

# Master Declaration of Covenants, Conditions and Restrictions for Wildwing Subdivision

A PLANNED COMMUNITY

*John*  
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Covenants - Final 07-19-07

**MASTER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WILDWING SUBDIVISION  
A PLANNED COMMUNITY**

THIS MASTER DECLARATION OF COVENANTS, CONDITION AND RESTRICTIONS FOR WILDWING SUBDIVISION, a Planned Community ("Declaration") is made as of this \_\_\_\_\_, 2007 by Wildwing Development, Limited Liability Company, a Colorado limited liability company ("Declarant").

**1. GENERAL**

**1.1 Community.** Declarant is the owner of that certain parcel of land located in the Town of Timnath, County of Larimer, State of Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by reference, which is defined in this Declaration as the "Community." Declarant intends to develop the Community as a quality Planned Community of single family residential, detached and patio homes in accordance with the terms and provisions of the Colorado Common Interest Ownership Act; provided, however, that the Community as provided in C.R.S. § 38-33.3-116, as amended from time to time, and as provided by the Act, shall be subject only to § 38-33.3-105, 38-33.3-106, and 38-33.3-107 of the Act. Except as specifically incorporated in this Declaration by reference, other provisions of the Act shall be inapplicable to the Community and this Declaration. The Planned Community is called "Wildwing Subdivision."

**1.2 Purposes of Declaration.** Property which is made subject to this Declaration in the manner hereinafter provided is referred to as the Community. This Declaration is executed (a) in furtherance of a common and general plan for the Community; (b) to protect and enhance the quality, value, aesthetics, desirability and attractiveness of the Community; (c) to provide for an Association as an entity to manage the Community; (d) to define the duties, powers and rights of the Association; and (e) to define certain duties, powers and rights of Owners of Lots within the Community.

**1.3 Declaration.** Declarant, for itself, its successors and assigns, hereby declares that all Property described on Exhibit A and any of the Development Property that shall become subject to this Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, for the duration hereof, all of which are declared to be part of, pursuant to and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Community. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with the terms hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the Property that becomes part of the Community and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all Persons having or acquiring any right, title or interest in any Property that becomes part of the Community or any part or parcel thereof or any Improvement thereon and their heirs, personal representatives, successors and assigns.

## 2. DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings specified in this Article, or if not defined herein, as defined in the Colorado Common Ownership Interest Act.

**2.1 Act.** "Act" shall mean the Colorado Common Interest Ownership Act, Colorado Revised Statutes § 38-33.3-101, et seq., as the same may be amended from time to time; provided, however, that the Community as provided in C.R.S. § 38-33.3-116, as amended from time to time, and as provided by the Act, shall be subject only to § 38-33.3-105, 38-33.3-106, and 38-33.3-107 of the Act. Except as specifically incorporated in this Declaration by reference, other provisions of the Act shall be inapplicable to the Community and this Declaration.

**2.2 Administrative Functions.** "Administrative Functions" shall mean functions as are necessary and proper under this Declaration and shall include, without limitation, providing management and administration of the Association; providing design review services under Article 4 hereof; incurring reasonable attorneys' fees and accountants' fees; obtaining errors and omissions insurance for officers, directors, and agents of the Association; obtaining fidelity bonds for any Person handling funds of the Association; paying taxes levied against the Association Properties; paying federal and state income taxes; incurring filing fees, recording costs, and bookkeeping fees; maintaining an Operating Fund and Reserve Fund; obtaining and maintaining offices and office furniture and equipment; and performing other reasonable and ordinary administration tasks associated with operation of the Association.

**2.3 Applicant.** "Applicant" shall mean a Person proposing to make an Improvement to Property who seeks approval of the Design Review Committee.

**2.4 Approved Builder.** "Approved Builder" shall mean the Owner of a Lot located within the Community who (a) acquires such Lot from Declarant or a previous Approved Builder for the purpose of constructing one or more residential dwellings for resale to the general public; (b) has submitted to, and obtained approval from the Declarant of general plans and specifications for such residential dwellings; and (c) has been designated in writing as an Approved Builder by Declarant.

**2.5 Articles of Incorporation.** "Articles of Incorporation" shall mean the Articles of Incorporation of Wildwing Community Association, Inc., which have been filed in the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

**2.6 Assessment.** "Assessment" shall mean a common Assessment, Special Assessment, or a Reimbursement Assessment.

**2.7 Association.** "Association" shall mean the Wildwing Community Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

**2.8 Association Properties.** "Association Properties" shall mean all real and personal property, including Improvements, now or hereafter owned or leased by the Association or with respect to which the Association holds an easement for the common use and enjoyment of its Members as provided herein, and for other purposes as may be permitted by this Declaration.

2.9 **Budget.** "Budget" shall mean a written itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared pursuant to Section 9.8 of this Declaration.

2.10 **Bylaws.** "Bylaws" shall mean the Bylaws of the Association that have been or shall be adopted by the Executive Board of the Association, as the same may be amended from time to time.

2.11 **County.** "County" shall mean any counties in which the Community or any portion thereof is located. Initially, "County" shall mean Larimer County, Colorado. If all or any portion of the Development Property is added to the Community as herein provided, "County" shall mean the County, either Larimer or Weld County, within which the Property to which reference is being made is located and "Counties" shall mean both Larimer and Weld Counties.

2.12 **Common Assessment.** "Common Assessment" shall mean the assessments made for the purpose of covering the portion of the annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, that are to be paid by each Owner to the Association for purposes provided herein and charged to such Owner and to the Lot of such Owner.

2.13 **Community.** "Community" shall mean all Property that is subject to this Declaration, including any Property that may be annexed to the Community as hereinafter provided.

2.14 **Declaration.** "Declaration" shall mean this instrument as it may be amended from time to time.

2.15 **Declarant.** "Declarant" shall mean Wildwing Development, Limited Liability Company, a Colorado limited liability company, its successors, assigns, and affiliates. A Person shall be deemed to be a "successor and assign" of Wildwing Development, Limited Liability Company, as Declarant, only if specifically designated in a duly Recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the written instrument. However, a successor to Wildwing Development, Limited Liability Company by consolidation or merger shall automatically be deemed a successor or assign of it as Declarant under this Declaration.

2.16 **Declarant Control Period.** "Declarant Control Period" shall mean the period of time commencing on the date that this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado, and ending on the date that the last Lot within the Community, as expanded by the addition of all or any portion of the Development Property has been sold and conveyed by Declarant to a Person other than the Declarant and a certificate of occupancy has been issued for the residence constructed on such Lot; the date which is twenty-five (25) years from Recordation of this Declaration; or the date upon which the Declarant relinquishes all of its rights under this Declaration by Recorded instruments; whichever date first occurs.

2.17 **Design Review Committee.** "Design Review Committee" shall mean the Committee provided for in Article 4 of this Declaration.

2.18 **Design Standards.** "Design Standards" shall mean standards adopted from time to time by the Design Review Committee to provide Persons desiring to construct residences or other Improvements or to carry out any other development activity with site and development design criteria. The Design Standards shall be considered Rules and/or Regulations.

2.19 **Development Property.** "Development Property" shall mean the real property legally described on Exhibit B attached hereto and incorporated herein by reference.

2.20 **Executive Board.** "Executive Board" and "Board" shall both mean the board of directors of the Association established in accordance with the Colorado Nonprofit Corporations Act.

2.21 **First Mortgage.** "First Mortgage" shall mean a mortgage or deed of trust filed of Record having a priority over all other mortgages or deeds of trust filed of record.

2.22 **First Mortgagee.** "First Mortgagee" shall mean the Record beneficiary of a First Mortgage.

2.23 **Improvement.** "Improvement" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, athletic fields, patios, patio covers, awnings, painting of any exterior surfaces of any structure, relocation, installation or replacement of windows, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, dog runs and dog houses, recreational equipment, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, basketball courts or poles, light poles, flag poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures.

2.24 **Improvement to Property.** "Improvement to Property" shall mean any change, alteration, or addition to any property within the Community. "Improvement to Property" shall include, but is not limited to those improvements more particularly described in Section 4.2 of this Declaration.

2.25 **Leases.** "Lease" shall mean any agreement for the leasing or rental of a Lot, and shall specifically include, without limitation, a month-to-month rental and other tenancies.

2.26 **Lot.** "Lot" shall mean any Lot within the Community that is shown upon any Recorded plat and any other parcel of land that may be sold or conveyed without violation of the provisions of applicable law pertaining to the subdivision of land. The term "Unit" as defined in the Act shall be analogous to the term "Lot." "Lot" shall not include: (a) any Property owned by a public body, or (b) the Association Properties.

2.27 **Maintenance Funds.** "Maintenance Funds" shall mean the Operating Fund and the Reserve Fund, accounts into which the Board shall deposit money paid to the Association and from which disbursements shall be made in the performance of the functions of the Association pursuant to Article 8 hereof.

2.28 **Member.** "Member" shall mean the Person or, if more than one, all Persons collectively who constitute the owner of a Lot.

2.29 **Metro District.** "Metro District" shall mean the Wildwing Metropolitan District, a special district organized and existing under the laws of the State of Colorado.

2.30 **Mortgage.** "Mortgage" shall mean any mortgage or deed of trust or other such instrument, given voluntarily by the owner of a Lot, encumbering the Lot to secure the performance of an obligation or the payment of a debt and that is required to be released upon performance of the obligation

or payment of the debt. The term "Deed of Trust" when used in this Declaration is synonymous with the term "Mortgage."

2.31 **Mortgagee.** "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgage.

2.32 **Mortgagor.** "Mortgagor" shall mean a Person who mortgages property owned by that Person (i. e., the maker or grantor of a Mortgage) to another. The term "Mortgagor" shall include a maker or grantor of a Deed of Trust.

2.33 **Notice and Hearing.** "Notice and Hearing" shall mean a written notice and public hearing before the Executive Board, or a tribunal, appointed by the Board, in the manner provided in the Board policies.

2.34 **Notice of Completion.** "Notice of Completion" shall mean written notice to the Design Review Committee of the completion of any Improvement to Property pursuant to Article 4 of this Declaration.

2.35 **Operating Fund.** "Operating Fund" shall mean funds which are set aside from Common Assessments by the Association and used to pay for current operating expenses of the Association.

2.36 **Owner.** "Owner" shall mean the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of Record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.

2.37 **Patio Homes.** shall mean homes constructed on Lots \_\_\_\_\_ through \_\_\_\_\_, inclusive.

2.38 **Person.** "Person" shall mean a natural person, corporation, partnership, limited liability company, trust, unincorporated association, or any other entity.

2.39 **Planned Community.** "Planned Community" shall have the same meaning as set forth in the Act.

2.40 **Plat.** "Plat" shall mean the recorded Plat for Wildwing Subdivision, as amended or supplemented from time to time.

2.41 **Prime Rate.** "Prime Rate" shall mean the prime rate of interest published in the Western Edition of *The Wall Street Journal* or any successor publication from time to time, adjusted for any change in such Prime Rate, provided that if neither the Western Edition of the *The Wall Street Journal* nor any successor publication is published, any publication of bank or other lending institution prevailing rates of interest charged to most favored customers reasonably selected by the Declarant.

2.42 **Property.** "Property" shall mean the real property described on Exhibit A attached hereto, together with all or any portion of the Development Property added to the Community pursuant to Section 6.8 of this Declaration.

2.43 **Record or Recorded.** "Record" and "Recorded" shall mean the filing for record of any document in the office of the Clerk and Recorder of the County in which the Property affected by the document is located.

2.44 **Reimbursement Assessment.** "Reimbursement Assessment" shall mean a charge against a particular Owner and the Lot owned by the Owner for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation of the Declaration or the Rules and Regulations, pursuant to Section 9.18 hereof, together with late charges and interest as provided for in this Declaration.

2.45 **Reserve Fund.** "Reserve Fund" shall mean a fund set aside out of Common Assessments by the Association to pay for future years' unanticipated expenses of the Association.

