



**Declaration
of
Covenants, Conditions, Restrictions and Easements
for
The Village At Peregrine**

997003188
(Recorder's Record #)

This Declaration is made this 9th day of January 1997, by Lifestyle Builders, Inc., a Colorado corporation (Declarant), in order to create a common interest community pursuant to the Colorado Common Interest Ownership Act.

ARTICLE 1

GENERAL

Section 1.1 Common Interest Community. The name of the common interest community created by this Declaration is "The Village at Peregrine". The Village at Peregrine is a planned community as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103(22), Colorado Revised Statutes. All of The Village at Peregrine is located in El Paso County, Colorado.

Section 1.2 Property Affected. Declarant owns certain real property in the City of Colorado Springs, El Paso County, Colorado described on the attached Exhibit A and shown on the plat attached hereto as Exhibit B, which is made a part of this Declaration. The real property described on Exhibit A and shown on Exhibit B is referred to in this declaration as the "Community Area".

Section 1.3 Purposes of Declaration. This Declaration is executed and recorded (a) in furtherance of a common and general plan for those parcels of land which are part of the Community Area; (b) to protect and enhance the quality, value, desirability and attractiveness of all property within the Community area; (c) to provide for the Association to hold, maintain and manage certain common properties and amenities in the Community Area and to perform certain functions for the benefit of owner of land within the Community Area; (d) to define the duties, powers and rights of the Association, and (e) to define certain duties, powers and rights of Owners.

Section 1.4 Declaration Declarant, for itself, its successors and assigns, hereby declares that the Community Area, and each part thereof, shall, on and after the date this Declaration is recorded, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions and other provisions set forth in this Declaration, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Community Area. The provisions of this Declaration are

intended to and shall run with the land and, until their expiration in accordance with Section 14.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property within (the Community Area and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all other persons and entities having or acquiring any right, title or interest in any property which is part of the Community Area or any part or parcel thereof or any Improvement thereon, and their encumbrancers, claimants, heirs, personal representatives, successors and assigns.

ARTICLE 2 DEFINITIONS

Unless otherwise expressly provided in this Declaration, the following words and phrases, whenever used in this Declaration, shall have the meanings specified in this Article 2.

Section 2.1 Agencies “Agencies” shall mean and collectively refer to the Federal National Mortgage Association (“FNMA”), the Government National Mortgage Corporation (“GNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”), the Federal Housing Administration of the Department of Housing and Urban Development (“FHA”), the Veterans Administration (“VA”), the Colorado Housing Finance Authority (“CHFA”) or any other public, quasi-public or private agency or entity which performs (or may in the future perform) functions similarly to those currently performed by the entities specifically listed herein.

Section 2.2 Architectural Committee “Architectural Committee” shall mean the approving authority described in Section 6.1 of this Declaration.

Section 2.3 Assessment “Assessment” shall mean a “Common Assessment”, pursuant to Section 11.3, a “Special Assessment”, pursuant to Section 11.9 or a “Site Assessment”, pursuant to Section 11.10.

Section 2.4 Association “Association” shall mean Peregrine Village Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

Section 2.5 Association Documents “Association Documents” shall mean the various operative documents of the Association, whether recorded or adopted at this time or as the same have been or may be amended, modified, supplemented, or otherwise changed from time to time, all of which are incorporated herein by this reference, and shall include the following:

- (a) the Articles of Incorporation of the Association,
- (b) the Bylaws of the Association,
- (c) this Declaration, including the Plat and all amendments to this Declaration;
- (d) any Supplemental Plat; and
- (e) the Rules and Regulations.

