers, machines, tractors, semi-tractors, tractor trailers, trucks (except standard pickup trucks), and inoperative automobiles shall not be stored, parked, or permitted to remain on any Street, Lot, or Common Element, except within fully-enclosed garages or within fully-screened, fenced areas approved by the Architectural Control Committee. For purposes of this provision, any disassembled or partially disassembled car or other vehicle or any car or other vehicle which has not been moved under its own power for more than one (1) week shall be considered an inoperative automobile subject to the terms of this Section 10.

Section 14: Discharge of Weapons. No person shall discharge, fire, or shoot any gun, pistol, crossbow, bow and arrow, slingshot, or other firearm or weapon whatsoever, including BB guns and pellet guns, within the Common Interest Community. Notwithstanding the foregoing, the discharge of firearms or weapons by any member of any law enforcement office in the course of such member's official duty shall not be deemed a violation of this provision.

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29

Section 15: Disturbing the Peace. No person shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, disorderly, or obstreperous conduct, and no Owner shall knowingly permit such conduct upon any Lot owned by such Owner.

Section 16: Electrical, Television, Natural Gas and Telephone Service. All electrical, television, natural gas, telephone service and other utility installations on a Lot shall be placed underground from the property line and/or the point of connection to the utility transmission line located within the Drainage and Utility Easement unless a specific waiver is granted in writing by the Architectural Control Committee based upon a determination that geological, topographical or environmental conditions make such underground installation impossible or impractical.

Section 17: Control of Weeds. The Association may enter upon any vacant Lot and control Canadian thistle or other noxious weeds by mowing, cultivating or applying chemicals and the Lot Owner shall be liable to the Association for an Individual Assessment to cover the cost of such service. The Association shall consult with the Larimer County Extension Service for assistance in determining the best manner in which to control noxious weeds and may adopt Rules and Regulations relative thereto. In addition to the foregoing, the Association shall have the right to undertake such efforts as it shall determine appropriate to control weeds within any of the Common Elements. Any weed control activities undertaken within the Common Elements shall be deemed a Common Expense and may be assessed against all Lot Owners in accordance with the terms of this Declaration.

ARTICLE XI. DRAINAGE

Section 1: Moisture. Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Residence constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Residence.

Section 2: Water Flow. The Owner of a Lot shall not impede or hinder in any way the water falling on the Lot from reaching the drainage courses established for the Lot and the Common Interest Community.

Section 3: Action by Owner. To accomplish the foregoing, each Owner of a Lot covenants and agrees, among other things:

(a) Not to install improvements, including, but not limited to, landscaping, items related to landscaping, walls, walks, driveways, parking pads, patios, fences, additions to the Residence, outbuildings, or any other item or improvement which will change the grading of the Lot. The installation of such improvements is acceptable so long as the manner of installation is consistent with, and does not change, the grading and drainage patterns of the Lot.

(b) To fill with additional soil any back-filled areas adjacent to the foundation of the Residence and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.

(c) To maintain the gutters and downspouts which discharge water into extensions or splash blocks by assuring that (i) the gutters and downspouts remain free and clear of all obstructions and debris; (ii) the water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (iii) the splash blocks are maintained under sill cocks.

Section 4: Disclaimer. The Declarant shall not be liable for any loss or damage to the Residence, any outbuilding, concrete slab, driveway, sidewalk, or other improvement on any Lot caused by, resulting from, or in any way connected with soil conditions on any Lot.

ARTICLE XII. MORTGAGEE PROTECTION

Section 1: Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the case of conflict, this Article shall control.

Section 2: Notice of Actions. The Association shall give prompt written notice to each Mortgagee and Insurer of (and each Lot Owner hereby consents to and authorizes such notice):

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Lot in which there is a First Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable.

(b) Any delinquency in the payment of Common Expense assessments owed by a Lot Owner whose Lot is subject to a First Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Mortgagees as specified in Section 4 of this Article.

(e) Any judgment rendered against the Association.

Section 3: Consent and Notice Required.