2.46 **Rules and Regulations.** "Rules and Regulations" shall mean rules and regulations adopted by the Executive Board, as provided in Section 8.11 of this Declaration.

2.47 **Special Assessment.** "Special Assessment" shall mean a charge against each Owner and the Lot owned by that Person representing a portion of the costs of the Association for unbudgeted expenses and any other purpose authorized by the Executive Board as provided herein.

### 3. GENERAL RESTRICTIONS AND COVENANTS

3.1 **Limitations and Restrictions.** All Property within the Community shall be held, used, and enjoyed subject to the following limitations and restrictions, and subject to exemptions of Declarant, set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Design Review Committee if such strict application would be unreasonably or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or Rules promulgated by the Design Review Committee.

3.2 **Maintenance of Community.** All Lots within the Community, including all Improvements and landscaping thereon as approved by the Design Review Committee, shall be kept and maintained in a clean, attractive, and sightly condition and in good repair. No Improvements or landscaping on any Lot within the Community shall be permitted to fall into disrepair. Maintenance, repair, and upkeep of each Lot shall be the responsibility of the Owner of the Lot. Violation of this provision by an Owner shall permit the Association, after Notice and Hearing, to enter onto the Lot of the Owner and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

3.3 **Uses of Lots.** All Lots shall be used for private residential purposes. No dwelling erected or maintained within the Community shall be used or occupied for any purpose other than for a single-family dwelling. Notwithstanding the foregoing, business activities associated with the sale of Lots or residences constructed thereon shall be allowed. In addition, in-home businesses or occupations not involving employees shall be allowed, provided such activities are conducted solely within the residence and do not create or result in any nuisance or any unreasonable, unwarranted, or unlawful use or interference with rights of Owners or of the public, including, but not limited to, unreasonable or unwarranted use or interference with public streets, rights of way, or sidewalks, excessive traffic or parking requirements, or any other offensive or noxious activities.

3.4 **Uses of Association Properties.** All uses of the Association Properties shall be subject to and governed by this Declaration and the Rules and Regulations of the Association. No damage or waste shall be committed to the Association Properties.

3.5 **Construction Type.** All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile or modular dwelling or structure may be moved onto a Lot, except as expressly hereinafter provided for temporary buildings, construction trailers and sales trailers.

3.6 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any Lot within the Community, nor shall anything be done or placed thereon that is or may become a nuisance or that may cause an unreasonable disturbance or annoyance to others.

3.7 **Specific Building Requirements.** In addition to all other restrictions and limitations on Improvements set forth in this Declaration, the Rules and Regulations and all laws, all Improvements shall be subject to the following restrictions:

<sup>2500</sup> (a) **Residence Size.** Any residence erected wholly or partially on any of the Lots or part or parts thereof, shall contain a minimum living area in the main structure, exclusive of basements, garages, porches or terraces, as follows: Patio Homes - 1,500 square feet; single level residences 2,000 square feet; all other residences, ~~3,000~~ square feet. Except for the following Lots situated in Blocks, 1, 15, 16, 17, 18 & 24. Which shall be single level residences 2,400 sq. ft. and all other residences ~~3,500~~ sq. ft. The Design Review Committee may grant a variance from the minimum square footage requirements for Lots containing less than 20,000 square feet. Any property annexed into the WildWing Subdivision is subject to modification of the current building requirements.

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} - want guidelines for future

(b) **Construction Standards.** Fifty percent (50%) of the remaining exterior surface after excluding windows of the exterior surface of each residence shall be constructed of brick or stone masonry. Some brick or stone masonry shall be included on the exterior surface of all sides of each residence. Other materials can be used - such as wood beams - to make up the percentage based on the architectural theme of the residence in conjunction with the approval of the Design Review Committee.

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(c) **Height Limit.** The height of each building or structure shall be approved by the Design Review Committee, but shall not exceed thirty-five (35) feet above the highest point on the foundation.

(d) **Accessory Structures.** Accessory Structures means any detached garage, outbuilding, lawn equipment storage building, or other structure upon a Lot, other than the residence. One Accessory Structure per Lot is permitted. The total area of any Accessory Structure shall not exceed 1,500 square feet. Accessory structures must be approved by the Design Review Committee and designed to reflect the architecture of the primary residence.

shall be placed to (on lake front) to not obstruct views

(e) **Roofs.** No residence is permitted to have a asphalt, composite or wooden shingle roof, unless otherwise permitted by the Design Review Committee applying a strict standard for fire retardation.



(f) **Garages.** An attached garage with a side entrance not facing the front Lot line shall be required, and shall be at least twenty (20) feet deep and thirty (30) feet wide, and contain a minimum

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all side load?



of 600 square feet, holding a minimum of three (3) cars. All vehicles owned by Lot Owners or those Persons residing on a Lot shall be parked inside the garage when not in use.

(g) **Slope Restriction.** No residential construction shall be permitted within one hundred (100) feet of slopes which are 4:1 (25%) or steeper except for walkout lots that have been pre-engineered unless further geotechnical investigation is done concerning slope stability.

(h) **Standard Design and Materials.** All improvements to residential structures shall be of similar design and materials as the residential structure on such Lot and shall be subject to prior approval of the Design Review Committee. All driveways to be installed shall be concrete and must be approved by the Design Review Committee.

**3.8 Trees.**

(a) **Planting.** The landscape plan for each Lot shall include assurances satisfactory to the Design Review Committee that at least three (3) evergreen trees with a minimum height of eight (8) feet and at least three (3) deciduous trees with a minimum caliper of three (3) inches shall be planted within nine (9) months after the residence constructed on the Lot is first occupied.

(b) **Cutting.** No tree or trees, whether now growing or hereafter planted upon any Lot shall be cut down without prior written approval of the Design Review Committee, provided, however, that this restriction shall not apply unless such tree is more than two (2) inches in caliper as measured one (1) foot above grade, and provided further that this restriction shall not be construed to limit in any way reasonable trimming of any trees within the Community. Each Owner shall be obligated to remove any diseased trees within thirty (30) days after a determination is made by an arborist that the tree is diseased and must be removed. If the Association retains an arborist to inspect any trees on an Owner's Lot and the arborist determines that a tree is diseased and must be removed, the cost of the arborist's report shall be assessed against the Owner and the Lot upon which the diseased tree is located.

**3.9 Annoying Sounds, Odors and Lights.** No sound or odor shall be emitted from any Lot within the Community that is noxious or unreasonably offensive to others. No lights shall be emitted from any Lot that are unreasonably bright or cause unreasonable glare. Exterior lighting shall either be indirect or of such controlled focus as not to unreasonably disturb Owners within the Community. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any Lot except with the prior written approval of the Design Review Committee.

**3.10 No Hazardous Activities.** No activity shall be conducted on and no Improvement shall be constructed on any Lot within the Community that is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms or archery weapons shall be discharged within the Community, and no open fires shall be lighted or permitted within the Community except in a contained barbecue canister while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning sparks and embers.

**3.11 Compliance with Insurance Requirements.** Except as may be approved in writing by the Executive Board, nothing shall be done or kept within the Community that might result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

*Considerate of views of adjacent lots?*

*? 2 inches?*

3.12 **No Unsightliness.** All unsightly conditions, structures, facilities, equipment, objects, boxes, implements, machinery, furniture, appliances and other unsightly conditions shall be enclosed within a structure, including snow removal equipment and garden and other maintenance equipment, except when in actual use.

3.13 **Weeds.** The entire area of every Lot on which no building has been constructed shall be kept mowed to a maximum height of six inches. In addition, each Lot shall be kept free from weeds, brush or other growth or trash which, in the opinion of the Design Review Committee, is unsightly, causes undue danger of fire, or might harbor rodents.

3.14 **Restrictions on Garbage and Trash.** No refuse, garbage, trash, lumber, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot except within an enclosed structure or appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up.

3.15 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that domesticated birds or fish and other small domestic animals permanently confined indoors shall be allowed. No other animals, except a total of not more than three domesticated animals (e.g., two cats and one dog) which must be restrained at all times within a Lot, shall be permitted within the Community: provided that they are not kept, bred, or maintained for any commercial purpose. No animal of any kind shall be permitted which in the opinion of the Design Review Committee makes an unreasonable amount of noise or odor or is a nuisance. All household pets shall be controlled by their owner and shall not be allowed off the Owner's Lot except when properly leashed or in other immediate control of its owner and accompanied by the pet owner or Owner's representative. Each Owner of a household pet shall be financially responsible and liable for any damage caused by such household pet.

3.16 **No Temporary Structures.** No tent, shack, temporary structure, or temporary building shall be placed upon any Lot within the Community except with the prior written approval of the Design Review Committee.

3.17 **Storage of Gasoline and Explosives, Etc.** No Lot shall be used for storage of explosives, gasoline, or other volatile or incendiary materials or devices. Gasoline or fuel for an Owner's lawn mower, snowblower, and the like may be maintained on an incidental basis on the Lot in an amount not to exceed ten gallons.

3.18 **Storage.** No building materials shall be stored on any Lot except temporarily during continuous construction of an Improvement if approved by the Design Review Committee.

3.19 **Vehicle Repairs.** No maintenance, servicing, repair, dismantling, or repainting of any type of vehicle, boat, machine, or device may be carried on within the Community, except within a completely enclosed structure that screens the sight and sound of the activity from the street and from other Lots.

3.20 **Trailers, Campers and Junk Vehicles.** No boat, camper (on or off supporting vehicles), trailer, tractor, truck, industrial or commercial vehicle (both cabs and trailers), towed trailers, motorcycle, motor vehicle, motor home, mobile home, recreational vehicle, or any other vehicle the primary purpose of which is recreational, sporting, or commercial use, shall be parked or stored on, or about any Lot or

street within the Community unless completely contained within a garage. No maintenance, repair, rebuilding, dismantling, repainting or services of any such equipment or vehicle may be performed on any Lot unless done within an enclosed garage which screens the sight and sound of the activity from the streets and neighboring Lots. The foregoing restriction shall not be deemed to prevent washing and polishing such equipment or vehicles. For the purposes of this covenant, any 3/4-ton or smaller vehicle commonly known as a pickup truck, shall not be deemed a commercial vehicle or truck. The Association shall have the right to enter each Owner's Lot to remove and store, at the Owner's expense, vehicles in violation of this Section. An Owner shall be entitled to 30 days' written notice prior to such action by the Association. Notwithstanding anything set forth herein to the contrary, temporary parking of recreational vehicles for the purposes of loading and unloading and temporary parking of vehicles that belong to visiting guests shall not be deemed to violate the foregoing prohibitions. For the purposes of this Section, temporary parking means a period not to exceed 48 hours, and an inoperable vehicle means one that has not been driven under its own propulsion for 48 hours or longer.

**3.21 Restrictions on Antennae, Pipes, Utility Lines and Transmitters.** Pipes for water, gas, sewer, drainage, or other purposes, and wires, poles, aerials, antennae, and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antenna of any type shall be erected or maintained within the Community. With the approval of the Design Review Committee as to location and screening, one satellite dish or cable television antennae no larger than the minimum size permitted by applicable federal law may be maintained on a Lot. No electronic or radio transmitters other than garage door openers, cordless telephones, and/or wireless internet shall be operated in or on any structure or within any Lot, but, notwithstanding such restriction, remote controlled electronic and radio transmitting devices for operation of television sets, stereos, videocassette recorders, toy walkie-talkie sets, baby monitors, handheld and mobile transceivers, handheld and mobile radios, cellular telephones and similar devices approved by the Design Review Committee may be allowed as long as (a) no wires or antennas are visible on the exterior of any structure within the Community, (b) their use complies with regulations of the Federal Communication Commission, and (c) any interference with similar permitted uses of other Owners is corrected within 24 hours after notice given by the Design Review Committee.