Section 2.6 Association Properties “Association Property” or “Association Properties” shall mean all real and personal property, together with any and all Improvements now or hereafter thereon and appurtenances and rights thereto, hereafter owned by the Association or which the Association is obligated to maintain, pursuant to this Declaration or other Association Documents. The Association Properties shall include those parcels and tracts of land identified as Association Properties on the Plat. The Association Properties include all lawns and landscaped areas within Lots, which shall be owned by the Owners of the Lots but shall be maintained by the Association. The Association Properties may include Landscaping or easements dedicated to the City of Colorado Springs but maintained by the Association. Notwithstanding any contrary provision of the Association

Documents, if the Association hereafter purchases, acquires, receives or otherwise obtains any real property or Improvements thereon, which add substantial value to the Association, the Association shall then comply with all applicable requirements of the VA regarding approvals and other matters for planned unit developments or requirements of other Agencies, if applicable. Any Association Property owned by the Association constitutes “common elements” as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-102(5), Colorado Revised Statutes.

Section 2.7 Board of Directors “Board of Directors” or “Board” shall mean the Board of Directors of the Association.

Section 2.8 Community Area “Community Area” shall mean the real property described on Exhibit A and shown on Exhibit B, together with any and all Improvements now or, hereafter on such real property and appurtenances and rights to such real property.

Section 2.9 Declarant “Declarant” shall mean Lifestyle Builders, Inc., a Colorado corporation, its successors and assigns. A Person shall be deemed a “successor and assign” if Lifestyle Builders, Inc. as Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument. Notwithstanding the foregoing, a successor to Lifestyle Builders, Inc. by consolidation or merger shall automatically be deemed a successor or assign of Lifestyle Builders, Inc. as Declarant under this Declaration.

Section 2.10 Declaration “Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for The Village at Peregrine, in its entirety, including all attached exhibits and all subsequent amendments

Section 2.11 Dwelling Unit “Dwelling Unit” shall mean an Improvement on a Lot which is intended or used for residential occupancy, including, without limitation, any individual single family attached or detached home,

Section 2.12 First Mortgage “First Mortgage” shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments.)

Section 2.13 First Mortgagee “First Mortgagee” shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage, including, for purposes of Section 12.2, with respect to notice of cancellation or substantial modification of certain insurance policies, and for purposes of Section 7 3, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns, under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not, and the and records in the Office of the Clerk and Recorder of the County of El Paso, Colorado, show the said Administrator as having the record title to the Lot, or any successor to the interest of any such Person under such First Mortgage.

Section 2.14 Improvements “Improvements” shall mean all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning and water softener fixtures.

“Improvements” shall also mean an excavation of fill the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 2.15 Landscape “Landscape” shall mean the treatment of ground surface with live plant materials, wood chips, crushed stone, decorative rocks, mulch materials or other decorative surfacing materials approved by the architectural committee. For purposes of this definition, the word “Landscape” shall include all other forms of the word Landscape, such as “Landscaped” and “Landscaping”.

Section 2.16 Lot “Lot” shall mean a parcel of land subject to this Declaration which is identified as a Lot on Exhibit A or shown as a separate parcel on the Plat or any Supplemental Plat upon which one Dwelling Unit may be constructed pursuant to the ordinances of the City of Colorado Springs, and which is not owned by the Association. Each Lot constitutes a “unit” as described in the Colorado Common Interest Ownership Act, Section 38-33.3-103(30), Colorado Revised Statutes. The maximum number of Lots that may be created within the Community Area is 49.

Section 2.17 Lot Lines Front, side and rear “Lot Lines” shall be the same as defined in the zoning regulations of the City of Colorado Springs in effect from time to time

Section 2.18 Member “Member” shall mean a member of the Association, who must also be an Owner Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot.

Section 2.19 Owner “Owner” shall mean the record titleholder, including Declarant, whether one or more Persons, of fee simple title to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.

Section 2.20 Person “Person” shall mean a natural person, a corporation, a partnership or any other public or private entity recognized as being capable of owner real property under Colorado law.

Section 2.21 Plat “Plat” shall mean the land survey plat of the Community Area which is attached hereto as Exhibit B.

