



#240809

DEC 08 2003

SCOTT DOYLE, RECORDER, LARIMER COUNTY CO  
RCPTN# 2003-0134975 10/23/2003 15:32:45  
PAGES - 44 FEE \$221.00 DOC \$0.00

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

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
POUDRE OVERLOOK  
(a Common Interest Community)**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR POUDRE OVERLOOK is made and entered into this 22 day of September 2003, by L. J. SCHUSTER, LLC, a Colorado limited liability company ("the Declarant").

**RECITALS**

A. The Declarant is the owner of that certain real property located in the County of Larimer, State of Colorado legally described as follows ("the Real Estate"):

Lots 1-32 and 76-87, inclusive  
Poudre Overlook  
County of Larimer,  
State of Colorado.

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

C. POUDRE OVERLOOK HOMEOWNERS ASSOCIATION (a Colorado nonprofit corporation) has been incorporated under the laws of the State of Colorado for the purpose of exercising the functions herein set forth.

**ARTICLE I. SUBMISSION OF REAL ESTATE**

The Declarant hereby publishes and declares that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, the

98.51305

Flamina  
ML

2

Declarant hereby submits the Real Estate to the provisions of the Act. In the event the Act is repealed, the Act on the date this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado, shall remain applicable.

## **ARTICLE II. DEFINITIONS**

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

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

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

Section 4: "Architectural Consultant" shall mean and refer to an engineer, architect, landscape architect, or such other professional as may be retained by the Architectural Control Committee to advise such Committee on issues raised in any applications submitted to it for approval pursuant to Article IX of this Declaration.

Section 5: "Architectural Guidelines" shall mean and refer to any and all guidelines adopted by the Architectural Control Committee pursuant to Article IX, Section 3, of this Declaration.

Section 6: "Association" or "Lot Owners' Association" shall mean and refer to Poudre Overlook Homeowners Association (a Colorado nonprofit corporation), its successors and assigns, organized and existing under the laws of the State of Colorado and specifically Section 38-33.3-301 of the Act.

Section 7: "Board" shall mean and refer to the Board of Directors of the Association. The term "Board" as used in this Declaration shall have the same meaning as the term "Executive Board" as used in the Act.

Section 8: "Bylaws" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

3

Section 9: "Common Elements" shall mean and refer to any real estate or real property interest within the Common Interest Community owned by the Association, other than a Lot, and other assets of the Association.

Section 10: "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Lot pursuant to this Declaration.

Section 11: "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves. These expenses for the operation of the Common Interest Community include, but are not limited to:

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

Section 12: "Common Interest Community" shall mean and refer to the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference.

Section 13: "County" shall mean and refer to the Board of County Commissioners of Larimer County, Colorado.

Section 14: "Declarant" shall mean and refer to L. J. Schuster, LLC, or any other Person or group of Persons acting in concert who:

- (a) As a part of a common promotional plan, offer to dispose of to a Purchaser such Declarant's interest in a Lot not previously disposed of to a Purchaser; or
- (b) Reserve or succeed to any Special Declarant Right.

Section 15: "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, plats of the Real Estate recorded in the Clerk and Recorder's office of Larimer County, Colorado.

A

Section 16: "Development Agreement" shall mean and refer to the Development Agreement for Poudre Overlook dated *October 23<sup>rd</sup>*, 2003, made and entered into by and between the County, the Declarant, and the Association, and recorded in the office of the Clerk and Recorder of Larimer County, Colorado prior to the recording of this Declaration.

Section 17: "Development Property" shall mean and refer to all of Poudre Overlook according to the Plat, except Lots 1-32 and Lots 76-87.

Section 18: "Dispose" or "Disposition" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Lot, but the term does not include the transfer or release of a security interest.

Section 19: "Documents" shall mean and refer to this Declaration, the Plat, the Articles of Incorporation, Bylaws, Architectural Guidelines, and Rules and Regulations of the Association, as supplemented or amended from time to time, the Development Agreement and the Management Plan.

Section 20: "Governmental Authority" shall mean and refer to the City; the County; and any governmental entity, agency, authority, or district having jurisdiction over the Common Interest Community; any metropolitan district, special district, or special improvement district within which the Common Interest Community is located; any cooperative or governmentally regulated, supervised or licensed public or private entity that provides utility or quasi-utility services to the Common Interest Community.

Section 21: "Identifying Number" shall mean and refer to a symbol or address that identifies only one (1) Lot in the Common Interest Community.

Section 22: "Improvement" shall mean and refer to all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings; painting of any exterior surfaces of any structure, relocation or installation of windows, additions, walkways, outdoor sculptures or artwork, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, antennas, decks, roofs, fixtures, landscaping hedges, windbreaks, plantings, trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures.

Section 23: "Insurer" shall mean and refer to any governmental agency or authority that insures or guarantees a Mortgage and that has provided actual written notice of such interest to the Association. Recording of a mortgage, deed of trust, or other security interest in the office of the Clerk and Recorder of Larimer County, Colorado, shall not be considered actual written notice to the Association of a security interest.

5

Section 24: "Law" shall mean and refer to any statute, law, ordinance, resolution, rule, or regulation of any Governmental Authority applicable to the Common Interest Community, including, but not limited to, the Act.

Section 25: "Lot" shall mean and refer to a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Plat. The term "Lot" as used in this Declaration shall have the same meaning as the term "Unit" as used in the Act.

Section 26: "Mortgagee" shall mean and refer to any Person who has a Security Interest in a Lot and who has provided actual written notice of such interest to the Association. Recording of a mortgage, deed of trust, or other security interest in the office of the Clerk and Recorder of Larimer County, Colorado, shall not be considered actual written notice to the Association of a security interest.

Section 27: "Notice" shall mean and refer to any notice required or desired to be given pursuant to the Documents. Unless otherwise provided in the Documents, all notices shall be in writing and may be personally delivered; mailed, certified mail, return receipt requested, sent by telephone facsimile with a hard copy sent by regular mail; sent by a nationally recognized, receipted overnight delivery service, including, by example and not limitation, United Parcel Service, Federal Express, or Airborne Express; or sent by electronic mail. 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 of the recipient 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. 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.

Section 28: "Management Plan" shall mean and refer to the Management Plan attached hereto as Exhibit D for the Common Elements which are described as Common Areas on the Plat and in the Management Plan.

Section 29: "Owner" shall mean and refer to any Person who owns a Lot but does not include a Person having an interest in a Lot solely as security for an obligation. The Declarant is the Owner of any Lot created in the Declaration until that Lot is conveyed to another Person. The term "Owner" as used in this Declaration shall have the same meaning as the term "Unit Owner" as used in the Act.

U

Section30: "Person" shall mean and refer to a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or combination thereof.

Section31: "Plat" shall mean and refer to the Plat of the Real Estate, designated as POUFRE OVERLOOK, recorded in the office of the Clerk and Recorder of Larimer County, Colorado, and all recorded amendments thereto.

Section32: "Purchaser" shall mean and refer to a Person, other than the Declarant, who, by means of a transfer, acquires a legal or equitable interest in a Lot, other than:

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

Section33: "Real Estate" shall mean and refer to the Real Estate described in Recital A hereinabove.

Section34: "Residence" shall mean and refer to a Single-Family residential dwelling constructed on a Lot.

Section 35: "Residential Use" shall mean and refer to use of a Residence by a Single Family for cooking, eating, sleeping and other usual and customary personal, private, family, domestic, household and housekeeping purposes.

Section36: "Rules and Regulations" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

Section37: "Security Interest" shall mean and refer to an interest in real property created by contract or conveyance which secures payment or performance of an obligation if the Association is given actual written notice of such interest. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation of which the Association has been given actual written notice. "First Security Interest" shall mean and refer to a Security Interest in a Lot of which the Association has been given actual written notice prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Larimer County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community. The recording of any document or instrument in the office of

1  
the Clerk and Recorder of Larimer County, Colorado, shall not be considered notice to the Association of any Security Interest created by the recording of such document or instrument.

Section38: "Single Family" shall mean and refer to either (a) a single family as defined by any Law or (b) a group of people consisting of: (i) an individual; or (ii) a married couple and the issue by blood or adoption of each Member of the couple; or (iii) any two individuals who would be considered a couple but for the absence of a ceremony and the issue by blood or adoption of each individual; and (iv) any individual related by blood, adoption, or marriage to an individual described in clauses (i), (ii), or (iii) above; or (v) any group of not more than three (3) unrelated individuals; whichever definition (a) or (b) is most restrictive.