**3.22 Utility Easement.** Declarant hereby reserves unto itself and grants to the Association an easement across the front ten (10) feet and the rear ten (10) feet of each Lot in the Community, and to all private roads and pathways in the Community for utilities, including for the installation, relocation, operation, maintenance, repair and replacement of lines, pumps, pipes, transformers, towers, tanks, wires, conduits, and other facilities or systems and for ingress and egress to and from the same, including the right to grant nonexclusive easements for such purposes. Without extinguishing the aforementioned general easement, Declarant shall have the right to substitute one or more specific easements for the use by utilities companies or others by Recording of an instrument in the real estate records of the County in which the Lot is located, provided, however, that if Declarant owns one or more Lots, the Association shall not exercise this option without obtaining written consent of Declarant. Unless the written consent of Declarant is first obtained, utility companies shall have no right to use easements within the Community to serve any properties outside of the the Community. Where necessary, Declarant shall have the right to amend the Plat to reflect any relocation of existing easements shown on the Plat or to grant new easements for any of the purposes permitted hereunder.

**3.23 Air Conditioning and Heating Equipment.** No heating, air conditioning, air movement (e.g., swamp coolers) or refrigeration equipment shall be placed, allowed, or maintained anywhere on the

exterior of a Lot other than on the ground in the rear or side yard of any Lot; provided, however, that solar units meeting all governmental guidelines for residential uses may be located on the roof if (a) the solar unit is built into and made an integral part of the roof flashing or the structure of any residence constructed on such Lot, and (b) if specifically approved by the Design Review Committee in accordance with Article 4.

**3.24 Restrictions on Signs and Advertising.** No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Community so as to be evident to public view, except: (a) signs as may be approved in writing by the Design Review Committee; and (b) signs, posters, billboards or any other type of advertising device or display erected by Declarant incidental to the development, construction, promotion, marketing, or sale of Lots within the Community. A sign, not to exceed eighteen inches (18") by twenty-four inches (24") advertising a Lot for sale or for lease may be placed on such Lot; provided, however, that standards relating to dimensions, color, style, and location of such sign shall be determined from time to time by the Design Review Committee.

**3.25 Restrictions on Mining and Drilling.** No Lot within the Community shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except drilling, exploring for, or removing underground water by Declarant or any Person designated by Declarant. Notwithstanding the foregoing, Declarant, for itself and its successors and assigns, excepts and reserves all oil, gas, hydrocarbons, and other minerals lying under the surface of the land, and retains the right to develop and remove any such oil, gas, hydrocarbons or minerals by slant drilling or other suitable means of subterranean entry; provided, however, that any such method of slant drilling or other means of subterranean entry must be employed without impairing structures, improvements or appurtenances, or the use thereof, located or to be located on any Lot.

### **3.26 Drainage**

(a) **Acknowledgment.** The soils within the State of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of a residence and other Improvements on a Lot if the residence and the Lot on which it is constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils. All residences shall have engineered footings and foundations.

(b) **Moisture.** Each Owner of a Lot and each Approved Builder 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.

(c) **Maintenance of Drainage.** There shall be no interference with the established drainage pattern over any Lot or other Property within the Community, except as approved in writing by the Design Review Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern that exists at the time the overall grading of any Property is completed and shall include any established drainage pattern shown on any plans approved by the Design Review Committee. The established drainage pattern may include the drainage pattern: (a) from Association Properties over any Lot; (b) from any Lot over the

Association Properties; (c) from any Property owned by the Counties, the Metro District, or other Persons over any Lot; (d) from any Lot over Property owned by the Counties, the Metro District, or other Persons; or, (e) from any Lot over another Lot.

(d) **Action by Owner.** To accomplish the foregoing, each Owner of a Lot covenants and agrees, among other things:

(i) **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 Improvements have been approved by the Design Review Committee and the manner of installation is consistent with, and does not change, the grading and drainage patterns of the Lot.

(ii) 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.

(iii) **Not** to water the lawn or other landscaping on the Lot excessively.

(iv) **Not** to plant flower beds (especially annuals) and vegetable gardens adjacent to or within three feet (3') of the foundation and slabs of the residence.

(v) If evergreen shrubbery and grass is used within five feet (5') of the foundation walls, to water the shrubbery and grass by controlled hand watering and to avoid excessive watering.

(vi) To minimize or eliminate the installation of piping and heads for sprinkler systems within five feet (5') of foundation walls and slabs.

(vii) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to nonperforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.

(viii) To maintain the gutters and downspouts which discharge water into extensions or splash blocks by assuring that (1) the gutters and downspouts remain free and clear of all obstructions and debris; (2) the water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (3) the splash blocks are maintained under sill cocks.

(ix) To recaulk construction joints opening up between portions of the exterior slabs and garage slabs to seal out moisture.

(e) **Disclaimer.** The Declarant shall not be liable for any loss or damage to the residence, outbuilding, concrete slab, driveway, sidewalk, or other Improvement on any Lot caused by, resulting from, or in any ay connected with soil conditions on any Lot.

3.27 **Compliance with Laws.** Nothing shall be done or kept on any Lot within the Community in violation of any law, ordinance, rule, or regulation of any governmental authority having jurisdiction over the Community.

3.28 **Further Subdivision of Lots.** The Owner of a Lot shall not further subdivide the Lot.

3.29 **Restrictions on Sewage Disposal Systems.** No cesspool, septic tank, or other sewage disposal system shall be installed within the Community without the prior written approval of the Design Review Committee. Any sewage disposal system installed within the Community shall be subject to applicable laws, rules, and regulations of any governmental authority having jurisdiction over the Community.

3.30 **Restrictions on Water Systems.** No individual water supply system shall be installed or maintained for any Lot within the Community unless such system is approved in writing by the Design Review Committee and is designed, located, constructed, and equipped in accordance with the requirements, standards, and recommendations of any applicable water and sanitation district or other governmental authority having jurisdiction over the Community.

3.31 **Restoration in the Event of Damage or Destruction.** In the event of damage or destruction of any Improvement on any Lot, the Owner of the Lot shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Lot to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance.

3.32 **Fences.** Security fences, and fences for screening purposes must have the prior approval of the Design Review Committee. All perimeter fencing – both common area and home site – must be natural and in conformance with the Declarant's original plan. Privacy fences will not be permitted.

3.33 **Perimeter Fencing.** The Metro District shall be responsible for maintaining, repairing, and replacing perimeter fencing. Perimeter fencing shall not exceed a height of four feet (4') and shall be a three rail natural wood fence. The Metro District shall have the right of ingress and egress to Lots bordering perimeter fencing for the purpose of maintaining, repairing, or replacing such perimeter fencing. At such time that the Metro District determines that the entire replacement of a section or more of the perimeter fencing is necessary along the exterior boundary of the Community, the Metro District shall be responsible for the replacement, shall have rights of access within the applicable Lots for such purposes, and shall pay the costs of the replacement. Owners of Lots bordering perimeter fencing may install one gate per Lot within the perimeter fencing not to exceed three feet (3') in width.

#### 4. **ARCHITECTURAL APPROVAL**

4.1 **Approval of Improvements Required.** The approval of the Design Review Committee shall be required for any Improvement to Property on any Lot, except (a) any Improvements to Property made by Declarant; (b) any Improvements to Property made by an Approved Builder if the plans for such Improvements have previously been approved by the Declarant; and (c) where prior approval of Improvements to Property may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the Design Review Committee.

**4.2 Improvement to Property Defined.** "Improvement to Property" requiring approval of the Design Review Committee as described in Section 4.1 of this Declaration shall mean and include, without limitation: (a) the construction, installation, erection, or expansion of any building, structure, or other Improvement, including utility facilities, landscaping, fences, and outbuildings; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, or change of drainage pattern (none of which shall be undertaken contrary to the provisions of Article 3 of this Declaration); and (d) any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, exterior lighting or texture. At any time that plans and specifications, grading plans and location for any Improvement to Property have been approved by the Design Review Committee, the construction of the Improvements to Property shall commence within sixty (60) days after approval of the Design Review committee and shall be completed within twelve (12) months from the date construction is approved; provided, however, that the time limit for completion of construction may be extended by the Design Review Committee in the event of unusual circumstances or delays beyond the control of Owner. If any extension is requested not less than thirty (30) days prior to the completion deadline and no response is given by the Design Review Committee within thirty (30) days after the request for extension is received by the Design Review Committee, then the requested extension shall be deemed granted.

**4.3 Membership of Committee.** The Design Review Committee shall consist of three members, all of whom shall be initially appointed by Declarant. Declarant shall have the continuing right to appoint all three members during the Declarant Control Period. The Association shall have the right to appoint such members after the expiration of the Declarant Control Period. During the Declarant Control Period, Declarant shall give the Executive Board written notice of the appointment or removal of any member of the Design Review Committee. Members of the Design Review Committee may be but need not be Members of the Association. After expiration of the Declarant Control Period, members of the Design Review Committee to be appointed by the Association shall be appointed by the Executive Board. Members of the Design Review Committee appointed by the Executive Board may be removed at any time by the Board, and shall serve for such terms as may be designated by the Board or until resignation or removal by the Board. After the expiration of the Declarant Control Period, the Association may at any time and from time to time change the authorized number of members of the Design Review Committee, but the number of members of the Design Review Committee shall not be less than three.

**4.4 Address of Design Review Committee.** The address of the Design Review Committee shall be care of the Association's management company, as such address is announced or published from time to time by the Association.

**4.5 Submission of Plans.** Except as provided in Section 4.1, prior to commencement of work to accomplish any proposed Improvement to Property, the Applicant shall submit to the Design Review Committee at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, landscaping plans, fencing plans, construction plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request (including such numbers thereof as are reasonably requested) showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Applicant shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The plans and other documents required for the construction of a residential dwelling on a Lot shall include a complete landscape plan for the Lot. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by

the Design Review Committee of all required materials in connection with the proposed Improvement to Property, the Design Review Committee may postpone review of any materials submitted for approval.

**4.6 Criteria for Approval.** The Design Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated shall not be detrimental to the appearance of the Community as a whole; that the appearance of the proposed Improvement to Property shall be in harmony with the surrounding areas of the Community; that the Improvement to Property shall not detract from the beauty, and attractiveness of the Community or the enjoyment thereof by Owners; that the upkeep and maintenance of the proposed Improvement to Property shall not become a burden on the Association; and that the proposed Improvement to Property does not affect the drainage plan for the Community or any portion thereof. The Design Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Design Review Committee may deem appropriate.

**4.7 Design Standards.** The Design Review Committee may issue standards or rules ("Design Standards") relating to the procedures, materials to be submitted, fees for review, and additional factors that shall be taken into consideration in connection with the review of any proposed Improvement to Property including, but not limited to, landscaping and fencing design standards. The Design Standards may specify circumstances under which the strict application of limitations or restrictions under this Declaration shall be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. The Design Review Committee may waive the requirement for approval of certain Improvements to Property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration. In addition to the restrictions set forth in this Declaration, the Design Standards may include by example and not by limitation, standards governing the following:

- (a) Standards establishing and dictating an architectural theme and requirements pertaining to building type, style, architectural design, location, orientation, and site planning;
- (b) Procedures for making application to the Design Review Committee for design review approval, including the documents to be submitted and the time limits in which the Design Review Committee must act to approve or disapprove any submission;
- (c) Time limitations for the completion, within specified periods after approval, of the Improvements to Property for which approval is required under the Design Standards.
- (d) Designation of a building site on a Lot, establishing the maximum developable area of a Lot and set-back or view corridor requirements;
- (e) Building design, orientation, location;
- (f) Experience and reputation of any contractor that is not an Approved Builder;
- (g) Construction methods and timetables;
- (h) Fence and wall materials, color, design, style, height and location;
- (i) Swimming pools and play structures;



- (j) Storage tanks, containers, and exterior mechanical equipment;
- (k) Window style, design, size, material, location, and orientation;
- (l) Solar energy devices;
- (m) Outdoor ornamentation and seasonal decorations;
- (n) Site drainage, grading, and water conservation;
- (o) Paved areas, culverts, and driveways;
- (p) Residence numbers and entry monuments;
- (q) Exterior lighting;
- (r) Specifications for location, dimensions, and appearance or screening of any accessory structures, antennae or other such Improvements;
- (s) Roof materials, color, overhang, and pitch;
- (t) Siding style, type, material, design, and color;
- (u) Quality, durability, aesthetic appeal, compatibility, and longevity of building materials;
- (v) General instructions for the construction, reconstruction, refinishing or alteration of any Improvement to Property, 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 on the Lot, addressing matters such as loading areas, water storage, trash removal, equipment and materials storage, grading, transformers and meters;
- (w) Designation of entry (front or side);
- (x) Landscaping regulations, including requirements for installing and maintaining landscaping on the entire Lot and in certain areas identified in the Design Standards, on parkways abutting the Lots and the street or road providing access to the Lot; time limitations within which all landscaping must be completed; 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 in question; and other practices benefiting the protection of the environment, aesthetics and architectural harmony of the Community.