(a) Document Changes. Notwithstanding any requirement permitted by this Declaration or the Act, no amendment of any provision of this Declaration pertaining to the matters hereinafter listed by the Association or Lot Owners shall be effective without notice to all Mortgagees and Insurers, and the vote of at least sixty-seven percent (67%) of the Lot Owners (or any greater Lot Owner vote required in this Declaration or the Act) and until approved by at least fifty-one percent (51%) of the Mortgagees (or any greater Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Special Declarant Rights, Additional Reserved Rights, or Development Right set forth in Articles V and VI of this Declaration:

(i) Voting rights.

(2) Assessments, assessment liens, or priority of assessment liens.

(3) Reserves for maintenance, repair, and replacement of Common Elements.

(4) Responsibility for maintenance and repairs.

(5) Redefinitions of boundaries of Lots, except that when boundaries of only adjoining Lots are involved or a Lot is being subdivided, then only those Lot Owners and the Mortgagees holding Security Interests in such Lot or Lots must approve such action.

(6) Convertibility of Lots into Common Elements or Common Elements into Lots.

(7) Expansion or contraction of the Common Interest Community or the addition, annexation, or withdrawal of property to or from the Common Interest Community, except expansion or contraction by exercise of Development Rights pursuant to Article VI of this Declaration.

(8) Insurance or fidelity bonds.

(9) Leasing of Lots.

(10) Imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot.

(11) A decision by the Association to establish self-management when professional management had been required previously by any Mortgagee.

(12) A decision by the Association not to restore or repair the Common Elements after a hazard damage or partial condemnation.

(13) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation of the Common Elements.

(14) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions, other than rights reserved to the Declarant as Special Declarant Rights, Additional Reserved rights, or Development Rights set forth in Articles V and VI of this Declaration, without the notice to all Mortgagees and Insurers as required by Section 2 above and approval of at least fifty-one percent (51%) (or the indicated percentage) of the Mortgagees:

(1) Convey or encumber the Common Elements or any portion thereof without approval by eighty percent (80%) of the Mortgagees. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause.)

32

(2) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation of the Common Elements without approval by sixty-seven percent (67%) of the votes of Mortgagees.

(3) The granting of any permits, easements, leases, licenses, or concessions through or over the Common Elements (excluding, however, any utility, road, or other easements serving or necessary to serve the Common Interest Community and excluding any leases, licenses, or concessions for no more than one (1) year).

(4) The establishment of self-management when professional management had been required previously by a Mortgagee.

(5) A decision by the Association not to restore or repair the Common Elements after a hazard damage or partial condemnation.

(6) The merger of the Common Interest Community with any other common interest community.

(7) The assignment of the future income of the Association, including its right to receive Common Expense Assessments.

(c) The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the consent of all Mortgagees.

(d) The failure of a Mortgagee or Insurer to respond within thirty (30) days to any written request of the Association delivered by certified or registered mail, return receipt requested, for approval of an addition or amendment to the Declaration wherever Mortgagee or Insurer approval is required shall constitute an implied approval of the addition or amendment.

Section 4: Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules and Regulations, books and records, and financial statements. The Association shall permit any Mortgagee or Insurer to inspect the books and records of the Association during normal business hours.

Section 5: Financial Statements. The Association shall provide any Mortgagee or Insurer who submits a written request a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association.

Section 6: Enforcement. The provisions of this Article are for the benefit of Mortgagees and Insurers and their successors and may be enforced by any of them by any available means at law or in equity.

Section 7: Attendance at Meetings. Any representative of a Mortgagee or Insurer may attend and address any meeting which an Owner may attend.

Section 8: Appointment of Trustee. In the event of damage, destruction, or condemnation of all or a portion of the Common Elements, any Mortgagee may require that such proceeds be payable to a trustee. Such trustee may be required to be a corporate trustee licensed by the State of Colorado. Proceeds will thereafter be distributed pursuant to the Act or pursuant to a condemnation award. Unless otherwise required, the members of



the Executive Board, acting by majority vote through the president, may act as trustee.