Section39: Unless the context clearly indicates otherwise, other terms defined in the Act shall have the meanings attributable to such terms in the Act.

Section40: Other terms in this Declaration may be defined in specified provisions contained herein and shall have the meaning assigned by such definition.

### **ARTICLE III. COMMON INTEREST COMMUNITY**

Section1: Name. The name of the Common Interest Community is POUFRE OVERLOOK

Section2: Association. The name of the Association is POUFRE OVERLOOK HOME-OWNERS ASSOCIATION.

Section3: Planned Community. The Common Interest Community is a planned community.

Section4: County. The name of every county in which any part of the Common Interest Community is situated is Larimer County, Colorado.

Section5: Legal Description. A legal description of the Real Estate included in the Common Interest Community is set forth in Recital A hereinabove.

Section6: Maximum Number of Lots. The maximum number of Lots that the Declarant reserves the right to create within the Common Interest Community is eighty-seven (87).

Section7: Boundaries of Lots. The boundaries of each Lot are set forth on the Plat of the Real Estate. The Plat sets forth the Lot's Identifying Number.

8

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

- (a) Each Owner's share of the Common Expenses shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within the Common Interest Community.
- (b) Each Owner shall be entitled to one (1) vote for each Lot owned.

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

#### **ARTICLE IV. ASSOCIATION**

**Section 1: Membership.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are as follows: (a) to operate the Common Interest Community known as POUFRE OVERLOOK located in Larimer County, Colorado, in accordance with the Act, as amended, and the Colorado Nonprofit Corporation Act, as amended; (b) to promote the health, safety, welfare, and common benefit of the residents of the Common Interest Community; and (c) to do any and all permitted acts, and to have and exercise any and all powers, rights, and privileges which are granted to a common interest community association under the laws of the State of Colorado, this Declaration, and the Bylaws, Architectural Guidelines, Rules and Regulations, and other governing documents of the Association.

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

**Section 3: Allocated Interests.** The Common Expense Liability and votes in the Association allocated to each Lot are set forth as follows:

- (a) The percentage of liability for Common Expenses shall be allocated on the basis of equal liability for each Lot; and

9

- (b) The number of votes in the Association shall be allocated on the basis of one (1) vote for each Lot.

**Section 4: Authority.** The business and affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by this Declaration and the Articles of Incorporation, Bylaws, Architectural Guidelines, and Rules and Regulations of the Association, as amended from time to time.

**Section 5: Powers.** The Association shall have all of the powers and authority permitted pursuant to the Act necessary and proper to manage the business and affairs of the Common Interest Community.

**Section 6: Declarant Control.** The Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of the Association for a period of ten (10) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of Section 38-33.3-303(5) of the Act.

**Section 7: Board Powers and Duties.** The Board may act in all instances on behalf of the Association. The Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws.
- (b) Adopt and amend Rules and Regulations.
- (c) Adopt and amend budgets for revenues, expenditures, and reserves.
- (d) Collect Common Expense assessments from Lot Owners.
- (e) Hire and discharge Managers.
- (f) Hire and discharge independent contractors, employees, and agents, other than Managers.
- (g) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Documents in the Association's name, on behalf of the Association, or two (2) or more Lot Owners on any matters affecting the Common Interest Community.

10

- (h) Make contracts and incur liabilities.
- (i) Regulate the use, maintenance, repair, replacement, and modification of the Common Elements, consistent with the Management Plan.
- (j) Provide for the maintenance, repair, replacement, and improvement of public roads and streets within the Common Interest Community.
- (k) Provide for performance by the Association of its duties and responsibilities under the Development Agreement and Management Plan.
- (l) Cause additional Improvements to be made as a part of the Common Elements consistent with the Management Plan.
- (m) Acquire, hold, encumber and convey in the Association's name, any right, title, or interest to real estate or personal property, but the Common Elements may be conveyed or subjected to a Security Interest only pursuant to this Declaration and the Act.
- (n) Grant easements for any period of time, including permanent easements, leases, licenses, and concessions through or over the Common Elements, subject to the restrictions and limitations of this Declaration, the Act, and the Management Plan.
- (o) Impose and receive a fee or charge for the use, rental, or operation of the Common Elements and for services provided to Lot Owners.
- (p) Impose a reasonable charge for late payment of assessments and levy a reasonable fine for violation of the Documents.
- (q) Impose a reasonable charge for the preparation and recordation of supplements or amendments to this Declaration and for statements of unpaid assessments.
- (r) Provide for the indemnification of the Association's officers and the Board and maintain directors' and officers' liability insurance.
- (s) Assign the Association's right to future income, including the right to receive Common Expense assessments, but only upon the affirmative vote of the Owners of Lots to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose.

- 11
- (t) Exercise any other powers conferred by the Documents.
  - (u) Exercise any other power that may be exercised in the State of Colorado by a legal entity of the same type as the Association.
  - (v) Exercise any other power necessary and proper for the governance and operation of the Association.
  - (w) By resolution, establish permanent and standing committees of Board members to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees established by the Board must maintain and publish notice of their actions to Lot Owners and the Board. Actions taken by any committee established by the Board may be appealed to the Board by any Lot Owner within forty-five (45) days of publication of a notice. If an appeal is made, the committee's action must be ratified, modified, or rejected by the Board at its next regular meeting.

**Section 8: Professional Management and Contract Termination Provisions.** The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon sixty (60) days' prior written notice. Any contracts, licenses, or leases entered into by the Association while there is Declarant control of the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of Declarant control of the Association, upon sixty (60) days' prior written notice; provided, however, that any contract entered into at any time by the Association providing for services of the Declarant shall provide for termination at any time by either party thereto, without cause and without payment of a termination fee, upon sixty (60) day's prior written notice.

**Section 9: Board Limitations.** The Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Board or determine their qualifications, powers, and duties or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term.

**Section 10: Owner's Negligence.** Notwithstanding anything to the contrary contained in this Declaration in the event that the need for maintenance or repair of the Common Elements or any Improvements located thereon is caused by the willful or negligent act, omission, or misconduct of any Lot Owner or by the willful or negligent act, omission, or misconduct of any

12

member of such Lot Owner's family or by a guest, invitee, employee, agent, contractor, or subcontractor of such Lot Owner or any tenant or member of a tenant's family, the costs of such repair and maintenance shall be the personal obligation of such Lot Owner, and any costs, expenses, and fees incurred by the Association for such maintenance, repair, or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall be a lien against such Owner's Lot as provided in this Declaration. A determination of the willful or negligent act, omission, or misconduct of any Lot Owner or any member of a Lot Owner's family or a guest, invitee, employee, agent, contractor, or subcontractor of any Lot Owner or tenant or member of a tenant's family and the amount of the Lot Owner's liability therefor shall be determined by the Board after notice to the Lot Owner and the right to be heard before the Board in connection therewith.

Section 11: Indemnification. To the full extent permitted by law, each officer and member of the Board of the Association and each member of the Architectural Control Committee shall be and are hereby indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party or in which they may become involved by reason of their being or having been an officer or member of the Board or Architectural Control Committee of the Association, or any settlement thereof, whether or not they are an officer or a member of the Board or Architectural Control Committee of the Association at the time such expenses are incurred, except in such cases where such officer or member of the Board or Architectural Control Committee is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

Section 12: Dissolution. The Association may not be dissolved (and this Section 12 may not be amended) without the approval of the County.

#### **ARTICLE V. SPECIAL DECLARANT RIGHTS**

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

- (a) Completion of Improvements. The right to complete Improvements indicated on the Plat, in the Development Plan, and/or the Management Plan.
- (b) Sales Management and Marketing. The right to maintain one (1) sales office, one (1) management office, signs advertising the Common Interest Community, and model Residences. The Declarant shall have the right to

13

determine the number of model Residences and the size and location of the sales office, management office, and model Residences. The Declarant shall also have the right to relocate the sales office, management office, and model Residences from time to time, at the Declarant's discretion. After the Declarant ceases to be the Owner of a Lot, the Declarant shall have the right to remove any sales office or management office from the Common Interest Community.