**4.8 Design Review Fee.** Payment of a fee specified by the Design Review Committee in the Design Standards must accompany each request for approval by the Design Review Committee of any proposed Improvement to Property and each resubmittal. The Design Committee may further provide that the amount of any design review fee include engineering or architectural consultant, and other fees reasonably incurred by the Association in reviewing any proposed Improvement to Property.

**4.9 Decision of Committee.** Any decision of the Design Review Committee shall be made only after receipt by the Design Review Committee of all materials required by the Design Review Committee. The decision shall be in writing. If the decision is not to approve a proposed Improvement to Property, the reasons for disapproval shall be stated. The decision of the Design Review Committee shall be transmitted to the Applicant at the address furnished by the Applicant to the Design Review Committee within thirty (30) days after receipt by the Design Review Committee of all materials required by the Design Review Committee.

**4.10 Prosecution of Work After Approval.** After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to Property and any materials submitted to the Design Review Committee in connection with the proposed Improvement to Property, and any conditions imposed by the Design Review Committee; provided that within ninety days after approval of any proposed Improvement to Property, or within such longer period as may be approved in writing by the Design Review Committee, the Owner shall complete the installation of any landscaping and gardening approved in conjunction with the approval of the proposed Improvements to Property. Failure to complete the proposed Improvement to Property within twelve (12) months after the date of approval or such shorter period as specified in writing by the Design Review Committee, or to complete the Improvements to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Design Review Committee, shall constitute noncompliance with the requirements for approval of the Improvements to Property. If any Improvements to Property are not completed within the time and in the manner herein required, the Association shall have the right, but not the obligation, to enter upon the Lot and complete the Improvements as approved by the Design Review Committee. The costs incurred by the Association in completing the Improvements shall be assessed against the Owner and the Lot as a Reimbursement Assessment.

**4.11 Notice of Completion.** Upon completion of the Improvement to Property, the Applicant may give written Notice of Completion to the Design Review Committee. Until the date of receipt of such Notice of Completion, the Design Review Committee shall not be deemed to have knowledge of completion of such Improvement to Property.

**4.12 Inspection of Work.** The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate six (6) months after the Design Review Committee shall have received a Notice of Completion from Applicant.

**4.13 Notice of Noncompliance.** If, as a result of inspections or otherwise, the Design Review Committee finds that any Improvement to Property has been made without obtaining the approval of the Design Review Committee or was not made in complete conformity with the description and materials furnished to, and any conditions imposed by, the Design Review Committee or was not completed within twelve (12) months after the date of approval by the Design Review Committee or such shorter period as specified in writing by the Design Review Committee, the Design Review Committee shall notify the Applicant in writing of the noncompliance. If any such notice is given, it shall be given within fourteen (14) days after the Design Review Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

4.14 **Failure of Committee to Act After Completion.** If, for any reason other than the Applicant's act or neglect, the Design Review Committee fails to notify the Applicant of any noncompliance within six (6) months after receipt by the Design Review Committee of written Notice of Completion from the Applicant, the Improvement to Property shall be deemed in compliance if the Improvement to Property was, in fact, completed as of the date of Notice of Completion.

4.15 **Appeal to Executive Board of Finding of Noncompliance.** If the Design Review Committee gives any notice of noncompliance, the Applicant may appeal to the Executive Board by giving written notice of such appeal to the Board and the Design Review Committee within seven (7) days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to commence and diligently to remedy such noncompliance, the Design Review Committee shall request a finding of noncompliance by the Executive Board by giving written notice of such request to the Executive Board and the Applicant within thirty (30) days after delivery to the Applicant of a notice of noncompliance from the Design Review Committee. In either event, the Executive Board shall hear the Owner in accordance with the provisions of the Board policies for Notice and Hearing, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

4.16 **Correction of Noncompliance.** If the Design Review Committee or if appealed, the Executive Board determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five days from the date of receipt by the Applicant of the ruling of the Design Review Committee or if appealed, the Executive Board. If the Applicant does not comply with the Design Review Committee or if appealed, the Executive Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the Lot on which the noncompliance exists, may enter upon such Lot and remove the non-complying Improvement to Property, or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Association, the Board may levy a Reimbursement Assessment against the Owner of the Lot for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies that the Association may have at law, in equity, or under this Declaration. The Applicant and Owner of the Lot shall have no claim for damages or otherwise on account of the entry upon the Lot and removal of the non-complying Improvement to Property.

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

4.18 **Committee Power to Grant Variances.** The Design Review Committee may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size, floor area, or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration 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 Design Review 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 a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot concerned, including, but not limited to, zoning ordinances, height limitations, and setback lines or requirements imposed by any governmental authority having jurisdiction.

**4.19 Meetings of Committee.** The Design Review Committee shall meet from time to time as necessary to perform its duties. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of its members, designate a Committee Representative (who may be but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval to any Improvement to Property and granting of variances. Decisions of the Committee Representative within the authority of such Committee Representative or the written consent or vote of a majority of the members of the Design Review Committee shall constitute the action of the Design Review Committee.

**4.20 Records of Actions.** The Design Review Committee shall maintain records of all actions of the Committee.

**4.21 Estoppel Certificates.** The Executive Board shall, upon the reasonable request of any interested Person and after confirming any necessary facts with the Design Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on the contents of the certificate.

**4.22 Non-liability of Committee.** No liability shall be imposed upon the Design Review Committee, any member of the Committee, any Committee Representative, the Association, any member of the Executive Board, or Declarant, their respective heirs, personal representatives, successors or assigns for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee unless due to the willful misconduct of the party to be held liable. In reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

**4.23 Construction Period Exceptions.** During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the Design Review Committee shall temporarily suspend the provisions contained in this Declaration as to the Lot upon which the construction is taking place to the extent necessary to permit such construction, provided that, during the course of any such construction, nothing is done that shall result in a violation of any of the provisions of this Declaration upon completion of construction, or which shall constitute a nuisance or unreasonable interference with the use and enjoyment of other Lots.

## **5. ASSOCIATION PROPERTIES**

**5.1 Member's Rights of Use and Enjoyment Generally.** Unless otherwise provided in this Declaration, all Members may use or enjoy the benefits of the Association Properties as appropriate.

**5.2 Right of Association to Regulate Use.** The Association, acting through the Executive Board, shall have the power to regulate use of Association Properties by Members to further enhance the overall rights of use and enjoyment of all Members.

**5.3 No Partition of Association Properties.** No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

**5.4 Liability of Owners for Damage by Member.** Each Member shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, caused by the negligence or willful misconduct of such Member or any Person using the Association Properties through such Member and for any violation by such Member or any such Person of this Declaration or any Rule and Regulation adopted by the Association. The Association shall have the power, as provided elsewhere in this Declaration, to levy and collect a Reimbursement Assessment against a Member, after Notice and Hearing, to cover the costs and expenses incurred by the Association on account of any such damage or violation of this Declaration or the Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or violation.

**5.5 Association Duties upon Damage or Destruction.** In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Association Properties by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment in accordance with Section 9.17, or if a Member or group of Members is liable for such damage, levy a Reimbursement Assessment against the responsible Member or group of Members to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the excess for future maintenance, repair, improvement, and operation of other Association Properties.

**5.6 Association Powers in the Event of Condemnation.** If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such Association Properties, including any Mortgagee of such Association Properties. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in the Association's Maintenance Fund, as a reserve for future maintenance, repair, reconstruction, or replacement of Association Properties or may be used for improvements or additions to or operation of Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

**5.7 Title to Association Properties on Dissolution of Association.** In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agencies or organizations or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Members in proportion to the number of Lots owned by each Member in the Community.

## **6. DECLARANT'S RIGHTS AND RESERVATIONS**

**6.1 Period of Declarant's Rights and Reservations.** Declarant shall have, retain, and reserve certain rights as set forth in this Article 6 with respect to the Association and the Association Properties during the Declarant Control Period. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Association whether or not specifically stated therein and in each deed or other instrument by which any Lot within the Community is conveyed by Declarant or any Member. The rights, reservations, and easements hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other amendment.

**6.2 Right to Construct Additional Improvements.** Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional improvements on Association Properties at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners. Declarant shall convey or transfer such improvements to the Association, and the Association shall be obligated to accept title to, care for, and maintain the same as Association Properties as elsewhere provided in this Declaration.

**6.3 Declarant's Rights of Use for Promotion and Marketing.** Declarant shall have and hereby reserves rights (which rights may be assigned to Approved Builders, in whole or in part, one or more times, as hereafter provided) to reasonable use of Lots owned by Declarant (or Lots owned by Approved Builders, if such right has been assigned to them) and to reasonable use of the Association Properties and services offered by the Association in connection with the promotion, development, construction of Improvements and marketing of the Community. Without limiting the generality of the foregoing, Declarant may erect and maintain on any Lot and the Association Properties such signs, temporary buildings, and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development, construction of Improvements and marketing of Lots within the Community. Each Approved Builder may maintain a sales/management office (which may be located in model dwellings), and up to six model dwellings, none of which individually shall exceed the size of the largest residential dwelling to be constructed for sale to the general public, and all of which may be located on any Lot and relocated to any other Lot within the Community owned by such Approved Builder. Declarant may also use vehicles and equipment on Association Properties for promotional purposes; may permit prospective purchasers of Lots within the Community who are not Owners or Members of the Association to use Association Properties at reasonable times and in reasonable numbers; and may refer to the Association Properties and to the Association and services offered by the Association in connection with the promotion, development, construction of Improvements and marketing of Lots within the Community.

**6.4 Declarant's Rights to Complete Development of Community.** No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete development of Property within the Community; to construct or alter improvements on any Property owned by Declarant within the Community, including temporary buildings; to maintain model homes, temporary buildings, construction trailers, sales trailers or offices for construction or sales purposes, or similar facilities, on any Property owned by Declarant or owned by the Association within the Community; or to post signs incidental to development, promotion, construction of improvements, marketing, or sales of Lots within the Community. Nothing contained in this Declaration shall limit the right of Declarant to excavate, cut, fill, or grade any Property owned by Declarant or to construct, alter, demolish, or replace any improvements on any Property owned by Declarant; or to use any structure on any property owned by Declarant as a construction site, model home, or real estate sales office in connection with the sale of any Lot within the Community. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

**6.5 Declarant's Approval of Conveyances or Changes in Use.** During the Declarant Control Period, the Association shall not, without first obtaining the written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties, Mortgage the Association Properties, or use Association Properties other than solely for the benefit of Members or as specifically allowed hereunder.

**6.6 Declarant's Rights to Grant and Create Easements.** Declarant shall have and hereby reserves the right to grant or create or be the beneficiary of temporary or permanent easements located in, on, under, over, and across Association Properties, for access, utilities, drainage, water, and other purposes incident to development and sale of portions of the Community.

**6.7 Declarant's Rights to Convey Additional Property to Association.** Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and improvements thereon to the Association at any time and from time to time in accordance within this Declaration.