Section 2.22 Related User. “Related User” shall mean: (a) any Person who resides with an Owner within the Community Area; (b) a guest or invitee of an Owner; (c) an occupant, tenant or contract purchaser of any Dwelling Unit on a Lot; and (d) any family member, guest, employee, agent, representative, licensee, contractor, invitee or cohabitant of any of the foregoing Persons.

Section 2.23 Rules and Regulations “Rules and Regulations” shall mean the rules and regulations adopted by the Board of Directors as provided in Section 8.9 of this Declaration.

Section 2.24 Supplemental Plat “Supplemental Plat” shall mean a plat satisfying the requirements of Section 209 of the Colorado Common Interest Ownership Act, Section 38-33.3-209, Colorado Revised Statutes, which amends the Plat.

ARTICLE 3

COVENANTS TO PRESERVE THE RESIDENTIAL
CHARACTER OF THE COMMUNITY AREA

Section 3.1 Property Uses. All lots in the Community Area shall be used exclusively for private residential purposes. No Dwelling Unit erected or maintained within the Community Area shall be used or occupied for any purpose other than for a single-family dwelling. No business, profession or other activity conducted for gain shall be carried on or within any Lot or Dwelling Unit, except as follows:

- (a) The following activities are permissible within a Dwelling Unit:
 - (i) the use of an office inside a Dwelling Unit by the occupants of the Dwelling Unit;
 - (ii) the use of a personal computer for business or commercial purposes; and
 - (iii) any business activity that is conducted by telephone, mail or their equivalents.
- (b) The following activities are permissible, but only if the Owner or Related User engaged in the activity obtains the prior written consent of the Board or Directors, only if the activity is not readily visible or apparent from any location outside the boundaries of the Lot on which the activity is being conducted, only if the activity does not, in the sole discretion of the Board, generate excessive traffic within the Community Area and only if the activity is permissible under the zoning ordinances and regulations of the City of Colorado Springs:
 - (i) the production, creation or assembly of tangible personal property for the purpose of sale off the premises;
 - (ii) the sale or offering for sale of a service either on or off the premises;
 - (iii) the holding of meetings relating to any business or functions of the Association; and
 - (iv) the holding of periodic meetings for business purposes.

Section 3.2 Improvements No Improvement shall be erected within the Community Area except single-family Dwelling Units and other improvements which have been approved by the Architectural Committee. No Improvement other than a Dwelling Unit with an attached garage for a minimum of two cars, and no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Improvement may be placed on any Lot before completion of the Dwelling Unit upon such Lot except with the permission of the Architectural Committee.

Section 3.3 Construction Type All construction shall be new. No building previously used at another location nor any dwelling may be moved onto a Lot except as expressly provided in Section 3.7 for temporary construction, sales or administration buildings.

Section 3.4 Storage No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 3.5 Completion of Work A Dwelling Unit shall not be occupied in the course of original construction until substantially completed. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 3.6 Construction Completion The exterior of all Dwelling Units or other Improvements must be completed within one year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. For purposes of this Section 3.6, "commencement of construction"

for a Dwelling Unit is defined as the obtaining of necessary building permits and the excavation of earth for a foundation, and for all other Improvements is defined as the undertaking of any visible exterior work. If construction is not completed within one year after commencement, or if construction shall cease for a period of sixty days without permission of the Architectural Committee, the Architectural Committee will give the Owner thereof written notice of such fact, and if construction on such Improvement is not diligently commenced within thirty days after such notice, the unfinished improvement or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner.

Section 3.7 Construction or Sales Offices. Temporary building for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Architectural Committee. Model homes may be used and exhibited only by Declarant or with the permission of the Architectural Committee. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 3.8 Control During Construction. During the period of construction of a Dwelling Unit or other Improvements on a Lot, the Owner of the Lot or his contractor shall control dirt and dust, keep surrounding streets reasonably clean and keep construction debris confined in a trash receptacle. Trash shall be removed from the Lot at least once a week during the construction period. All construction debris which is blown by the wind shall be collected and placed in the trash receptacle. Construction debris may not be dumped or left on any Lot or on any of the Association properties

Section 3.9 Trees and Boulders. No trees, surface boulders, or scrub oak shall be removed from any Lot, except those that would interfere with the actual construction of a Dwelling Unit.