- (c) Construction Easements. The right to use easements within the Common Interest Community for the purpose of making Improvements within the Common Interest Community.
- (d) Control of Association and Board. The right to appoint or remove any officer of the Association or any Board member.
- (e) Dedications. The right to establish, from time to time, by dedication or otherwise, access, utility, and other easements over, across, and upon the Common Elements for purposes including, but not limited to, paths, walkways, and drainage, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of and to serve the Lot Owners and the Association consistent with the Management Plan.

## **ARTICLE VI. ASSESSMENT FOR COMMON EXPENSES**

Section 1: Personal Obligation of Owners for Common Expenses. The Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Common Expense assessments imposed by the Association to meet the estimated Common Expenses.

Section 2: Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners; for the improvement and maintenance of the Common Elements; for the payment of the costs and expenses of maintaining the roads within the Common Interest Community; and for the payment of the costs and expenses of the performance of the Association's duties and responsibilities under the Development Agreement and Management Plan.

Section 3: Amount of Assessment. The amount of the assessment for the estimated Common Expenses which shall be paid by each Owner shall be determined by dividing the aggregate sum the Association reasonably determines to be paid by all Owners by the total number

14  
of Lots within the Common Interest Community, and the Owner of each Lot shall pay his proportionate share of such aggregate sum.

Section 4: Maximum Annual Assessment. Until January 1 of the year immediately following the date of commencement of annual assessments, the maximum annual assessment shall be Five Hundred Dollars (\$700) per Lot.

- (a) From and after January 1 of the year immediately following the date of commencement of annual assessments, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index for the Denver/Boulder region (published by the Department of Labor, Washington, D.C.) for the preceding month of July.
- (b) From and after January 1 of the year immediately following the date of commencement of annual assessments, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the Owners for the next succeeding two (2) years, and at the end of each such period of two (2) years, for each succeeding period of two (2) years, **provided that** any such change shall have the assent of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association participates.
- (c) The Board may fix the annual assessment at an amount not in excess of the maximum.

Section 5: Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, payment of any operating deficit and/or unbudgeted cost, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, and the cost of any construction, reconstruction, repair, or replacement of any street or road within the Common Interest Community; provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present.

Section 6: Notice and Quorum for any Action Authorized Under Sections 4 and 5. Notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be given to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the

15

meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes of the Owners shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7: Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

**Section 8: Date of Commencement of Annual Assessments; Due Dates.** The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. Annual assessments shall be collected in twelve (12) equal monthly installments. Omission or failure to fix an assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of a Lot Owner from his or her obligation to pay the same.

**Section 9: Exempt Property.** The following property subject to the Declaration shall be exempted from the assessments, charges, and liens created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated and accepted by a municipal or quasi-municipal corporation or other local public utility or authority and devoted to public use.
- (b) All Common Elements.

**Section 10: Record of Receipts and Expenditures.** The Association shall keep detailed and accurate records in chronological order of all of its receipts and expenditures, specifying and itemizing the maintenance and repair of the Common Elements and the roads and streets within the Common Interest Community and any other expenses incurred. Such records shall be available on request for examination by the Lot Owners and others with an interest, such as prospective lenders.

**Section 11: Notice to Security Interest.** Upon the request of a holder of a First Security Interest on a Lot, and upon payment of reasonable compensation therefor, the Association shall report to such party any unpaid assessment or other defaults under the terms of this Declaration which are not cured by the Lot Owner within sixty (60) days after written notice of default given by the Association to the Lot Owner.

**Section 12: Certificate of Status of Assessments.** The Association, upon written request to the Association, and upon payment of a reasonable fee, shall furnish to a Lot Owner or such Lot

16  
Owner's designee, to a holder of a Security Interest or its designee, or to a closing agent handling the closing of the sale or financing of the Owner's Lot a statement, in recordable form, setting out the amount of the unpaid Common Expense assessments against the Lot. The statement must be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Board, and each Lot Owner as of the date of its issuance.

Section 13: Common Expenses Attributable to Fewer than All Lots. The following Common Expenses may be chargeable to fewer than all Lots:

- (a) If a Common Expense is caused by the misconduct of a Lot Owner, the members of such Owner's family, or such Owner's guests, invitees, employees, agents, contractors, subcontractors, or tenants, the Association may assess that expense against that Lot Owner and such Owner's Lot.
- (b) Fees, charges, taxes, impositions, late charges, fines, collection costs, and interest charged against a Lot Owner for nonpayment of assessments or violation of the Documents are enforceable as Common Expense assessments against such Owner's Lot.

Section 14: Reserve Account. Until January 1 of the year immediately following the date of commencement of annual assessments, the annual assessment for Common Expenses shall include an amount equal to Twenty-three Dollars (\$23) per month, per Lot, which amount shall be held in a separately-designated account for the purpose of road maintenance, repair and replacement. The amount allocated to reserve shall be adjusted each year to account for the rate of inflation; provided, however, that the amount allocated to reserve may not be decreased or terminated without the prior, written consent of the County.

#### **ARTICLE VII. LIEN FOR NONPAYMENT OF COMMON EXPENSES**

Any assessment, charge, or fee provided for in this Declaration or any monthly or other installment thereof which is not fully paid within ten (10) days after the date due shall bear interest at a rate determined by the Board. In addition, the Board may assess a late charge thereon. Any Owner who fails to pay any assessment, charge, or fee of the Association shall also be obligated to pay to the Association, on demand, all costs and expenses incurred by the Association, including reasonable attorney's fees, in attempting to collect the delinquent amount. The total amount due to the Association, including unpaid assessments, fees, charges, fines, interest, late payment penalties, costs, and attorney's fees, shall constitute a lien on the defaulting Owner's Lot as provided in the Act. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association or any monthly or other installment thereof and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in

equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association or monthly or other installments thereof may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien. The Association's lien shall be superior to any homestead exemption now existing or hereafter created by any state or federal law.

### **ARTICLE VIII. COMMON ELEMENTS**

**Section 1: Description of Common Elements.** Initially, there will be no Common Elements within the Common Interest Community. If the Development Property is added to the Common Interest Community, then the Common Elements within the Common Interest Community shall consist of outlots A and B, inclusive, as designated on the Plat, including but not limited to the detention ponds, and together with all Improvements installed by the Declarant or the Association thereon.

**Section 2: Rules and Regulations.** The Board shall have the right to adopt reasonable Rules and Regulations governing the use of the Common Elements, provided that such Rules and Regulations apply to all Owners in a nondiscriminatory manner and are consistent with the Management Plan.

**Section 3: Owners' Easements of Enjoyment.** Each Lot Owner shall have a right and easement of enjoyment in and to the Common Elements, and such easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (a) The right of the Association to promulgate and publish reasonable Rules and Regulations as provided in this Declaration.
- (b) The right of the Association to suspend voting rights and the right to use the Common Elements by an Owner for any period during which any assessment against his or her Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.
- (c) The right of the Declarant or the Association, acting through the Board, to dedicate or transfer any part of the Common Elements to any public, quasi-public, or cooperative agency, authority, utility, or other entity.
- (d) The right of the Association to close or limit use of the Common Elements while maintaining, repairing, or making replacements in the Common Elements, and as necessary to protect wetlands and natural areas from harm or damage.

18

(e) The limitations and restrictions contained in the Management Plan.

Section 4: Delegation of Use. A Lot Owner may delegate his or her right of enjoyment to the Common Elements to the members of his or her family, guests, invitees, and tenants subject to the terms and provisions of the Documents.