Section 9: Payment of Delinquent Fees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance on the lapse of such a policy for such Association property, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**ARTICLE XIII. INSURANCE AND FIDELITY BONDS**

Section 1: Authority to Purchase. All insurance policies relating to the Common Elements shall be purchased by the Executive Board or its duly authorized agent. The Executive Board, the Manager and the Declarant shall not be liable for failure to obtain any coverage required by this Article XIII or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs. Notwithstanding the foregoing, if the insurance described in this Article XIII is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or otherwise delivered to all Owners by such methods as required by the Act.

Section 2: General Insurance Provisions. All such insurance coverage obtained by the Executive Board shall conform to any minimum requirements of the Act, and, to the extent not inconsistent with the Act, the following provisions:

(a) As long as the Declarant owns any Lot, the Declarant shall be protected by all such policies in the same manner as any other Lot Owner. The coverage provided to the Declarant under the insurance policies obtained in compliance with this Article XIII shall not be deemed to protect or be for the benefit of any general contractor engaged by the Declarant, nor shall such coverage be deemed to protect the Declarant for (or waive any rights with respect to) warranty claims against the Declarant as the developer of the Common Interest Community.

(b) The deductible, if any, on any insurance policy purchased by the Executive Board may be treated as a Common Expense payable from annual Common Expense Assessments or Special Assessments allocable to all of the Lots or to only some of the Lots, if the claims or damages arise from the negligence of particular Lot Owners (if the repairs benefit only particular Lot Owners), or as an item to be paid from working capital reserves established by the Executive Board. Except as otherwise set forth in this Article, the maximum deductible amount shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount.

Section 3: Physical Damage Insurance on Common Elements. The Association shall obtain insurance for all insurable Improvements, if any, on the Common Elements in an amount equal to the full replacement value (i.e., one hundred percent [100%] of the current "replacement cost" exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage), which shall include all building service equipment and the like, common personal property and supplies, and any fixtures or equipment within the Common Elements. In addition, such policy shall afford protection against at least the following:

(a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement with the standard "all-risk" endorsement covering sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage.

(b) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use to the Common Interest Community.

In contracting for the insurance coverage obtained pursuant to this Section above, the Executive Board shall be required to make reasonable efforts to secure coverage which provides the following:

(1) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to this Declaration not to do so.

(2) The following endorsements (or equivalent): (a) "cost of demolition;" (b) "contingent liability from operation of building laws or codes;" (c) "increased cost of construction;" (d) "agreed amount" or elimination of co-insurance clause; and (e) "inflation guard" (if available).

Prior to obtaining any policy of physical damage insurance or any renewal thereof, and at such other intervals as the Executive Board may deem advisable, the Executive Board shall obtain an appraisal from a general contractor or such other source as the Executive Board may determine of the then current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Article.

Section 4: Liability Insurance. The Association shall obtain a comprehensive policy of commercial general liability insurance (including bodily injury, libel, slander, false arrest and invasion of privacy coverage) and property damage insurance with such limits as the Executive Board may from time to time determine, insuring each member of the Executive Board, the Association, the Manager, each Lot Owner and the respective employees, agents and all Persons acting as agents of the Association against any liability to the public or the Lot Owners (and their guests, invitees, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance, or use of the Common Elements within the Common Interest Community and any other areas under the control of the Association. The Declarant and its officers, directors, agents and authorized representatives shall be included as additional insureds in their capacity as a Lot Owner, officer, director, agent or authorized representative. The Lot Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements.

Such comprehensive policy of public liability insurance shall include the following:

(a) Coverage for contractual liability, liability for non-owned and hired automobiles, and, if applicable, host liquor liability, employer's liability, and such other risks as shall customarily be covered with respect to developments

35

similar to the Common Interest Community in construction, location, and use.

(b) A cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured.

(c) A "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to a Lot Owner because of the negligent acts of the Association or another Lot Owner.