Section 3.10 Drilling Structures. No derrick or other Improvement designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot.

Section 3.11 Underground Utilities. All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground.

ARTICLE 4

DENSITY, SETBACK AND QUALITY STANDARDS

Section 4.1 Limitations on Dwellings and Subdivisions. No more than one Dwelling Unit shall be erected or maintained within any Lot. No Lot shall be replatted or otherwise subdivided except with the prior approval of the Architectural Committee. The foregoing sentence shall not apply to or restrict Declarant's rights under Section 10.2.

Section 4.2 Setback Areas

Section 4.3 Dwelling Area Requirements. No Dwelling Unit shall be erected which, exclusive of basements, porches, patios, covered but unenclosed areas, garages and any other buildings, has a gross livable floor area of less than 1200 square feet if a single-story Dwelling Unit, or less than 1600 square feet if a Dwelling Unit with more than one story.

Section 4.4 Height Restrictions No Dwelling Unit shall be more than thirty feet in height. The height of a Dwelling Unit is defined and determined by the approved Hillside Ordinance of the City of Colorado Springs.

Section 4.5 Exterior Materials and Colors Unless otherwise approved by the Architectural Committee, exterior walls of Dwelling Units shall be constructed of or covered by stone and stucco. Primarily earth tone colors shall be used on exterior trim and garage doors. The Architectural Committee shall not approve exterior materials for Dwelling Units and other Improvements if such materials are not compatible with materials used on neighboring Dwelling Units.

Section 4.6 Roofs All roof areas shall be of concrete tile or other material approved by the Architectural Committee.

Section 4.7 Antennae and Roof Projections No aerial, antenna or microwave system for reception or transmission of radio, television or other electronic signals, or other roof projection, including but not limited to lightning rods and weather vanes, shall be maintained on the roof or any other exterior location of a Dwelling Unit, other Improvement or Lot, unless fully screened in a manner approved by the Architectural Committee so as not to be visible at ground level from neighboring property or adjoining streets,

Section 4.8 Rebuilding or Restoration Any Dwelling Unit or other Improvement which may be destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a slightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six months from the time the damage occurred.

Section 4.9 Fences Except as provided in Section 4.10, fencing around individual Dwelling Units shall not be permitted.

Section 4.10 Dog Runs Small fenced dog runs may be erected on Lots with the prior approval of the Architectural Committee, in locations and in accordance with plans approved by the Architectural Committee. Maintenance of the area fenced shall be the sole responsibility of the Owner. Chain link metal fence, whether or not galvanized, may not be used in erecting dog runs. Dog runs shall not be wider than the Dwelling Unit.

ARTICLE 5

LIVING ENVIRONMENT STANDARDS

Section 5.1 Building and Grounds Conditions. Each Owner shall maintain the exterior of his or her Dwelling Unit in good condition and shall cause the Dwelling Unit to be repaired as the effects of damage or deterioration become apparent. If the Owner fails to properly perform such maintenance, Declarant or the Architectural Committee may, after giving thirty (30) days written notice, effect such repairs and maintenance as it deems necessary in its judgment to maintain the standards of the Community Area. Entry to effect such repairs and maintenance shall not be deemed a trespass and the Owner shall be liable for all costs incurred in connection with the repairs and maintenance.

Section 5.2 Garage Doors Garage Doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 5.3 Maintenance Equipment All maintenance equipment shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 5.4 Clotheslines Outdoor clothes poles, clotheslines, and other facilities for drying or airing of clothing or household goods shall not be placed on any Lot.