Section 5: Maintenance by Larimer County. In the event the Association shall fail to maintain the Common Elements or the public streets and roads within the Common Interest Community in a reasonable order and condition, the County may serve written notice upon the Association or upon the Owners of Lots setting forth the manner in which the Association has failed to maintain the Common Elements and public streets and roads within the Common Interest Community in a reasonable condition. Such notice shall include demand that the deficiencies of maintenance be cured within thirty (30) days and shall state the date and place of a hearing thereon, which shall be held within fourteen (14) days of the notice. At such hearing, the County may modify the terms of its original notice as to the deficiencies and may give an extension of time within which the deficiencies are to be cured. If the deficiencies set forth in the original notice or in the modification thereof are not cured within said thirty (30) days or any extension thereof, the County, in order to preserve the taxable value of the property within the Common Interest Community and to prevent the Common Elements and streets and roads from becoming public nuisances and public liabilities, may undertake to maintain the same for a period of one (1) year. Before the expiration of said year, the County shall, upon its initiative or upon the written request of the Association, call a public hearing upon notice to the Association and to the Owners of the Lots, at which hearing the Association shall show cause why such maintenance by the County shall not, at the election of the County, continue for a succeeding year. If the County shall determine that the Association is ready and able to maintain the Common Elements, streets, and roads within the Common Interest Community in a reasonable manner, the County shall cease to maintain such Common Elements, streets, and roads at the end of said year. If the County shall determine that the Association is not ready and able to maintain the Common Elements, streets, and roads in a reasonable manner, the County may, in its discretion, continue to maintain the Common Elements, streets, and roads during the next succeeding year, subject to a similar hearing and determination each year thereafter. The cost of any maintenance performed by the County shall be paid by the Owners of Lots within the Common Interest Community, and any unpaid assessments shall become a tax lien upon the Lot or Lots of the delinquent Owner or Owners. The County shall file a notice of such lien in the office of the Clerk and Recorder and shall certify such unpaid assessments to the County Treasurer for collection, enforcement, and remittance in the manner provided by law for the collection, enforcement, and remittance of general property taxes.

#### **ARTICLE IX. ARCHITECTURAL CONTROL**

Section 1: Architectural Control Committee.

19

- (a) Membership. The members of the Architectural Control Committee shall be appointed, and may be removed, by the Declarant. At such time as the Declarant is no longer the Owner of one or more Lots within the Common Interest Community, the members of the Architectural Control Committee shall be appointed, and may be removed, by the Board from among the Owners.
- (b) Term. Each member of the Architectural Control Committee shall serve for a term designated by the person or entity appointing such member, subject to the right of the person or entity appointing a member of the Architectural Control Committee to remove such member. In the event of the death or resignation of any member of the Architectural Control Committee, the person or entity that appointed such member shall appoint a successor.
- (c) Decisions. All decisions of the Architectural Control Committee shall be by a majority vote of those members of the Architectural Control Committee present at a meeting at which a quorum is present. A majority of the members of the Architectural Control Committee shall constitute a quorum.
- (d) Compensation. The members of the Architectural Control Committee shall not be entitled to any compensation for services performed pursuant to this Declaration but shall be entitled to reimbursement by the Association for all costs and expenses incurred in performing their duties pursuant to this Declaration.
- (e) Consultant. The Architectural Control Committee may retain an Architectural Consultant to advise the Architectural Control Committee on the issues raised in any application. The applicant shall reimburse the Architectural Control Committee for the reasonable costs, expenses and fees incurred in retaining an Architectural Consultant to review the application submitted. The Architectural Consultant shall perform such duties as may be assigned or delegated to him or her by the Architectural Control Committee, which may include by example and not limitation: (1) Review of plans and drawings submitted for approval; (2) review of as-built plans for compliance with the Declaration and the plans submitted to and approved by the Architectural Control Committee (based on such review, the Architectural Control Committee may require reasonable additions and modifications to the Improvements); and (3) advise the Architectural Control Committee on compliance and/or violations.
- (f) Nonliability. Neither the members of the Architectural Control Committee nor the Architectural Consultant shall be liable to the Association or to any

20

the Owner or prospective the Owner for any loss, cost, expense, damage, or injury arising out of or in connection with the performance of the duties of the Architectural Control Committee under this Declaration or, in the case of the Architectural Consultant, any advice given to the Architectural Control Committee, unless such action constitutes willful misconduct or bad faith on the part of the Architectural Control Committee or Architectural Consultant. Review and consideration of any application submitted to the Architectural Control Committee shall be pursuant to this Declaration, and any Architectural Guidelines adopted by the Board pursuant to Section 3 of this Article IX. Any approval granted shall not be considered approval of the structural safety or integrity of the Improvements to be constructed or conformance of such Improvements with building codes, zoning resolutions, subdivision regulations, or other governmental rules and regulations applicable to the Common Interest Community.

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

**Section 3: Architectural Guidelines.** The Architectural Control Committee shall issue rules setting forth procedures for the submission of plans to the Architectural Control Committee for approval and shall also issue guidelines setting forth the criteria that the Architectural Control Committee will use in considering plans submitted to it for approval. The Rules and Guidelines may be amended from time to time by the Architectural Control Committee. In addition to the restrictions set forth in Article X hereinafter, the Guidelines may include by example and not by limitation, rules and regulations 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 Architectural Control Committee for design review approval, including the documents to be submitted and the time limits in which the Architectural Control Committee must act to approve or disapprove any submission;
- (c) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Architectural Guidelines;

21

- (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) Number of outbuildings, accessory buildings, and storage sheds;
- (f) Building size, type, height, design, orientation, location;
- (g) Experience and reputation of the contractor and major subcontractor;
- (h) Construction methods and timetables;
- (i) Fence and wall materials, color, design, style, height, and location;
- (j) Signs, clotheslines, antennae, satellite dishes, and play structures;
- (k) Storage tanks, containers, and exterior mechanical equipment;
- (l) Window style, design, size, material, location, and orientation;
- (m) Solar energy devices;
- (n) Outdoor ornamentation and seasonal decorations;
- (o) Site drainage, grading, and water conservation;
- (p) Paved areas, culverts, and driveways;
- (q) Residence numbers and entry monuments;
- (r) Exterior lighting;
- (s) Specifications for the location, dimensions, and appearance or screening of any accessory structures, antennae or other such Improvements;
- (t) Residence size, height, and floor area;
- (u) Garage size, type, height, design, orientation, location (attached or detached);
- (v) Roof materials, color, overhang, and pitch;

22

- (w) Siding style, type, material, design, and color;
- (x) Quality, durability, aesthetic appeal, compatibility, and longevity of building materials;
- (y) Regulations for parking vehicles off the street, within an enclosed garage or a designated area on a Lot;
- (z) General instructions for the construction, reconstruction, refinishing or alteration of any Improvement, including any plan to evacuate, 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, waster storage, trash removal, equipment and materials storage, grading, transformers and meters;
- (aa) Minimum setback from existing ditches located within the Common Interest Community;
- (bb) Designation of entry (front or side);
- (cc) Landscaping regulations, including requirements for installing and maintaining landscaping on the entire Lot and in certain areas identified in the Architectural Guidelines, on parkways abutting the Lot 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 questions; and other practices benefiting the protection of the environment, aesthetics and architectural harmony of the Common Interest Community. Notwithstanding the foregoing, the Declarant shall be responsible for the installation of all landscaping within the Common Area in accordance with the landscaping plan approved by the County. Landscaping of the Lots shall be the responsibility of the Owners thereof.

**Section 4: Review of plans and specifications.** The Architectural Control Committee shall consider and act upon any and all requests submitted for its approval. The Architectural Control Committee shall approve plans and specifications submitted to it only if it determines that the construction, alteration, additions, or landscaping contemplated thereby, and in the location as indicated, will comply with this Declaration and all applicable Architectural Guidelines, will serve to preserve and enhance the value of Lots within the Common Interest Community, and will maintain a harmonious relationship among structures, vegetation, topography, and the overall development of the Common Interest Community. The Architectural Control Committee shall

23

consider the quality of workmanship (including the experience and reputation of the builder), type of materials, and harmony of exterior design with other Residences located within the Common Interest Community. Should the Architectural Control Committee fail to approve or disapprove the plans and specifications submitted to it by an the Owner of a Lot within thirty (30) days after complete submission of all required documents, then such approval shall not be required; provided, however, that no Improvement shall be erected or allowed to remain on any Lot which violates any of the covenants or restrictions contained in this Declaration or any applicable Architectural Guidelines. The issuance of a building permit or license for the construction of Improvements inconsistent with this Declaration shall not prevent the Association or any the Owner from enforcing the provisions of this Declaration. Approval by the Architectural Control Committee shall be in writing or by endorsement on the plans.

Section 5: Enforcement.