The Executive Board shall review the coverage limits at least once every two (2) years, but, generally, the Executive Board shall carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to the Common Interest Community, and in no event shall such coverage be less than One Million Dollars (\$1,000,000.00) for all claims for bodily injury or property damage arising out of one (1) occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than One Million Dollars (\$1,000,000.00).

Section 5: Fidelity Insurance. Fidelity bonds shall be maintained by the Association to protect against dishonest acts on the part of its officers, Directors, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds shall be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in such an amount as the Executive Board may determine appropriate, and in any event in the minimum amount, if any, prescribed by the Act. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees," or similar terms or expressions. Such bonds shall cover the maximum funds that will be in the custody of the Association or any management agent at any time while the bond is in force.

Section 6: Provisions Common to Physical Damage Insurance, Liability Insurance, Fidelity Insurance and Flood Insurance. Any insurance coverage obtained by the Association under the provisions of this Article above shall be subject to the following provisions and limitations:

(a) The named insured under any such policies shall include the Declarant, until all of the Lots in the Common Interest Community have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Lot Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under such policies.

(b) Each Lot Owner shall be an insured person with respect to liability arising out of the Lot Owner's interest in the Common Elements or membership in the Association.

(c) In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Lot Owners or the holders of their Security Interests.

36

(d) The policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Lot Owner (including a Lot Owner's family, tenants, servants, agents, invitees, and guests) when such act or neglect is not within the control of the Association, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Real Estate over which the Association has no control; or (iii) conduct of any kind on the part of a Lot Owner (including the Lot Owner's family, tenants, servants, agents and guests) or any Director, officer, employer, or Manager of the Association, without prior demand to the Association and a reasonable opportunity to cure the matter.

(e) The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Real Estate is located, and provide that coverage may not be cancelled in the middle or at the end of any policy year or other period of coverage or substantially modified or reduced (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice mailed to the Association and to each Lot Owner and holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(f) The policies shall contain a waiver by the insurer of any right to claim by way of subrogation against the Declarant, the Executive Board, the Association, the Manager, and any Lot Owner and their respective agents, employees, or tenants, and in the case of Lot Owners, members of their households, and of any defenses based upon co-insurance.

(g) The policies described in Sections 3 and 4, above, shall provide that any "no other insurance" clause shall expressly exclude individual Lot Owners' policies from its operation so that the physical damage policy or policies purchased by the Executive Board shall be deemed primary coverage, and any individual owners' policies shall be deemed excess coverage.

Section 7: Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and Directors from personal liability in relation to their duties and responsibilities in acting as such officers and Directors on behalf of the Association.

Section 8: Workmen's Compensation Insurance. The Association shall obtain workmen's compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 9: Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it deems appropriate with respect to the Association's responsibilities and duties.

Section 10: Insurance Obtained by Owners. Each Lot Owner shall have the right to obtain insurance for such Lot Owner's benefit, at such Lot Owner's expense, covering the Lot Owner's personal property and personal liability (except to the extent any Owner's Lot is encumbered by an easement conveyed to the Association as a Common Element). In addition, each Lot Owner may obtain such other and additional insurance coverage on and in relation to his or her Lot as such Lot Owner concludes to be desirable; provided, however, that no insurance coverage obtained by a Lot Owner shall operate to decrease the amount which the

Executive Board, on behalf of all Lot Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage. Any such insurance obtained by a Lot Owner shall include a waiver of the particular insurance company's right of subrogation against the Association and other Lot Owners.

ARTICLE XIV. GENERAL PROVISIONS

Section 1: Enforcement. Enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an Owner, by the Architectural Control Committee, or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award to the prevailing party in such litigation, in addition to such damages as the Court may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the prevailing party in connection with such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration.

Section 2: Duration. This Declaration shall run with the land, shall be binding upon all persons owning Lots and any persons hereafter acquiring said Lots, and shall be in effect in perpetuity unless amended or terminated as provided in the Act.