Section 5.5 Swingsets and Play Areas All swingsets, jungle gyms, slides and other similar improvements shall not exceed a height of eight feet, must be approved by the Architectural Committee prior to construction or installation of such Improvements, and shall be situated on the Lot so as not to obstruct the view from neighboring Lots.

Section 5.6 Refuse No unsightly objects or materials, including but not limited to ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefore, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collections. After a period of two weeks of continued violation of this Section 5.6, the Association or Declarant shall have the right to enter upon the Lot involved and remove such unsightly objects or materials at the expense of the Owner. Such an entry shall not be deemed a trespass and the Owner shall be liable for all costs incurred relative thereto.

Section 5.7 Nuisances No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any Dwelling Unit. No annoying lights, sounds or odors shall be permitted to emanate from any Lot or Dwelling Unit.

Section 5.8 Sound Devices No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any Improvement or within any Lot.

Section 5.9 Landscaping Landscaping, design, installation and maintenance shall be the responsibility of the Association or Declarant. Owners wishing to add or modify Landscaping on the property shall do so only after prior approval of the Architectural Committee. Small flower gardens may be installed and maintained by Owners without prior approval.

Section 5.10 Weeds All yards and open spaces and the entire area of every Lot on which no building has been constructed shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which in the reasonable opinion of the Association or Declarant are likely cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the reasonable opinion of the Association or Declarant causes undue danger of fire.

Section 5.11 Transmitters No electronic or radio transmitter of any kind other than garage door openers and remote control devices for televisions, stereos, video cassette recorders and similar equipment shall be operated in or on any Improvement or Lot.

Section 5.12 Animals No animals except domesticated birds or fish and other small domestic animals permanently confined indoors and except an aggregate of three domesticated dogs or cats shall be maintained in or on any Lot within the Community Area and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of the Association makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Community Area for any commercial purposes. No dogs or other pets shall be chained or

enclosed on a Lot outside of the Dwelling Unit, except the Architectural Committee, in its sole discretion, may approve dog runs or enclosures, subject to the provisions of Section 4.10.

Section 5.13 Parking of Vehicles

- (a) No motor vehicles owned, leased, rented or used by Owners or Related Users shall be parked overnight on any street within the Community Area
- (b) No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, any towed trailer unit or truck shall be parked overnight on any street or within any Lot except in a completely enclosed building such as a garage, or unless screened in a manner approved by the Architectural Committee. Pickup trucks having a $\frac{3}{4}$ ton or less manufacturer's rated capacity, with or without bed covers, and passenger vans for the private use of residents of a Dwelling Unit primary transportation on a day-to-day basis, shall not be considered trucks for purposes of the foregoing restrictions.
- (c) No motor vehicles shall be driven or parked within the Association Properties except as authorized by the Association.

Section 5.14 Inoperative Vehicles No unused, stripped down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot in such a manner as to be visible at ground level from any neighboring property or street, unless fully screened in a manner approved by the Architectural Committee. An unused vehicle shall be any vehicle which is not properly licensed or registered or has remained immobile for more than a week as determined by the Association.

Section 5.15 Vehicle Repairs No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed Improvement which screens from the sight and sound of the activity from adjoining streets and from neighboring property.

Section 5.16 Signs

The only signs permitted on any Lot or Improvement shall be:

- (a) one sign of customary size for offering of the signed property for sale or for rent;
- (b) one sign of customary size for identification of the occupant and address of any Dwelling Unit;
- (c) multiple signs for sale and administration purposes installed by, or with the permission of Declarant during development;
- (d) signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
- (e) such signs as may be required by law.

Except for permitted signs, there shall not be used or displayed on any Lot or Improvement, any signs or any banners, streamers, flags, light or other devices calculated to attract attention in aid of sale or rental. All permitted signs must be professionally painted, lettered and constructed.