- (a) Inspection. The Architectural Consultant or any member of the Architectural Control Committee, or any authorized officer, director, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Lot to determine whether the Improvements have been or are being built in compliance with the Documents and the plans and specifications approved by the Architectural Control Committee.
- (b) Construction and Certificate of Compliance. All Improvements constructed upon a Lot shall be constructed in strict accordance with the plans approved by the Architectural Control Committee. Upon written request of any the Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, and upon payment of a reasonable fee established from time-to-time by the Architectural Control Committee, the Architectural Control Committee shall issue a certificate setting forth generally whether, to the best of the Architectural Control Committee's knowledge, the Improvements on a particular Lot are in compliance with the terms and conditions of the Architectural Guidelines.
- (c) Condition of Lot Prior to and During Construction. Prior to and during construction of any Residence on a Lot, the Lot the Owner (other than Declarant) shall cut weeds and install grass or other suitable groundcover as may be first approved by the Architectural Control Committee to eliminate blowing dirt, weeds, and unsightly appearances on the Lot. If such the Owner fails to do so, the Board may impose fines and penalties, which shall be pursuant to the schedule of fines and penalties adopted by the Board from

24

time-to-time.

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

Section 7: Appeal. So long as the Declarant has the right to appoint the members of the Architectural Control Committee, decisions of the Committee may be appealed to the Declarant. The decisions of the Declarant shall be final. Decisions made by an Architectural Control Committee appointed by the Board may be appealed to the Board pursuant to the following procedure:

The Applicant or any the Owner (appellant) is dissatisfied with the decision of the Architectural Control Committee to approve or deny any application submitted to it, the Owner may appeal the decision to the Board by giving written notice of appeal to the Board, the Architectural Control Committee and the applicant (if other than the appellant). The notice shall be given within ten (10) days after the decision of the Architectural Control Committee. The Board shall hear and consider the appeal at its next regular meeting following the date notice of appeal is given. The appellant, the applicant (if other than the appellant), and the Architectural Control Committee may have a representative present at the hearing, and shall have the right to present such evidence as may be relevant to the appeal. The Board shall give notice of its decision within ten (10) days after the conclusion of the hearing. If the Architectural Control Committee, the applicant or the appellant is dissatisfied with the decision of the Board, such person or entity may appeal the decision to the Owners. Notice of appeal to the Owners shall be given within ten (10) days of the Board's decision to the Board, the applicant, the appellant (if other than the applicant) and the Architectural Control Committee. The Board shall schedule and give notice of a special meeting of the Owners to consider the appeal, which meeting shall be held not less than ten (10) nor more than sixty (60) days following the date that notice of appeal is given to the Board. If a decision of the Architectural Control Committee is appealed to the Board, the decision shall be upheld and affirmed unless a majority of all directors then in office (regardless of the number of directors actually present at the meeting) vote to reverse and overturn the decision of the Architectural Control Committee. If the decision of the Board is appealed to the Owners, the decision of the Board shall be upheld and affirmed unless a majority of all the Owners (regardless of the number of the Owners actually present at the special meeting called for the purpose of considering the appeal) vote to reverse and overturn the Board's decision.

25

## ARTICLE X. USE RESTRICTIONS

Section 1: Land Use. No building or other structure shall be erected, altered, placed, or permitted to remain on any Lot other than one Single-Family Residence per Lot constructed on-site, subject to approval by the Architectural Control Committee, and such additional Improvements as may be approved by the Architectural Control Committee, pursuant to the terms of Article IX hereinabove.

Section 2: Trash Collection. The Association, acting through its Board, shall have the right to require that any trash collection within the Common Interest Community be performed by one company and that trash be collected from all Lots by such company on the same day of each week. The Board shall select the trash company based on competitive bids. At the option of the Association, the cost of trash collection shall be paid by each Owner directly to the trash collection company, and in such event, the Association shall have no duty to assess the cost of trash collection as a Common Expense. Nothing herein contained shall be construed to prohibit an Owner from personally disposing of trash from his Lot. This section shall not apply to a contractor during the construction of a Residence or other Improvements on a Lot. The contractor may dispose of trash, rubbish, debris, and other construction materials from the Lot either personally or by contracting with a trash collection company. The contractor or trash collection company may remove trash, rubbish, debris, and other construction materials from the Lot during the construction of the Residence as often as the contractor deems appropriate. All trash receptacles shall have lid tie-downs to protect them from Animals. Except during the construction or remodeling of a Residence or other Improvements on a Lot and except on the day designated for trash collection, all trash receptacles shall be kept in a garage, outbuilding, or screened from view by screening approved by the Architectural Control Committee.

Section 3: No Hazardous Activities. No activities shall be conducted within the Common Interest Community which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

Section 4: Vehicle Repair. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any vehicles, trailers, or boats, may be performed on any Lot unless it is done within a completely enclosed garage which screens the sight and sound of the activity from the street and from adjoining Lots, nor shall any such activity be performed on the Common Elements. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

Section 5: Signs. No sign of any character shall be displayed or placed upon any Lot, with the following exceptions:

zll

- (a) One (1) sign per Lot of not more than six (6) square feet in total area advertising a Lot for sale shall be permitted on any Lot.
- (b) The Declarant or the Association shall have the right to place a permanent sign at each entrance to the Common Interest Community identifying the Common Interest Community.
- (c) Until such time as the Declarant is no longer the Owner of a Lot, the Declarant or its agents shall have the right to place one or more signs on the Common Interest Community, without limitation of size, offering Lots within the Common Interest Community for sale.
- (d) Additional signs may be permitted if approved by the Board.

Section 6: Antennae. No antennae or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, by example and not limitation, satellite dishes, shall be erected, used, or maintained outdoors on any Lot, whether attached to a Residence or otherwise, unless approved by the Architectural Control Committee. 18" Satellite dishes are acceptable as long as they are under eaves and not on front elevation of the home.

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

Section 8: Home Occupations. The conduct of a home occupation within a Residence on a Lot shall be considered accessory to the residential use and shall not be deemed a violation of these Covenants, provided that the following requirements are met:

- (a) Such home occupation shall be conducted only within the interior of the Residence and shall not occupy more than twenty-five percent (25%) of the floor area within the Residence;
- (b) The home occupation shall be conducted only by residents of the Residence and no more than one (1) non-resident employed in connection with the home occupation carried on in the Residence;

27

- (c) No on-site retail sales shall be conducted upon a Lot;
- (d) Only those home occupations which require no visits from customers and no parking at or near the Residence in connection with such occupation shall be allowed;
- (e) There shall be no evidence of a home occupation visible from the outside of the Residence;
- (f) Deliveries may be made to, and pickups may be made from, the Lot no more than once per day;
- (g) The conduct of such home occupation must be permitted and comply with all Laws of any Governmental Authority.

Section 9: Storage Tanks and Containers. No elevated tanks of any kind shall be erected, placed, or permitted to remain on any Lot unless such tanks are screened from view from other Lots and from the streets by fencing or landscaping in a manner approved by the Architectural Control Committee. All air-conditioning, refrigeration, cooling, heating, or other mechanical equipment or system which is located outside of a Residence, including but not limited to, window air-conditioning units and swamp coolers, shall be screened from view from other Lots and from the streets by fencing or landscaping approved by the Architectural Control Committee.

Section 10: Restrictions on Leasing. No Lot Owner shall lease his or her Dwelling to any group of people other than a "Single Family" as defined in Article II hereinabove. All such leases shall be in writing and shall provide that the tenant shall comply in all respects with the provisions of the Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association, and that any failure by the tenant to comply with the terms and provisions of the Documents shall be a default under the lease. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has violated any provision of this Declaration, the Articles of Incorporation, Bylaws, or Rules and Regulations of the Association; and if the Owner fails to commence eviction proceedings with the appropriate court within 30 days after the Board's decision, then the Board shall have the right, but not the obligation to evict the Tenant and assess the cost as a special assessment against the Lot and the Owner. No short-term leases (i.e., for terms less than month-to-month) shall be permitted and no time-sharing or such other forms of interval the Ownership shall be permitted.

Section 11: Insurance. Nothing shall be done or kept on any Lot which would increase the premiums for insurance or result in the cancellation of any insurance maintained by the Association.

Section 12: Discharge of Weapons. No person shall discharge, fire, or shoot any gun, pistol, rifle, shotgun, crossbow, bow and arrow, slingshot, spud-gun, paint gun, BB gun, pellet gun,

28

stun gun, or other firearm or weapon of any kind. Notwithstanding the foregoing, the discharge of firearms or weapons by any person acting in self defense as permitted by C.R.S. Section 18-1-704 or by any member of any law enforcement agency in the course of such member's official duty shall not be deemed a violation of this provision.