**6.8 Development Rights.**

(a) Right to Expand by Annexing Additional Property. Declarant shall have and hereby reserves the right during the Declarant Control Period, to expand the Community by subjecting all or any part of the Development Property to the provisions of this Declaration, thereby annexing the Development Property to the Community. The consent of Owners and Mortgagees shall not be required for any such annexation, and Declarant may proceed with such annexation in its discretion and at its sole option. In accordance with the development rights of Declarant, each owner of a Lot hereby grants to Declarant the right to annex all the Development Property to the Community and to modify such Owner's right to the Common Area accordingly, as more particularly set forth in this Section 6.8. No such annexation shall make or constitute any amendment or modification to this Declaration except as may otherwise be provided herein. The annexation of additional real property to the Community shall be accomplished by the filing for record by Declarant with the Clerk and Recorder of the Counties, a supplement or supplements to this Declaration containing a legal description of the Development Property to be added to the Community (the "Annexation Supplement"), together with any supplemental plats applicable thereto. The annexation of the Development Property may be accomplished by successive supplements.

(b) Effect of Expansion. In the event any of the Development Property is annexed to the Community as provided herein, the definitions used in this Declaration shall be automatically expanded to encompass and refer to the Community as expanded; after which "Community" shall mean the real property described herein plus any additional real property annexed to the Community; similarly, "Lots" shall include those areas as described herein as well as those so designated on any Annexation Supplement or supplemental plat relating to any real property which is annexed pursuant to this Section 6.8. References to this Declaration shall mean this Declaration as supplemented by any Annexation Supplement. Every Owner of a Lot in the area annexed to the Community shall, by virtue of ownership of such annexed property and upon recordation of the Annexation Supplement annexing such property to the Community, be a Member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Association Member. The recording of the Annexation Supplement with the Clerk and Recorder of the Counties, shall operate automatically to grant, transfer, and convey to all Owners of Lots located within the Community, and Owners of Lots within the property annexed thereto, their respective, appurtenant, undivided rights, privileges, duties and obligations in and to both the existing Association Properties and any additional property added to the existing Association Properties by virtue of such annexation. Annual assessments for Lots within the area annexed to the Community shall commence as of the date of the Recording of the Annexation Supplement and shall be prorated as of such date. Upon recording of an Annexation Supplement and any other supplemental plat with the Clerk and Recorder of the Counties, the additional Lots shall be subject to the terms and provisions of this Declaration.

(c) Reservation of Annexation Rights. Declarant shall have the right to annex different portions of the Development Property to the Community at different intervals and the right to annex only a portion or none of the Development Property as it deems appropriate in its sole discretion. In accordance therewith, Declarant makes no assurances as to the boundaries or extent of the Community in the event any of the Development Property is annexed to the Community as provided herein.

**6.9 Approved Builders.** Declarant shall have the right to designate Approved Builders. Approved Builders shall have the right to obtain pre-approval of one or more residential designs that may be constructed on any Lot owned by the Approved Builder within the Community. Approved Builders shall have the right to maintain model homes and one sales/management office for construction or sales purposes on any Lot owned by any Approved Builder within the Community; and to post signs subject to approval of the Declarant incidental to promotion, marketing, or sale of residential dwellings and Lots owned by the Approved Builder within the Community.

**6.10 Subassociations.** Declarant shall have the right but not the obligation to create subassociations within the Community, including by example and not limitation, an association for the maintenance, upkeep, repair, replacement and improvement of the *Patio Homes and the Lots* upon which the *Patio Homes* are constructed.

**6.11 Declarant's Rights Supercede.** The rights of the Declarant granted by this Article 6 shall supercede any provision of this Declaration appearing to restrict such rights.

**6.12 Transfer of Declarant Rights.** Declarant may transfer, convey, and assign any or all of Declarant's rights and reservations contained in this Article 6 to any Person by an instrument describing the rights transferred signed by both the Declarant and the transferee and Recorded in the Counties.



**7. ASSOCIATION OPERATION**

**7.1 Association.** The Association has been formed under the Colorado Nonprofit Corporations Act. The Association shall have the duties, powers, and rights set forth in the Act, the Colorado Nonprofit Corporations Act, this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have an Executive Board to manage its affairs. Except as may be provided herein, the Articles of Incorporation or the Bylaws, the Executive Board shall be elected by Owners acting in their capacity as Members of the Association.

**7.2 Association Executive Board.** The affairs of the Association shall be managed by an Executive Board. The number, term, and qualifications of the members of the Executive Board shall be fixed in the Articles of Incorporation and Bylaws. The Executive Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Executive Board or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

**7.3 Membership in Association.** Each Owner of a Lot within the Community shall be a Member of the Association. There shall be one Membership in the Association for each Lot within the Community. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Lot. Declarant and Approved Builders shall hold a Membership in the Association for each Lot owned by them. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot except that an Owner may assign some or all rights as an Owner and as a Member of the Association to a tenant or Mortgagee and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Declaration, but no Owner shall be relieved of responsibility for fulfillment of the obligations of an Owner under this Declaration.

**7.4 Voting Rights of Members.** Each Member shall have the right to cast one vote for each Lot owned by such member in accordance with the Bylaws. Notwithstanding the foregoing, Declarant, in its sole discretion, shall be entitled to select and appoint members of the Executive Board until the expiration of the Declarant's Control Period.

**7.5 Determination of Member Voting Percentages.** Notwithstanding anything to the contrary contained in this Declaration, only Members whose voting rights are in good standing under the Association's Bylaws (e.g., voting rights that have not been suspended as provided therein) shall be entitled to vote on Association matters. In accordance therewith, any and all provisions contained herein requiring the approval of a certain percentage of Members of the Association shall be deemed satisfied when the requisite percentage of Members entitled to vote has voted affirmatively for approval.

**8. DUTIES AND POWERS OF ASSOCIATION**

**8.1 General Duties and Powers of Association.** The Association has been formed to further the common interests of the Members. The Association, acting through the Executive Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve, and enhance the common interests of the Members, to maintain,

improve, and enhance Association Properties, and to improve and enhance the attractiveness, aesthetics, and desirability of the Community.

**8.2 Duty to Accept Property and Facilities Transferred by Declarant.** The Association shall accept title to any real property, including any Improvements thereon and personal property transferred to the Association by Declarant, and equipment related thereto, together with the responsibility to perform any and all Administrative Functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests, and licenses to use. Any real property or interest in real property transferred to the Association by Declarant shall be within the boundaries of the Community. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all liens and encumbrances securing payment of indebtedness (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration and easements, covenants, conditions, restrictions, reservations, and equitable servitudes or other encumbrances of record. Except as otherwise specifically approved by resolution of the Executive Board, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

**8.3 Duty to Manage and Care for Association Properties.** The Association shall manage, operate, care for, maintain, and repair all Association Properties, and shall keep the same in an attractive and desirable condition for the use and enjoyment of the Members. The Association shall care for and maintain wetlands within the Association Properties in accordance with federal regulations in such wetlands.

**8.4 Duty to Pay Taxes.** The Association shall pay all taxes and assessments levied upon the Association Properties and all taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties that may accrue if the contest of such taxes is unsuccessful.

**8.5 Duty to Maintain Casualty Insurance.** The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, property insurance on all insurable improvements and personal property owned by the Association in broad form for causes of loss, including casualty, fire, and extended coverage insurance and, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property insurance policies.

**8.6 Duty to Maintain Liability Insurance.** The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of Association Properties, including officers and directors' liability insurance covering the individual members of the

Executive Board and covering public liability for bodily injury and property damage and, if the Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable: (a) have limits of not less than one million dollars (\$1,000,000) per person and five million dollars (\$5,000,000) per occurrence; (b) insure the Board and individual members of the Board, the Association, the manager, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured in such Declarant's capacity as a Member or Board member; (d) include the Members as an additional insured, but only for claims and liabilities arising in connection with the ownership, existence, use or management of Association Properties; and (e) cover claims of one or more insured parties against other insured properties.

**8.7 General Provisions Respecting Insurance.** Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is cancelled or renewed without a replacement policy having been obtained, the Association shall promptly cause notice of that fact to be delivered to all Members. The Association may carry any other type of insurance it considers appropriate, in amounts it deems appropriate, to insure the interests of the Association. Insurance policies carried pursuant to Sections 8.6 and 8.7 shall provide that: (a) each Member is an insured Person under the policy with respect to liability arising out of such Member's interest in the Association Properties or membership in the Association; (b) the insurer waives its right of subrogation under the policy against the Association, each Member, and any Person claiming by, through, or under such Member or any other director, agent, or employee of the foregoing; (c) no act or omission by any Member, unless acting within the scope of such Member's authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, there is other insurance in the name of a Member covering the same risk covered by the policy, the Association's policy shall be the primary insurance. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to Association Properties, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. The insurance may be provided under blanket policies covering the Association Properties and property of Declarant. In no event shall insurance coverage obtained or maintained by the Association be bought into contribution with insurance purchased by Owners, occupants or their Mortgagees.

**8.8 Fidelity Bonds Required.** The Association shall obtain and keep in force at all times a fidelity bond or bonds for any Person handling funds of the Association. Each such bond shall name the Association as obligee and shall be not less than the estimated maximum of funds, including Reserve Funds, in the custody of the Association or the manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate Common Assessments on all Lots plus Reserve Funds.

**8.9 Other Insurance and Bonds.** The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such

other insurance and such fidelity, indemnity, or other bonds as the Association shall deem necessary or desirable.

**8.10 Power to Acquire Property and Construct Improvements.** The Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property. The Association may construct and maintain Improvements on Property, including fences, and may demolish existing Improvements.

**8.11 Power to Adopt Rules and Regulations.** The Association may adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community, including Lots, and the general restrictions and covenants described in Article 3. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Executive Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Member at the address for notices to Members as elsewhere provided in this Declaration or the Bylaws, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with the Rules and Regulations, and shall cause Persons claiming through such Member to comply with the Rules and Regulations. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall control.

**8.12 Power to Enforce Declaration and Rules and Regulations.** The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and may take such action as the Board deems necessary or desirable to cause compliance by each Member and each Person claiming by, through, or under such Member ("Related Users"). Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (a) by entry upon any Lot within the Community after Notice and Hearing (unless a bona fide emergency exists), without liability to the Owner thereof or the Association, for the purpose of enforcement or causing compliance with this Declaration or the Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (d) by suspension, after Notice and Hearing, of the voting rights of a Member during and for up to ten days following any breach by such Member or a Related User of such Member of this Declaration or the Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (e) by levying and collecting, after Notice and Hearing, a Reimbursement Assessment against any Member for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member; and (f) by levying and collecting, after Notice and Hearing, uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or the Rules and Regulations by such Member or Related User.

**8.13 Power to Grant Easements.** The Association shall have the power to grant access, utility, drainage, water facility, and other such easements in, on, over, or under Association Properties, as

well as the power to limit portions of the Association Properties for the use and benefit of Owners of specific Lots.

**8.14 Power to Convey Property to Governmental Agencies.** The Association, with the approval of Members representing at least sixty-seven percent of the votes entitled to vote (excluding the votes of Declarant), shall have the power to grant, convey, dedicate, or transfer any Association Properties or facilities to any public, governmental or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, subject to the provisions contained elsewhere in this Declaration for approval of the same by Declarant with respect to Property transferred to the Association by Declarant. Further, to the extent that any easement or right-of-way is required under or across any Association Properties that would not impair or hinder the use of the Association Properties, the Association shall have the right to grant or convey the same without the consent of the Members.

**8.15 Power to Borrow Money and Mortgage Property.** The Association shall have the power to borrow money and, with approval of Members representing at least sixty-seven percent of the votes of the Association entitled to vote (excluding the votes of Declarant), to encumber Association Properties as security for such borrowing.

**8.16 Power to Engage Employees, Agents and Consultants.** The Association shall have the power to hire and discharge employees and agents, to retain and pay for a manager, (e. g., management company), and legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

**8.17 Power to Enter into Trash Removal Contract.** The Association shall have the power and authority to enter into a trash removal contract that provides for exclusive trash removal services for all Lots located within the Community. In the event the Association elects to enter into such trash removal contract, all Owners of Lots in the Community who are currently occupying residences on their Lots must use the services of the trash removal company selected by the Association. The Owner of each Lot shall pay the company selected by the Association directly for trash removal for such Owner's Lot.