Section 3: Amendment. Except as otherwise provided in this Declaration, this Declaration may be altered or amended at any time the then record Owners of sixty-seven percent (67%) or more of the Lots so elect through a duly written and recorded instrument.

Section 4: Requirement for Declarant's Approval Generally. Notwithstanding the provisions of Section 3, (i) no termination, extension, modification, amendment or restatement of this Declaration may be made during the period of Declarant Control without the Declarant's written consent; and (ii) no termination, extension, modification, amendment or restatement of this Declaration may be made during the Special Declarant Rights Period affecting (a) the right of the Declarant to appoint the Architectural Control Committee, (b) any Special Declarant Right or other right expressly reserved to the Declarant under this Declaration or (c) the protection of the Declarant's rights under this Article XIV, without the Declarant's written consent.

Section 5: Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of the Documents or the intent of any provision thereof.

Section 6: Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

Section 7: Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or

This document is a preliminary disclosure and is not intended to constitute an offer of securities for sale.

38

breaches which may occur.

Section 8: Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 9: Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.

Section 10: Conflict. The Documents are intended to comply with the requirements of the Act. If there is any conflict between the Documents and the provisions of the Act, the provisions of the Act shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

CLYDESDALE PARK LLC,  
a Colorado Limited Liability Company

By: J.D. Padilla  
J.D. Padilla, Manager

By: Jay B. Stoner  
Jay B. Stoner, Manager

This document does not constitute a public record disclosure as required under Colorado law.

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of July, 2001, by J.D. Padilla and Jay S. Stoner as Managers of CLYDESDALE PARK LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My commission expires: 2-28-2005

Kristin A. Beckler  
Notary Public



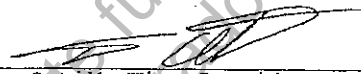
39

RATIFICATION

The undersigned, having a Security Interest in all or any part of the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference, hereby approves, ratifies, confirms, and consents to the foregoing Declaration of Covenants, Conditions and Restrictions for Clydesdale Park P.U.D.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed by its Vice President this 1<sup>st</sup> day of August, 2001.

CENTENNIAL BANK OF THE WEST

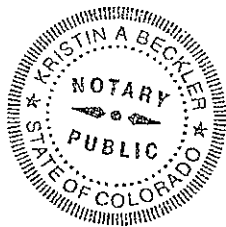
By:   
Tim Ostik, Vice President

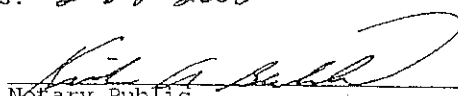
STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2001, by Tim Ostik as Vice President of CENTENNIAL BANK OF THE WEST.

WITNESS my hand and official seal.

My commission expires: 2-28-2005



  
Notary Public

This document does not constitute full resolution  
disclosure as required under Colorado law.

EXHIBIT "A"

Legal Description of the Real Estate

Lots 1 through 85,  
Tracts A through G,  
Clydesdale Park P.U.D.,  
First Filing,  
County of Larimer,  
State of Colorado

This document does not constitute full resale  
disclosure as required under Colorado law.



EXHIBIT "B"

Easements and Licenses

1. Easements and notes shown on Exemption Submittal recorded June 26, 1981, in Book 2121 at Page 888.

2. An Easement for irrigation facilities recorded January 17, 1983, in Book 2202 at Page 1167.

3. An Easement granted to the State Department of Highways by instrument recorded March 7, 1983, in Book 2209 at Reception No. 1258.

4. A water line easement as contained in instrument recorded February 2, 1990, at Reception No. 90004896.

5. Emergency fire access easement recorded April 19, 1990, at Reception No. 90016151.

6. An Easement for Drainage and Sanitary Sewer Purposes as contained in instrument recorded October 19, 1998, at Reception No. 98090574.

7. Right-of-way as granted to Mountain States Telephone and Telegraph Company as set forth in instrument recorded May 6, 1930, in Book 607 at Page 23.

This document does not constitute full release  
disclosure as required under Colorado law