Section 13: Mineral Extraction. No mining or extraction of oil, gas, gravel, or other minerals shall be permitted on any Lot.

Section 14: Resubdivision. No Lot may be further subdivided without the approval of the Board. This provision shall not be construed to prohibit or prevent the dedication or conveyance of any portion of a Lot as an easement for public utilities.

Section 15: Animals.

- (a) Definitions. For purposes of this Section 16, the following terms shall have the meanings given:
- (1) "Animal" shall mean any live vertebrate creature, either domestic or wild, excluding fish.
  - (2) "At Large" shall mean outside of a fence or other enclosure which restrains the Animal to a Lot, unless under the control by leash or lead of the Keeper. Animals tethered to a stationary object within reach of a street, sidewalk, common element, or other common access point shall be considered "at large".
  - (3) "Keeper" shall mean a person who is the Owner of an Animal. Keeper shall also mean any person who has custodial or supervisory authority or control over an Animal.
  - (4) "Leash" shall mean a cord, rope, chain, or similar device which holds an Animal in restraint.
  - (5) "Pet" shall mean a dog, cat or such other Animal as may be approved by the Board, that has been bred and/or raised to live in or about the habitation of humans and is dependent upon humans for food and shelter.
  - (6) "Restraint" shall mean: (a) Secured by leash under the physical control of a responsible person; (b) tethered to a stationary object not within reach of a street, sidewalk, Common Element, or other public access; or (c) within a fenced or other enclosed area limiting the

29

Animal to a Lot.

- (7) "Shelter" shall mean a structure or environment adequate to the species of Pet Animal which provides protection from adverse weather conditions.
- (b) Prohibition. No Animals other than Pet dogs or cats, or other Pets as approved by the Board, may be kept on any Lot. Without limiting the generality of the definition of "Animal", no snakes or other reptiles may be kept within the Common Interest Community.
- (c) Commercial Purposes. No Animal shall be boarded, kept, bred, or maintained on any Lot for commercial purposes.
- (d) Number. No more than two (2) Pet dogs; no more than three (3) Pet cats; and no more than a total of four (4) adult Pet dogs and adult Pet cats may be kept on any Lot. (For example, two Pet dogs and two Pet cats; or three Pet cats and one Pet dog.) Pet dogs and Pet cats shall not be considered adults until they are six (6) months old.
- (e) Rabies Vaccinations. The Association shall have the right, but not the obligation, to require that the Owners of all Pet dogs and Pet cats, provide to the Board evidence of current vaccination against rabies.
- (f) Improper Care or Treatment. No Owner or Keeper of an Animal shall fail to provide that Animal with sufficient good and wholesome food and water, proper Shelter, protection from the weather, veterinary care, and such other care as is customary and necessary for the Animal's health and well being, considering the species, breed, and type of Animal. No person shall beat, cruelly ill-treat, torment, overload, overwork, otherwise abuse, or needlessly kill an Animal, or cause, instigate, or permit any fight among Animals. No person shall transport or confine an Animal in or upon any vehicle in a cruel and reckless manner. No Owner of an Animal shall abandon such Animal.
- (g) Removal of Waste. The Owner or Keeper of any Animal shall be responsible for the immediate removal of any feces deposited by such Animal on any Lot or Common Element not owned or exclusively occupied by the Owner or Keeper of the Animal. The Owner or Keeper of any Animal shall also be responsible for the periodic removal of feces deposited by such Animal on such Owner's Lot.

30

- (h) Animals at Large. All Animals within the Common Interest Community shall be kept under restraint. No Owner or Keeper of an Animal shall permit such Animal to be at large within the Common Interest Community. All female Animals in season shall be kept inside a building or within a fenced area or other enclosure which limits the Animal to the Owner's Lot.
- (i) Disturbance of Peace. No Owner or Keeper of an Animal shall permit such Animal to disturb the peace and quiet of any person within the Common Interest Community by barking, whining, howling, yowling, squawking, or making any other noise in an excessive, continuous, or untimely fashion.
- (j) Nuisance. The Owner or Keeper of an Animal shall exercise proper care and control of his or her Animal to prevent it from becoming a public nuisance. For purposes of this section, a public nuisance includes an Animal which is a safety or health hazard, damages or destroys the property of another, or creates offensive odors which materially interfere with or disrupt another person in the conduct of activities on such other person's Lot.
- (k) Vicious Animals. No person shall own or keep any vicious Animal within the Common Interest Community. A vicious Animal is one that has bitten or clawed any person or in a vicious and terrorizing manner, approaches any person, in an obvious attitude of attack. No dog may be kept within the Common Interest Community that is a member of a reputedly vicious breed including by example and not limitation, American Staffordshire Terriers, also known as Pit Bulls; Rottweilers; and Pressa Canario. For purposes of this Section, it shall be a defense to a charge of owning or keeping a vicious Animal that the person or Animal bitten or approached by the vicious Animal was:
  - (1) Attacking the Animal or engaging in conduct reasonably calculated to provoke the Animal to attack or bite;
  - (2) unlawfully engaging in entry into or upon a fenced or enclosed portion of the Lot upon which the Animal was kept or properly restrained;
  - (3) unlawfully engaging in entry into or upon a vehicle in which the Animal was confined;
  - (4) attempting to assault the Animal or another person;

31

- (5) attempting to stop a fight between the Animal and any other Animal;
- (6) attempting to aid the Animal when it was injured;
- (7) attempting to capture the Animal in the absence of the Owner or Keeper;
- (8) the Animal was acting in self defense, defense of its offspring, or defense of its Owner or Keeper.

Section 16: Use of Common Elements. All use of the Common Elements shall be subject to the terms and provisions of the Management Plan and shall be further governed by the Rules and Regulations adopted by the Board. No damage or waste shall be committed to the Common Elements by Lot Owners, their families, tenants, guests, and invitees.

Section 17: Motor Vehicles on Common Elements. No motor-driven, engine-powered, or other mechanically propelled vehicle, including, by example and not limitation, automobiles, trucks, motorcycles, all-terrain vehicles, and snowmobiles, may be used or operated within or upon any of the Common Elements, except in the event of an emergency or by the Association for maintenance purposes.

Section 18: General Prohibition. No use shall be made of an Owner's Lot which will in any manner violate any Law of any Governmental Authority having jurisdiction over the use of said Owner's Lot. Any violation of any Law shall also be a violation of this Declaration.

Section 19: Maintenance of Lots and Improvements. The Owners of Lots shall keep or cause to be kept all buildings, fences, and other Improvements and all landscaping located on their Lot in good repair. Rubbish, refuse, garbage, and other solid, semi-solid, and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate on any Lot, and shall be disposed of in a sanitary manner. No Lot shall be used or maintained as a dumping ground for such materials. All containers shall be kept in a neat, clean, and sanitary condition and shall be stored inside a garage or other approved structure, except on trash collection days. No trash, litter, or junk shall be permitted to remain exposed upon any Lot and visible from adjacent streets or other Lots. Burning of trash on any Lot shall be prohibited. No lumber or other building materials shall be stored or permitted to remain on any Lot unless screened from view from other Lots and from the streets, except for reasonable storage during construction.

Section 20: Nuisance. Nothing shall be done or permitted on any Lot which is or may become a nuisance. No obnoxious or offensive activities or commercial businesses or trades, except home occupations as hereinabove defined, shall be conducted on any Lot.

Section 21: Temporary Structures. No structure of a temporary character, including, by

32  
example and not limitation, trailers, converted trailers, shacks, sheds, basements, tents, garages, or accessory buildings, shall be used on any Lot as a Residence, temporarily or permanently.

Section 22: Storage of Vehicles. Boats, campers, snowmobiles, all-terrain vehicles, trailers, machines, tractors, semi-tractors, tractor trailers, recreational vehicles, trucks (except standard pickup trucks), inoperative automobiles shall not be stored, parked, or permitted to remain on any street, Lot, or Common Element, except within fully-enclosed garages, for more than 48 consecutive hours and not more than two-48 hour periods per month. Notwithstanding the foregoing, a recreational vehicle owned by any Person who is the guest of an Owner may be parked on a Lot for not more than seven consecutive days and not more than four-seven day periods per year. The Association shall have the right to remove any vehicle parked in violation of these restrictions or any restriction adopted by Rule or Regulation and to charge the cost of such removal against the Owner of such vehicle. If any such Owner shall be a Member of the Association, the cost shall be assessed against such Owner as a Reimbursement Assessment.