**8.18 General Corporate Powers.** The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporations Act, including, without limitation, entering into partnership and other agreements, subject only to limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things that may be authorized, required, or permitted to be done under this Declaration, the Articles of Incorporation or Bylaws and to do and perform any and all acts that may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration, the Articles of Incorporation or Bylaws.

**8.19 Powers Provided by Law.** In addition to the powers provided in this Declaration, the Articles of Incorporation, or Bylaws, the Association shall have full power to take and perform any and all actions that may be lawfully taken by the Association under the Colorado Nonprofit Corporations Act.

**9. BUDGET AND FUNDS**

**9.1 Maintenance Funds to be Established.** The Association may establish and maintain the following separate Maintenance Funds: (a) an Operating Fund; and (b) the Reserve Fund. The Maintenance Funds shall be established as one or more savings or checking accounts at any financial institution in which deposits are insured by an agency of the federal government, each of which accounts shall be held in trust for the Members. Notwithstanding anything else to the contrary contained herein, in no event shall the Association be required to apply any surplus funds of the Association remaining after payment of or provision for common expenses, or any prepayment of or provision for reserves, against any Members' future Common Assessment.

**9.2 Establishment of Other Funds.** The Association may establish other funds as and when needed. For example, the Association may establish a separate Maintenance Fund for subassociations or areas within the Community requiring services not otherwise provided to the entire Community, such as the patio homes. Nothing herein shall limit, preclude, or impair the authority of the Association to establish other funds for specified purposes authorized by this Declaration. If the Association establishes any additional funds, the Executive Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Association.

**9.3 Deposit of Common Assessments to Maintenance Funds.** Money collected by the Association as Common Assessments shall be deposited in the Maintenance Funds in accordance with the following provisions: (a) there shall be deposited to the Operating Fund that portion of the Common Assessments that, according to the Association Budget for the year, was budgeted for operating costs and expenses of the Administrative Functions; and (b) there shall be deposited to the Reserve Fund that portion of the Common Assessments that was budgeted for the Reserve Fund.

**9.4 Other Deposits to Maintenance Funds.** The Association shall deposit money received by the Association from sources other than Common Assessments in the Maintenance Fund determined by the Executive Board to be most appropriate. For example, the Reimbursement Assessments shall be deposited to the Maintenance Fund from which the costs and expenses were or will be paid that form the basis for the Reimbursement Assessments; and Special Assessments for capital repairs, maintenance, replacements and improvements shall be deposited to the Reserve Fund from which such capital costs have been or will be paid. Interest and late charges received on account of delinquent assessments may be allocated among the Maintenance Funds in the same proportions as the delinquent assessments were allocated or, at the discretion of the Executive Board, may be allocated to any one or more of the Maintenance Funds or other funds.

**9.5 Disbursements from Maintenance Funds.** All amounts deposited in the Maintenance Funds shall be used solely for the common benefit of all the Members for purposes authorized by this Declaration. Disbursements from particular Maintenance Funds shall be limited to specified purposes as follows: (a) disbursements from the Operating Fund may be made for such purposes as are necessary or proper under this Declaration, except those purposes for which disbursements are to be made from other Maintenance Funds; (b) disbursements from the Administrative Functions Reserve Fund shall be made solely for purposes of funding those Administrative Functions that are not expected to recur on an annual or more frequent basis; and (c) disbursements from a specific Maintenance Fund shall be disbursed for the purpose for which such Fund was established. For example, if a specific Maintenance Fund is established for maintenance of the Patio Homes, disbursements from such Maintenance Fund shall be used solely for the purpose of maintaining the Patio Homes.

**9.6 Authority for Disbursements.** The Executive Board shall have the authority to make, or to authorize an agent to make, disbursements of any money in a Maintenance Fund.

**9.7 Funding of Reserve Funds.** The Executive Board, in budgeting and levying Assessments, shall endeavor, whenever possible, to fund the Administrative Functions Reserve Fund by regularly scheduled payments, included as part of the Common Assessments, rather than by Special Assessments. Money in the Administrative Functions Reserve Fund may be used in the discretion of the Board, from time to time, for any purpose for which a Common or Special Assessment may be used.

**9.8 Annual Budgets.** The Executive Board shall cause to be prepared, at least sixty days prior to the commencement of each calendar year, a Budget for such calendar year, including a reasonable provision for contingencies and deposits into the Administrative Functions Reserve Fund. The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Maintenance Fund, and shall reflect any expected income of the Association for the coming calendar year, any expected surplus from the prior year, and any existing surplus in any Reserve Fund. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the proper Reserve Fund for major capital repairs, replacements, and improvements for Association Properties.

**9.9 Common Assessments.** For each calendar year, the Association may levy Common Assessments against Owners of the Lots. Each Owner shall be obligated to pay the Common Assessments levied against and allocated to such Owner and the Lot of such Owner, as hereinafter provided.

**9.10 Apportionment of Common Assessments.** For purposes of assessing the Common Assessments under this Declaration, each Lot shall constitute one Lot regardless of the size, value, location, or use of such Lot. The amount of the Common Assessment for any year, payable by the Owner of such Lot, shall be computed by multiplying the total amount to be raised by the Common Assessments for that year, as shown in the Association Budget for that year, by a percentage (rounded to the nearest one-tenth of one percent), derived from a fraction, the numerator of which is one and the denominator of which is the total number of Lots in the Community as of the first day of that calendar year. The annual average Common Assessment against each Lot made pursuant to this Declaration, exclusive of optional user fees and any insurance premiums paid by the Association, shall not exceed Four Hundred Fifty Dollars (\$450), increased annually on July 1, 2008 and on July 1 of each succeeding year in accordance with any increase in the United States Department of Labor, Bureau of Labor Statistics, Final Consumer Price Index for the Denver-Boulder Consolidated Metropolitan Statistical Area for the preceding calendar year. The limitation shall not be increased if the Final Consumer Price Index for the preceding calendar year did not increase and shall not be decreased if the Final Consumer Price Index for the preceding calendar year decreased.

**9.11 Supplemental Common Assessments for Deficiencies.** Subject to the provision of Section 9.12, if the Common Assessments prove inadequate for any reason, including nonpayment of any Owner's Assessments, the Executive Board may, from time to time, levy a Supplemental Common Assessment for any of the Maintenance Funds. Such Supplemental Common Assessment shall be assessed against the Owner of each Lot in the same manner as Common Assessments are originally assessed each year by the Board with respect to the particular Maintenance Fund. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner, not less than thirty days prior to the effective date of such change.

9.12 **Supplemental Common Assessments for Other Needs.** If the Executive Board levies a Common Assessment, the Board by majority vote may thereafter levy one or more Supplemental Common Assessments during the calendar year, if it determines that the important and essential functions of the Association cannot be funded by the original Common Assessments.

9.13 **Commencement of Common Assessments.** Common Assessments shall commence and be due and payable as to each Lot within the Community beginning the first day of the month in which the first conveyance of a Lot to an Owner other than the Declarant occurs. The obligation to pay Common Assessments shall apply to all Lots included within the Community, including those owned by Declarant and any Approved Builder. The Common Assessment for the then-current calendar year shall be prorated on the basis of the number of days in such calendar year remaining from the date of commencement of such Common Assessments to the end of such calendar year.

9.14 **No Disbursements to Abate Nuisances or Zoning Amendments Outside the Community.** Nothing in this Declaration shall be construed to permit the Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Community or to dispute any change to the zoning or assessment of any property adjacent to or outside the boundaries of the Community.

9.15 **Payment of Assessments.** Annual Common Assessments shall be due and payable in advance to the Association by the assessed Member on or before the first day of April during each calendar year, or in such other manner and on such other dates as the Executive Board may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments shall be given to each Member prior to February 1 of each year after the Initial Assessment.

9.16 **Failure to Levy Assessment.** Failure by the Executive Board to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. No abatement of the Common Assessments or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to Association Properties or from any action taken to comply with any law or any determination of the Executive Board or for any other reason.

9.17 **Special Assessments for Capital Expenditures.** In addition to Common Assessments, the Executive Board may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Common Assessments to construct or reconstruct, repair, or replace capital improvements upon Association Properties, including necessary personal property related thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable. The Members shall pay any such Special Assessment in the manner so specified.

9.18 **Reimbursement Assessments.** The Executive Board may, subject to the provisions hereof, levy an Assessment against any Member if the willful or negligent failure of the Member or a Related User claiming through the Member to comply with this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations shall have resulted in the expenditure of funds by the



Association to cause such compliance including, but not limited to, court costs and attorneys' fees. Such Assessment shall be known as a Reimbursement Assessment and shall be levied only after Notice and Hearing. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty days after notice to the Member of the decision of the Board that the Reimbursement Assessment is owing.

**9.19 Late Charges and Interest.** If any Common Assessment, Special Assessment, or Reimbursement Assessment or any installment thereof is not paid within thirty days after it is due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Executive Board in addition to the Assessment. Any Assessment or installment of an Assessment that is not paid within thirty days after the date of any Notice of Default given under Section 9.21 and prior to the Recordation of a Notice of Lien under Section 9.24 hereof shall bear interest from the date of Recordation of the Notice of Lien at the Prime Rate of Interest plus five (5) percent per annum. An Owner's default shall not be deemed cured unless and until the Owner pays all delinquent Assessments, late charges, defaulting interest, attorneys' fees and other collection costs incurred by the Association.

**9.20 Attribution of Payments.** If any installment payment of a Common Assessment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in the following order of priority: (a) to the Administrative Functions Reserve Fund until that portion of the Common Assessment has been satisfied; and then (b) to the Operating Fund. In each of the foregoing cases, receipts shall be credited first to interest, attorneys' fees and other costs of collection, and next to, the Common Assessments due, in chronological order as to due date.

**9.21 Notice of Default.** If any Common Assessment, Special Assessment, or Reimbursement Assessment or any installment thereof is not paid within thirty days after its due date, the Executive Board may mail a notice of default ("Notice of Default") to the Owner and to each first Mortgagee of the Lot who has requested a copy of the notice. The notice shall specify: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty days from the date the notice is mailed to the Member, by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current calendar year, if applicable, and the filing and foreclosure of the lien for the Assessment against the Lot of the Member. The notice shall further inform the Member of any right to cure the default. If the delinquent Assessment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the annual Assessment to be immediately due and payable without further demand, if applicable, and may enforce the collection of the Assessment and all charges and interest thereon in any manner authorized by law or by this Declaration, subject to the protection afforded to Mortgagees under this Declaration.

**9.22 Remedies to Enforce Assessments.** Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special, or Reimbursement, the Executive Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

9.23 **Lawsuit to Enforce Assessments.** The Executive Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount the court may adjudge, against the defaulting Owner or Member.

9.24 **Lien to Enforce Assessments.** The Association shall have a lien on a Lot for any Assessment levied against that Lot, or fines imposed against its Owner, from the time the Assessment or fine becomes due. All fees, charges, late charges, attorneys' fees, fines and interest outstanding from such Owner shall be included in such lien. The lien created hereby shall be prior to any declaration of homestead rights. The lien shall be prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of this Declaration; (ii) a First Mortgage which was recorded before the date on which the Assessments sought to be enforced became delinquent; and (iii) the liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, the Association's lien shall be prior to a First Mortgage to the extent of an amount equal to the Common Assessments based on a periodic budget adopted by the Association which would have become due in the absence of any acceleration during the six months immediately preceding institution by either the Association or a First Mortgagee of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. The lien for unpaid assessments shall be extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments became due. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. Unless paid or otherwise satisfied, the lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado or in any other manner provided under Colorado law.

9.25 **Estoppel Certificates.** Upon the written request of any Member and any Person with, or intending to acquire, any right, title, or interest in or mortgage against the Lot of such Member, or any title company handling the closing of the transfer of an interest in or mortgage against a Lot, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot that is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association and all Persons for all purposes that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

9.26 **No Offsets.** All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or Executive Board is not properly exercising its duties and powers under this Declaration.