Section 23: Damage or Destruction of Improvements. In the event any Residence or other Improvement constructed on a Lot is damaged, either in whole or in part, by fire or other casualty, said Residence or other Improvement shall be promptly rebuilt or remodeled to comply with this Declaration; or in the alternative, if the Residence or other Improvement is not to be rebuilt, all remaining portions of the damaged Improvement, including the foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Residence or other Improvement.

Section 24: Disturbing the Peace. No person shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, disorderly, or obstreperous conduct, and no Owner shall knowingly permit such conduct upon any Lot owned by such Owner.

## **ARTICLE XI. DRAINAGE**

Section1: Acknowledgement. The soils within the state of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Residence 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.

Section2: Moisture. Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Residence constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Residence.

33

**Section3: Water Flow.** The Owner of a Lot shall not impede or hinder in any way the water falling on the Lot from reaching the drainage courses established for the Lot and the Common Interest Community.

**Section4: Action by Owner.** To accomplish the foregoing, each Owner of a Lot covenants and agrees, among other things:

- (a) Not to install Improvements, including, but not limited to, landscaping, items related to landscaping, walls, walks, driveways, parking pads, patios, fences, additions to the Residence, outbuildings, or any other item or improvement which will change the grading of the Lot. The installation of such Improvements is acceptable so long as the manner of installation is consistent with, and does not change, the grading and drainage patterns of the Lot. For lots 37 through 51, owner shall maintain 4" clear height between bottom of fence and concrete pan at rear property line both perpendicular and parallel to the pan.
- (b) To fill with additional soil any back-filled areas adjacent to the foundation of the Residence and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.
- (c) Not to water the lawn or other landscaping on the Lot excessively.
- (d) Not to plant flower beds (especially annuals) and vegetable gardens adjacent to or within three (3) feet of the foundation and slabs of the Residence.
- (e) If evergreen shrubbery and grass is used within five (5) feet of the foundation walls, to water the shrubbery and grass by controlled hand watering and to avoid excessive watering.
- (f) To minimize or eliminate the installation of piping and heads for sprinkler systems within five (5) feet of foundation walls and slabs.
- (g) 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.
- (h) To maintain the gutters and downspouts which discharge water into extensions or splash blocks by assuring that (i) the gutters and downspouts remain free and clear of all obstructions and debris; (ii) the water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (iii) the splash blocks are maintained under sill cocks.

- 31
- (i) To recaulk construction joints opening up between portions of the exterior slabs and garage slabs in order to thereby seal out moisture.

Section5: Disclaimer. The Declarant shall not be liable for any loss or damage to the Residence, any outbuilding, concrete slab, driveway, sidewalk, or other improvement on any Lot caused by, resulting from, or in any way connected with soil conditions on any Lot.

#### **ARTICLE XI. SURROUNDING AGRICULTURAL USES AND WILDLIFE**

Section1: Right to Farm. The rural land surrounding the Common Interest Community is intensively used for agriculture, and Owners of Lots within the Common Interest Community must recognize that there are agricultural practices ongoing and which will continue in the agricultural land surrounding the Common Interest 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 Common Interest 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.

Section2: Wildlife. The Common Interest 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.

#### **ARTICLE XII. STREETS**

Section1: Initial Construction. The Declarant shall construct and install all streets within the Common Interest Community.

Section2: Maintenance. Once constructed, all streets shall be maintained, repaired, and improved by the Association.

35

Section3: Maintenance by Larimer County. In the event the Association fails to maintain, repair, or improve the roads and streets within the Common Interest Community as required by Larimer County, Colorado, then the County shall have the right, but not the obligation, to maintain, repair, and improve roads and streets within the Common Interest Community and to assess the costs of such maintenance and repair against the Lots within the Common Interest Community pursuant to and in accordance with Article VIII, Section 5, of this Declaration.

### **ARTICLE XIII. MORTGAGEE PROTECTION**

Section1: Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the case of conflict, this Article shall control.

Section2: Notice of Actions. The Association shall give notice to each Mortgagee and Insurer of (and each Lot Owner hereby consents to and authorizes such notice):

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Lot in which there is a First Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable.
- (b) Any delinquency in the payment of Common Expense assessments owed by a Lot Owner whose Lot is subject to a First Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable, which remains uncured for a period of sixty (60) days.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action which would require the consent of a specified percentage of Mortgagees as specified in Section 3 of this Article.
- (e) Any judgment rendered against the Association.

Section3: Consent and Notice Required.

- (a) Document Changes. Notwithstanding any requirement permitted by this Declaration or the Act, no amendment of any provision of this Declaration pertaining to the matters hereinafter listed by the Association or Lot Owners

31

shall be effective without notice to Mortgagees and Insurers, and the vote of at least sixty-seven percent (67%) of the Lot Owners (or any greater Lot Owner vote required in this Declaration or the Act) present in person or by proxy at a meeting at which a quorum is present and until approved by at least fifty-one percent (51%) of the Mortgagees (or any greater Mortgagee approval required by this Declaration):

- (1) Voting rights.
- (2) Assessments, assessment liens, or priority of assessment liens.
- (3) Reserves for maintenance, repair, and replacement of Common Elements.
- (4) Responsibility for maintenance and repairs.
- (5) Redefinitions of boundaries of Lots, except that when boundaries of only adjoining Lots are involved or a Lot is being subdivided, then only those Lot Owners and the Mortgagees holding Security Interests in such Lot or Lots must approve such action.
- (6) Convertibility of Lots into Common Elements or Common Elements into Lots.
- (7) Expansion or contraction of the Common Interest Community or the addition, annexation, or withdrawal of property to or from the Common Interest Community.
- (8) Insurance or fidelity bonds.
- (9) Leasing of Lots.
- (10) Imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot.
- (11) A decision by the Association to establish self-management when professional management had been required previously by any Mortgagee.
- (12) A decision by the Association not to restore or repair the Common Elements after a hazard damage or partial condemnation.

37

- (13) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation of the Common Elements.
  - (14) Any provision that expressly benefits mortgage holders, insurers, or guarantors.
- (b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions, other than rights reserved to the Declarant as Special Declarant Rights set forth in Article V of this Declaration, without the notice to Mortgagees and Insurers as required by Section 2 above and approval of at least fifty-one percent (51%) (or the indicated percentage) of the Mortgagees:
- (1) Convey or encumber the Common Elements or any portion thereof without approval by eighty percent (80%) of the Mortgagees. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause.)
  - (2) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation of the Common Elements without approval by sixty-seven percent (67%) of the votes of Mortgagees.
  - (3) The granting of any easements or leases through or over the Common Elements (excluding, however, any utility, road, or other easements serving or necessary to serve the Common Interest Community and excluding any leases for no more than three (3) years).
  - (4) The establishment of self-management when professional management had been required previously by a Mortgagee.
  - (5) A decision by the Association not to restore or repair the Common Elements after a hazard damage or partial condemnation.
  - (6) The merger of the Common Interest Community with any other common interest community.

38

- (7) The assignment of the future income of the Association, including its right to receive Common Expense assessments.
- (c) The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the consent of all Mortgagees.
- (d) The failure of a Mortgagee or Insurer to object in writing to any proposed addition or amendment within thirty (30) days after notice is given by the Association requesting approval of an addition or amendment to the Declaration shall conclusively constitute approval by the Mortgagee or Insurer of the addition or amendment.

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

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

**Section 6: Enforcement.** The provisions of this Article are for the sole benefit of Mortgagees and Insurers and their successors and may only be enforced by one or more of the Mortgagees and Insurers. Failure of the Association to comply with provisions of this Article shall not invalidate any action taken by the Association or Owners, including, by example and not limitation, any amendment to this Declaration, but any action taken by the Association without first complying with this Article shall be voidable by any Mortgagee or Insurer having a Security Interest in a Lot on the effective date of such action; provided that any legal proceeding to make void any action taken by the Association in violation of this Article must be commenced within one (1) year of the effective date of such action.

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

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

39

award. Unless otherwise required, the members of the Board, acting by majority vote through the president, may act as trustee.

Section9: Payment of Delinquent Fees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance on the lapse of such a policy for such Association property, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section10: Transfer of Common Elements. The Association shall not sell, transfer, or convey any Common Elements without first offering to dedicate the Common Elements to the County or other governmental agency designated by the County. This restriction shall not apply to any of the following:

- (a) The sale, transfer, or conveyance of the Common Elements to another organization or association, the purpose of which is to maintain such Common Elements.
- (b) The granting of an easement or right-of-way to a governmental, quasi-governmental, cooperative, or other regulated organization which provides utility services to the Common Interest Community, including, by example and not limitation, water, sewer, gas, electricity, cable television, and other services which may become available to the Common Interest Community at any time in the future.
- (c) The granting of permits, leases, licenses, or concessions for not more than three (3) years.

**ARTICLE XV. RESERVATION OF EXPANSION AND DEVELOPMENT RIGHTS**

1. Expansion Rights. Declarant reserves the right to subject all or any part of the Development Property to the provisions of this Declaration. The consent of the then-existing Lot Owners or Mortgagees shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation, at its sole option.

2. Withdrawal Rights. Declarant expressly reserves the right to withdraw all or any portion of the Real Estate and, if submitted to this Declaration, the Development Property from the Common Interest Community by recording a document evidencing such withdrawal in the County Clerk and Recorder's office. The Real Estate or Development Property withdrawn from

40

the Common Interest Community shall be subject to whatever easements, if any, are reasonably necessary for access to or operation of the Common Interest Community. Declarant shall prepare and record in the County Clerk and Recorder's office whatever documents are necessary to evidence such easements.

3. Amendment of the Declaration. If Declarant elects to submit the Development Property, or any part thereof, to this Declaration, Declarant shall record an amendment to the Declaration containing a legal description of the Development Property, or portion thereof to be submitted to this Declaration, and reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Lot will be apportioned according to the total number of Lots submitted to the Declaration. The Allocated Interests appurtenant to each Lot in the Common Interest Community, as expanded, shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within the Common Interest Community, as expanded. The amendment may contain additional covenants, conditions, and restrictions applicable only to the Lots and/or Common Elements contained within the Development Property added to the Real Estate by such amendment.

4. Interpretation. Recording of amendments to this Declaration in the County Clerk and Recorder's office shall automatically (a) vest in each existing Lot Owner the reallocated Allocated Interests appurtenant to each Owner's Lot; and (b) vest in each existing Mortgagee a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Lot. Upon the recording of an amendment to this Declaration, the definitions in this Declaration shall automatically be extended to encompass and to refer to the Real Estate as expanded. The Development Property, or any part thereof, shall be added to and become a part of the Real Estate for all purposes. All conveyances of Lots after such expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made in any amendment to this Declaration, subject to any restrictions on the use of the Common Elements as set forth in the amendment to this Declaration adding the Development Property, or any part thereof, to the Real Estate. Reference to this Declaration in any instrument shall be deemed to include all amendments to this Declaration without specific reference thereto.

5. Maximum Number of Lots. The maximum number of Lots in the Common Interest Community, as expanded, shall not exceed the number set forth in Article III, Section 6, above. Declarant shall not be obligated to expand the Common Interest Community beyond the number of Lots initially submitted to this Declaration.

6. Construction Easement. Declarant expressly reserves the right to perform construction work, store materials on Common Elements, and the future right to control such work and the right of access thereto until its completion. All work may be performed by Declarant without the Consent or Approval of any Lot Owner or Mortgagee. Declarant reserves such easements through the Common Elements as may be reasonably necessary for the purpose of discharging

41

Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easements include the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate for the purpose of furnishing utility and other services to the Development Property. Declarant's reserved construction easement includes the right to grant easements to any Governmental Authority and to convey improvements within those easements.

7. Reciprocal Easements. If all or any part of the Real Estate or, if submitted to this Declaration, the Development Property is withdrawn from the Common Interest Community ("the Withdrawn Property"): (a) the Lot Owner(s) of the Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair maintenance, and emergencies over and across the Common Interest Community; and (b) the Lot Owner(s) in the Common Interest Community shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance, and emergencies over and across the Withdrawn Property. Declarant shall prepare and record in the County Clerk and Recorder's office, whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the Lot Owners of the Withdrawn Property and the Lot Owners of the Common Interest Community shall be obligated to pay a proportionate share of the cost of the Operation and Maintenance of any easements entitled to either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this section shall conclusively determine the existence, location, and extent of the reciprocal easements that are necessary or desirable as contemplated by this section.

8. Termination and Expansion of Development Rights. The expansion and development rights reserved to Declarant, for itself and its successors and assigns, shall expire twenty (20) years from the date of recording this Declaration in the County Clerk and Recorder's office, unless the expansion and development rights are (a) extended as allowed by Law or (b) reinstated or extended by the Association.

9. Transfer of Expansion and Development Rights. Any expansion, development, or withdrawal right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in the County Clerk and Recorder's office. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE XVI. GENERAL PROVISIONS

Section 1: Deemed Nuisances. Every violation of this Declaration is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner shall be applicable. Without limiting the generality of the foregoing, this Declaration may be enforceable as provided below.

- 42
- (a) Fines for Violations. The Board may adopt a schedule of fines including, but not limited to, fines for failure to abide by the Architectural Guidelines, fines for failure to obtain any required approval from the Architectural Control Committee, and fines for violating the restrictions applicable to Animals.
  - (b) Removal of Nonconforming Improvements. The Association shall have the right to obtain a court order to remove any improvement constructed, reconstructed, refinished, altered or maintained upon a Lot in violation of this Declaration.

Section 2: Enforcement. In addition to the foregoing remedies, enforcement of this Declaration may be by appropriate proceedings at law or in equity against those Persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an Owner, by the Architectural Control Committee, or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award to the prevailing party in such litigation, in addition to such damages as the Court may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the prevailing party in connection with such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration.

Section 3: Duration. This Declaration shall run with the land, shall be binding upon all persons owning Lots and any persons hereafter acquiring said Lots, and shall be in effect in perpetuity unless amended or terminated as provided in the Act.

Section 4: Amendment. Except as otherwise provided in this Declaration, this Declaration may be altered or amended at any time by the then record Owners of sixty-seven percent (67%) or more of the Lots. In no event shall any provisions of this Declaration relating to the responsibility to maintain the public roads and streets or other Common Elements within the Common Interest Community (including, by example and not limitation, provisions authorizing assessments in the establishment and enforcement of liens for nonpayment of assessments or costs of repair or maintenance) be amended or expire unless specifically released by the Board of County Commissioners of Larimer County, Colorado.

43

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

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

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

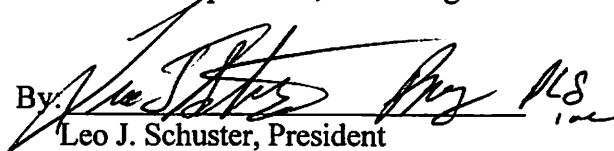
Section 8: Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and if a provision is declared invalid by judgment or court order, all of the other provisions of the Documents shall continue in full force and effect.

Section 9: Conflict. The Documents are intended to comply with the requirements of the Act. If there is any conflict between the Documents and the provisions of the Act, the provisions of the Act shall control. In the event of any conflict between the Development Agreement or the Management Plan and this Declaration, the Development Agreement and/or the Management Plan shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

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

L. J. SCHUSTER, LLC, a Colorado limited liability company

BY: Progressive Living Structures, Inc.,  
a Colorado corporation, its Manager

By:  PL8  
Leo J. Schuster, President

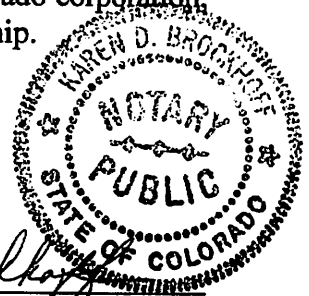
44

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 22nd day of September, 2003, by Leo J. Schuster, President of Progressive Living Structures, Inc., a Colorado corporation, Manager of L. J. SCHUSTER, LLC, a Colorado limited liability limited partnership.

Witness my hand and official seal.

My commission expires: June 20, 2004.



Karen D. Brockhoff  
Notary Public