## 10. MISCELLANEOUS

10.1 **Term of Declaration.** Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect in perpetuity unless terminated by the vote of Members holding at least sixty-seven percent of the votes of all Members of the Association entitled to vote. In the event this Declaration is terminated, the termination of this Declaration shall be

evidenced by a termination agreement ("Termination Agreement"), or ratification thereof, executed by the requisite number of Owners. The Termination Agreement shall specify a date after which the Termination Agreement shall be void unless Recorded before such date. The Termination Agreement shall be Recorded, and the termination of this Declaration shall be effective upon such Recording.

**10.2 Amendment of Declaration by Declarant.** Until the first Lot subject to this Declaration has been conveyed by Declarant by a Recorded deed, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the Recordation of a written instrument, executed by Declarant, setting forth the amendment or termination or a restatement of this Declaration.

**10.3 Amendment of Declaration.** Except as otherwise provided in this Declaration, including this Section and Sections 6.1 and 10.4, and subject to provisions contained elsewhere in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members of the Association holding at least two-thirds (2/3) of the votes of the Association and two-thirds (2/3) of First Mortgagee encumbering any Lot in the Community. The approval of any duly adopted amendment or repeal shall be evidenced by certification by the Members of their votes to the Executive Board. The amendment or repeal shall be effective upon the Recordation of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been duly adopted by the Members. Any Amendment to the Declaration made hereunder shall be effective only when Recorded. The procedure for obtaining approval of First Mortgagees shall be as follows:

(a) The Association shall send a dated, written notice and a copy of any proposed amendment by certified mail to each First Mortgagee at its most recent address as shown on the recorded Mortgage or recorded assignment thereof.

(b) The Association shall cause the dated notice, together with information on how to obtain a copy of the proposed amendment to be printed in full at least twice on separate occasions at least one week apart, in a newspaper of general circulation in the Counties.

(c) A First Mortgagee that does not deliver to the Association a negative response within sixty (60) days after the date of the notice, shall be deemed to have approved the proposed amendment.

No action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is Recorded. All expenses associated with preparing and Recording an amendment to this Declaration shall be the sole responsibility of the Association.

This Declaration may be amended by the Association pursuant to C.R.S. §38-33.3-217(7), which is incorporated herein by reference as if fully set forth.

**10.4 Required Consent of Declarant to Amendment.** During the Declarant Control Period and notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written

consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at the end of the Declarant Control Period.

**10.5 Amendment of Articles and Bylaws.** The Articles of Incorporation and Bylaws may be amended in accordance with the provisions set forth in such instruments or, in the absence of such provisions, in accordance with applicable provisions of the Colorado Nonprofit Corporations Act. During the Declarant Control Period and notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of the Articles of Incorporation or Bylaws shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at the end of the Declarant Control Period.

**10.6 Special Rights of First Mortgagee.** Any First Mortgagee, upon filing a written request therefor with the Association, shall be entitled to: (a) written notice from the Association of any default by the Mortgagor of such Lot in the performance of the Mortgagor's obligations under this Declaration, the Articles of Incorporation, Bylaws, or Rules and Regulations, which default is not cured within sixty days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon written request receive a copy of financial statements of the Association including any annual financial statement within ninety days following the end of any fiscal year of the Association; (d) upon written request receive written notice of all meetings of Members; (e) designate a representative to attend any meeting of Members; (f) receive sixty (60) days' written notice prior to the effective date of any proposed material amendment to this Declaration, the Articles of Incorporation, or Bylaws; (g) receive written notice if the Association receives notice or otherwise learns of any damage to the Association Properties if the cost of reconstruction exceeds \$100,000; and (h) receive written notice if the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

**10.7 First Mortgagee Right to Pay Taxes and Insurance Premiums.** Any such First Mortgagee or First Mortgagees, jointly or individually, shall be entitled to pay any taxes or other charges that are in default and that may or have become a charge against any of the Association Properties and may pay any overdue premiums on hazard insurance policies for any Association Properties. The First Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

**10.8 Association Right to Mortgage Information.** Each Owner hereby authorizes any First Mortgagee holding a Mortgage on such Owner's Lot to furnish information to the Association concerning the status of such First Mortgage and the loan which it secures.

**10.9 Amendment Required by Government Mortgage Agencies.** Notwithstanding any other provisions of this Article 10, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration that any Government Mortgage Agency requires to be amended or repealed may be amended or repealed solely by Declarant during the Declarant Period, and no approval, consent or vote of any other Person shall be required. Any such amendment or repeal shall be effective upon the Recordation of a certificate, executed by Declarant, setting forth the amendment or repeal in full. "Government Mortgage Agencies" shall mean the FHA, the VA, the FHLMC, the GNMA, the FNMA, or

any similar entity, public or private, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase Mortgage loans. "FHA" means the Federal Housing Administration of the United States Department of Housing and Urban Development, including any department or agency of the United States Government that succeeds to the FHA in insuring notes secured by mortgages and deeds of trust on residential real estate. "VA" means the Veterans Administration of the United States of America, including any department or agency of the United States Government that succeeds to the VA in its present function of issuing guarantees with respect to notes secured by Mortgages on residential Lots. "FHLMC" means the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title m of the Emergency Home Finance Act of 1970, including any successors thereto. "GNMA" means the Government National Mortgage Association administered by the United States Department of Urban Development, including any successor thereto. "FNMA" means the Federal National Mortgage Association, a government sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto.

**10.10 Notices.** Any notice required or desired to be given pursuant to this Declaration shall be in writing and may be personally delivered; mailed, certified mail, return receipt requested; sent by telephone, facsimile, or electronic mail with a hard copy sent by regular mail; or sent by a nationally recognized, receipted overnight delivery service including, by example and not limitation, United Parcel Service, Federal Express, or Airbone Express. Any such notice shall be deemed given when personally delivered; if mailed, three (3) delivery days after deposit in the United States mail, postage prepaid; if sent by telephone facsimile or electronic mail on the day sent if sent on a business day during normal business hours or on the next business day if sent at any other time; or if sent by overnight delivery service, one (1) business day after deposit in the custody of the delivery service for delivery on the next business day. The addresses and telephone numbers for the mailing, transmitting, or delivering of notices shall be as set forth in the books and records of the Association. Notices of a change of address shall be given in the same manner as all other notices as hereinabove provided.

**10.11 Persons Entitled to Enforce Declaration.** Declarant, the Association, acting by authority of the Executive Board, the Metro District, and any Owner shall have the right, but not the obligation, to enforce any or all of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration against any Lot within the Community and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin or seek abatement of any violation of any provision of this Declaration.

**10.12 Violations Constitute a Nuisance.** Any violation of any provision, covenant, condition, restriction, and equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

**10.13 Enforcement of Self-Help.** Declarant, the Metro District, or the Association, or any authorized agent of either of them, may enforce, by self-help, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration, provided such self-help is preceded by Notice and Hearing and can be accomplished without breach of the peace or entry into an Owner's dwelling.

**10.14 Violations of Law.** Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any Lot within the

Community is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth in this Declaration.

10.15 **Remedies Cumulative.** Each remedy provided under this Declaration is cumulative and not exclusive.

10.16 **Costs and Attorneys' Fees.** In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

10.17 **Limitation on Liability.** The Association, Executive Board, Design Review Committee, Declarant, and any Member, agent, or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

10.18 **No Representations or Warranties.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, soils conditions, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

10.19 **Liberal Interpretation.** The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

10.20 **Governing Law.** This Declaration shall be construed and governed under the laws of the state of Colorado.

10.21 **Severability.** Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

10.22 **Number and Gender.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

10.23 **Captions for Convenience.** The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

10.24 **Mergers or Consolidations.** Upon a merger or consolidation of the Association with any other association, the Association's properties, rights, and obligations may, by operation of law, be transferred to the other surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one plan.

10.25 **Disclaimer Regarding Safety.** Declarant and the Association hereby disclaim any obligation regarding the security of any persons or property within the Community. Any Owner acknowledges that Declarant and the Association are only obligated to do those acts specifically enumerated herein, or in the Articles of Incorporation and Bylaws, and are not obligated to do any other acts with respect to the safety or protection of persons or property within the Community.

10.26 **Conflicts.** In the event of a conflict between the provisions of this Declaration and the Association's Articles of Incorporation or Bylaws, the provisions of this Declaration shall supersede and control.

10.27 **Right to Farm.** The rural land surrounding the Community is intensively used for agriculture, and Owners of Lots within the Community must recognize that there are agricultural practices ongoing and which will continue in the agricultural land surrounding the Community. Agricultural users of the land should not be expected to change their long-established agricultural practices in order to accommodate the intrusions of urban users into their area. Well-run agricultural activities will generate off-site impacts, including noise from tractors and equipment; dust from animal pens, field work, harvest, and dirt roads; odor from animal confinement, silage, and manure; smoke from ditch burning; flies and mosquitoes; the use of pesticides and fertilizers in the fields, including the use of aerial spraying. Ditches and reservoirs cannot simply be moved "out of the way" of residential development without threatening the efficient delivery of irrigation to fields which is essential to farm production. The rural nature of the Community is such that law enforcement response time will be slower than in an urbanized area. Children are exposed to different hazards in rural areas than in urban settings. Farm equipment, oil field equipment, ponds, irrigation ditches, electrical pumps, sprinkler systems, high-speed traffic, sand burs, puncture vines, territorial farm dogs, and livestock present real threats to children. Controlling children's activities is important, not only for their safety but also for the protection of the surrounding agricultural interests.

10.28 **Wildlife.** The Community is located in a rural setting where wildlife such as raccoons, skunks, coyotes, deer, and mosquitoes abound and can at times be a nuisance. The Colorado Division of Wildlife will not be responsible for compensation for loss due to wildlife.

10.29 **Implied Rights of the District.** The Metro District may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right, privilege, power and/or authority necessary or desirable to fulfill its obligations under this Declaration including, without limitation, the right to hire and terminate agents and independent contractors as necessary to assist the Metro District in performing its duties authorized by this Declaration and enforcing the terms and conditions of this Declaration. The Board of Directors of the Metro District shall not be liable for any duty, power or function so delegated by written instrument executed by or on behalf of the Board of Directors of the Metro District.

10.30 **Right to Make Rules and Regulations.** The Metro District shall be authorized to and shall have the power to adopt, amend and enforce rules and regulations applicable within the Metro District and to implement the provisions of this Declaration including, but not limited to, rules and regulations to protect and preserve property and property rights. All rules and regulations shall comply with the Declaration and supplemental declarations of land use restrictions for the Metro District. The rules and regulations shall be reasonable and shall be uniformly applied, except such rules may differentiate among reasonable categories of Lots. The Metro District may provide for enforcement of

any such rules and regulations through reasonable and uniformly applied fines and penalties or otherwise. Each Owner, lessee, guest and member of the general public shall be obligated to and shall comply with and abide by such rules and regulations and pay such fines or penalties upon failure to comply with or abide by such rules and regulations and such unpaid fines.

**10.31 Restriction on District Powers.** During the Declarant Control Period, the Declarant shall have the right to revoke any and all authority granted to the Metro District by this Declaration for any reason at any time.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

WILDWING DEVELOPMENT, LIMITED LIABILITY  
COMPANY, a Colorado limited liability company

By: THE BOEKEL FARM LLLP, a Colorado  
limited liability limited partnership, Manager

By:   
Fredrick W. Boekel, General Partner





**EXHIBIT A**  
**To Declaration of Covenants, Conditions and Restrictions for Wildwing Subdivision**  
**Description of Community Property**  
**(Larimer County Property)**

Wildwing Final Plat Filing No. 1, a parcel of land located in the South Half of Section 24 and the North Half of Section 25, township 7 North, Range 68 West of the 6<sup>th</sup> P.M., County of Larimer, State of Colorado, according to the plat thereof recorded on October 25, 2007 at Reception No. 2007-0080538 of the Larimer County, Colorado records.

**EXHIBIT B**  
**To Declaration of Covenants, Conditions and Restrictions for Wildwing Subdivision**  
**Description of Development Property**  
**(Weld County Property)**

A TRACT OF LAND SITUATED IN SECTION 30, TOWNSHIP 7 NORTH, RANGE 67 WEST, OF THE 6<sup>th</sup> PRINCIPAL MERIDIAN LYING NORTH OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 30; AND CONSIDERING THE EAST LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 30 TO BEAR N00°00'21"W,  
THENCE N00°00'21"W ALONG SAID EAST LINE, A DISTANCE OF 389.44 FEET TO THE TRUE POINT OF BEGINNING;

THENCE FOLLOWING ALONG THE SOUTH BANK OF LEE LAKE THE FOLLOWING 17 COURSES:

1. S87°33'25"W, A DISTANCE OF 117.50 FEET;
2. THENCE N77°16'50"W, A DISTANCE OF 103.67 FEET;
3. THENCE N79°25'56"W, A DISTANCE OF 247.06 FEET;
4. THENCE N26°55'49"W, A DISTANCE OF 99.85 FEET;
5. THENCE N11°58'40"E, A DISTANCE OF 100.41 FEET;
6. THENCE N43°16'04"E, A DISTANCE OF 161.06 FEET;
7. THENCE N29°21'11"W, A DISTANCE OF 149.61 FEET;
8. THENCE N74°22'09"W, A DISTANCE OF 85.81 FEET;
9. THENCE N67°51'50"W, A DISTANCE OF 43.61 FEET;
10. THENCE N51°51'47"W, A DISTANCE OF 160.36 FEET;
11. THENCE N58°00'25"W, A DISTANCE OF 134.21 FEET;
12. THENCE N61°26'49"W, A DISTANCE OF 124.20 FEET;
13. THENCE N42°07'17"W, A DISTANCE OF 160.03 FEET;
14. THENCE N60°37'09"W, A DISTANCE OF 128.59 FEET;
15. THENCE N82°39'31"W, A DISTANCE OF 129.47 FEET;
16. THENCE N37°41'04"W, A DISTANCE OF 133.84 FEET;
17. THENCE N83°10'07"W, A DISTANCE OF 375.81 FEET;  
THENCE LEAVING SAID SOUTH EDGE OF LEE LAKE AND CONTINUING ALONG THE FOLLOWING THREE COURSES:
18. N23°06'26"E, A DISTANCE OF 441.20 FEET;
19. THENCE N37°38'36"E, A DISTANCE OF 207.46 FEET;
20. THENCE N80°51'32"W, A DISTANCE OF 85.31 FEET TO A POINT 2 FEET SOUTHERLY OF A CONCRETE IRRIGATION DITCH;  
THENCE ALONG A LINE 2 FEET SOUTHERLY OF SAID CONCRETE IRRIGATION DITCH THE FOLLOWING 52 COURSES:
21. S79°50'31"W, A DISTANCE OF 127.75 FEET;
22. THENCE S84°37'42"W, A DISTANCE OF 113.67 FEET;
23. THENCE S76°53'09"W, A DISTANCE OF 38.62 FEET;
24. THENCE S57°30'44"W, A DISTANCE OF 62.37 FEET;
25. THENCE S53°26'27"W, A DISTANCE OF 184.99 FEET;
26. THENCE S43°44'48"W, A DISTANCE OF 30.49 FEET;
27. THENCE S34°18'35"W, A DISTANCE OF 56.34 FEET;
28. THENCE S31°30'09"W, A DISTANCE OF 123.20 FEET;
29. THENCE S38°03'01"W, A DISTANCE OF 206.38 FEET;
30. THENCE S51°08'08"W, A DISTANCE OF 107.81 FEET;

EXHIBIT B CONTINUED

31. THENCE S42°12'41"W, A DISTANCE OF 34.94 FEET;
32. THENCE S29°36'56"W, A DISTANCE OF 37.61 FEET;
33. THENCE S24°44'40"W, A DISTANCE OF 52.87 FEET;
34. THENCE S29°50'00"W, A DISTANCE OF 48.77 FEET;
35. THENCE S46°09'28"W, A DISTANCE OF 54.18 FEET;
36. THENCE S53°45'43"W, A DISTANCE OF 57.46 FEET;
37. THENCE S46°38'05"W, A DISTANCE OF 57.68 FEET;
38. THENCE S43°04'08"W, A DISTANCE OF 71.77 FEET;
39. THENCE S48°26'13"W, A DISTANCE OF 41.67 FEET;
40. THENCE S57°34'13"W, A DISTANCE OF 36.67 FEET;
41. THENCE S62°41'14"W, A DISTANCE OF 71.11 FEET;
42. THENCE S44°09'28"W, A DISTANCE OF 102.42 FEET;
43. THENCE S45°13'35"W, A DISTANCE OF 96.65 FEET;
44. THENCE S32°31'13"E, A DISTANCE OF 46.80 FEET;
45. THENCE S25°24'32"E, A DISTANCE OF 52.77 FEET;
46. THENCE S19°02'35"E, A DISTANCE OF 52.23 FEET;
47. THENCE S06°20'42"W, A DISTANCE OF 27.16 FEET;
48. THENCE S04°02'39"W, A DISTANCE OF 47.95 FEET;
49. THENCE S17°36'25"W, A DISTANCE OF 33.30 FEET;
50. THENCE S46°47'34"W, A DISTANCE OF 35.85 FEET;
51. THENCE S66°23'19"W, A DISTANCE OF 49.78 FEET;
52. THENCE S78°06'22"W, A DISTANCE OF 101.17 FEET;
53. THENCE S62°16'48"W, A DISTANCE OF 83.30 FEET;
54. THENCE S58°47'30"W, A DISTANCE OF 62.59 FEET;
55. THENCE S42°13'37"W, A DISTANCE OF 35.56 FEET;
56. THENCE S29°09'06"W, A DISTANCE OF 42.27 FEET;
57. THENCE S22°21'24"W, A DISTANCE OF 56.13 FEET;
58. THENCE S16°39'27"W, A DISTANCE OF 88.58 FEET;
59. THENCE S09°24'37"W, A DISTANCE OF 120.22 FEET;
60. THENCE S18°59'16"W, A DISTANCE OF 51.36 FEET;
61. THENCE S28°49'03"W, A DISTANCE OF 65.21 FEET;
62. THENCE S39°49'39"W, A DISTANCE OF 51.25 FEET;
63. THENCE S48°47'50"W, A DISTANCE OF 36.39 FEET;
64. THENCE S67°53'27"W, A DISTANCE OF 565.33 FEET;
65. THENCE S77°35'08"W, A DISTANCE OF 70.84 FEET;
66. THENCE S88°28'22"W, A DISTANCE OF 63.53 FEET;
67. THENCE N78°05'03"W, A DISTANCE OF 45.77 FEET;
68. THENCE N70°19'19"W, A DISTANCE OF 138.62 FEET;
69. THENCE N76°06'41"W, A DISTANCE OF 34.94 FEET;
70. THENCE S88°08'40"W, A DISTANCE OF 28.81 FEET;
71. THENCE S26°09'14"W, A DISTANCE OF 43.86 FEET;
72. THENCE N60°32'31"W, A DISTANCE OF 593.74 FEET TO THE EASTERLY  
RIGHT-OF-WAY OF WELD COUNTY ROAD NO. 13;
73. THENCE CONTINUING N60°32'31"W, A DISTANCE OF 34.51 FEET TO THE  
WEST LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 30;
74. THENCE ALONG SAID WEST LINE, N00°09'58"W, A DISTANCE OF 657.11  
FEET TO THE WEST ONE-QUARTER CORNER OF SAID SECTION 30.

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EXHIBIT B CONTINUED

PROPERTY DESCRIPTION

A PARCEL OF LAND IN THE NORTH HALF AND SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 7 NORTH, RANGE 67 WEST OF THE 6TH. PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 30 AND CONSIDERING THE NORTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 30 TO BEAR N 89°13'47"W WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE S 46°53'03" E A DISTANCE OF 41.10 FEET TO THE POINT OF BEGINNING. THENCE N 86°13'47" E ALONG A LINE 30 FEET SOUTHERLY OF AND PARALLEL WITH SAID NORTHERLY LINE OF THE NORTHWEST QUARTER A DISTANCE OF 2353.36 FEET; THENCE N 86°13'50" E ALONG A LINE 30 FEET SOUTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30 A DISTANCE OF 1204.52 FEET; THENCE S 55°56'13" E A DISTANCE OF 1460.90 FEET; THENCE S 00°13'10" W ALONG THE EASTERLY LINE OF SAID NORTHEAST QUARTER OF SECTION 30 A DISTANCE OF 1299.50 FEET; THENCE ALONG THE BOUNDARY OF THAT PARCEL DESCRIBED IN BOOK 1126 AT PAGE 1666 IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER THE FOLLOWING SIXTEEN (16) COURSES:

1. N 87°35'46" W A DISTANCE OF 88.19 FEET;
2. N 86°29'46" W A DISTANCE OF 376.00 FEET;
3. N 24°59'46" W A DISTANCE OF 185.50 FEET;
4. N 31°43'14" E A DISTANCE OF 284.00 FEET;
5. N 57°41'46" W A DISTANCE OF 142.60 FEET;
6. S 53°49'14" W A DISTANCE OF 917.30 FEET;
7. S 83°45'14" W A DISTANCE OF 478.50 FEET;
8. N 23°43'14" E A DISTANCE OF 441.20 FEET;
9. N 37°51'14" E A DISTANCE OF 208.00 FEET;
10. N 69°08'46" W A DISTANCE OF 78.80 FEET;
11. S 75°23'14" W A DISTANCE OF 327.20 FEET;
12. S 54°11'14" W A DISTANCE OF 230.60 FEET;
13. S 31°50'14" W A DISTANCE OF 156.60 FEET;
14. S 39°14'14" W A DISTANCE OF 513.80 FEET;
15. S 48°40'14" W A DISTANCE OF 293.80 FEET;
16. S 54°41'14" W A DISTANCE OF 274.70 FEET;

THENCE ALONG THE BOUNDARY OF THAT PARCEL DESCRIBED IN BOOK 826 AT PAGE 398 IN SAID RECORDS OF THE WELD COUNTY CLERK AND RECORDER THE FOLLOWING FOURTEEN (14) COURSES:

1. S 30°03'46" E A DISTANCE OF 116.00 FEET;
2. S 25°22'14" W A DISTANCE OF 84.90 FEET;
3. S 04°48'14" W A DISTANCE OF 82.70 FEET;
4. S 75°44'14" W A DISTANCE OF 159.20 FEET;
5. S 69°25'14" W A DISTANCE OF 116.50 FEET;
6. S 44°01'14" W A DISTANCE OF 115.00 FEET;
7. S 28°59'14" W A DISTANCE OF 101.80 FEET;
8. S 09°51'14" W A DISTANCE OF 242.30 FEET;
9. S 36°28'14" W A DISTANCE OF 129.00 FEET;
10. S 68°13'14" W A DISTANCE OF 641.10 FEET;
11. S 81°37'14" W A DISTANCE OF 96.70 FEET;
12. N 70°33'46" W A DISTANCE OF 173.00 FEET;
13. S 82°47'14" W A DISTANCE OF 130.50 FEET;
14. N 60°03'46" W A DISTANCE OF 487.51 FEET;

THENCE N 00°00'07" E ALONG THE EASTERLY RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 901 BEING ALSO A LINE 30 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SAID SOUTHWEST QUARTER OF SECTION 30 A DISTANCE OF 675.82 FEET;

THENCE CONTINUING N 00°00'07" E ALONG SAID EASTERLY RIGHT-OF-WAY LINE BEING ALSO A LINE 30 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE NORTHWEST QUARTER OF SECTION 30 A DISTANCE OF 2615.39 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 269.030 ACRES (11,719,028 SQ.FT.), MORE OR LESS.