ARTICLE 6

ARCHITECTURAL CONTROL

Section 6.1 Architectural Committee Declarant shall act as the Architectural Committee until it has sold all of the Lots in the Community Area, or until such earlier time as Declarant elects to assign the right to act as the Architectural Committee to the Board. After such assignment by Declarant, the Board shall appoint three or more members of the Association to act as the Architectural

Committee. The Architectural Committee shall exercise the functions assigned to it by this Declaration including reviewing and approving all plans for Improvements as provided in this Declaration.

Section 6.2 Approval Required No Improvement shall be placed, erected, installed or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until the plans and specifications for such Improvements shall have been submitted to and approved in writing by the Architectural Committee. Matters which require the approval of the Architectural Committee include but are not limited to:

- (a) the construction, installation, erection or expansion of any Dwelling Unit or any building, structure, or other Improvements (as defined in Section 2.14);
- (b) the installation of Landscaping;
- (c) the demolition or destruction, by voluntary action, of any building, structure or other Improvements;
- (d) the grading, excavation, filling or similar disturbance to the surface;
- (e) any change or alteration of any previously approved Improvements, including any change of exterior appearance, finish material, color or texture.

Section 6.3 Plans Submissions All plans, samples and other materials to be submitted to the Architectural Committee shall be submitted in duplicate. The minimal scale of these plans shall be one-twentieth inch equals one foot. The plat plan in this minimum scale shall show the location of all buildings, drives, walks, fences and any other Improvements. Proposed new contours throughout the Lot and abutting street elevations on all sides shall be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples.

Section 6.4 Approval Process All action required or permitted to be taken by the Architectural Committee shall be in writing and any such written statement shall establish the action of the Architectural Committee and shall protect any person relying on the statement. If the Architectural Committee does not execute and acknowledge such a statement within thirty days after delivery of all the required materials to the members of the Architectural Committee, the materials so delivered shall be deemed approved for the purpose of this Declaration. The Architectural Committee may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Committee for their services. The Architectural Committee shall be entitled to retain one copy of all approved plans as part of its files and records. Approvals of all plans and specifications for an Improvement will automatically expire within one year after approval if construction is not commenced within one year after approval, and if approval so expires, the applicant must resubmit a request for approval of the Improvement.

Section 6.5 Approval Standards In granting or withholding approval of matters submitted to it, the Architectural Committee shall consider, among other things, the adequacy of the materials for their intended use; the compatibility and harmonization of the external appearance of the Improvement in question with the surroundings, the proper relation of the Improvement to the size, shape and terrain of the Lot, the environment and the surrounding uses; the extent of disturbance of slopes and natural vegetation; and the degree, if any, to which the proposed Improvement will cause intrusions of sound, light or other effects on neighboring sites beyond those to be expected in a quality area from considerate neighbors. The Architectural Committee shall have the right to establish reasonable and consistent design standards and guidelines applicable to Improvements, provided they are not in conflict with any express provisions of this Declaration. The Architectural Committee shall have the right to disapprove any plans, specifications, or details submitted to it if it determines the proposed Improvement is not consistent with the above standards, if the plans and specifications

submitted are incomplete, or if the Architectural Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interest, welfare or rights of all or any part of the Community Area, the Association or the Owners. If the Architectural Committee believes there may be questions of structural integrity, it may, as part of the approval requirements, require certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. The decisions of the Architectural Committee shall be final and binding unless they are clearly arbitrary and there is no evidence to support the Architectural Committee's decision.

Section 6.6 Variances from Governmental Requirements Before submitting a request for a building, subdivision, zoning or any land use variance to the City of Colorado Springs or other governmental agency, an Owner must submit his request to the Architectural Committee for review and comment. Within thirty days after submittal, the Architectural Committee will provide comments and, in the event of disagreement, work with the Owner to reach agreement. Notwithstanding the fact that an Owner obtains a variance from the City of Colorado Springs or other governmental agency, the Architectural Committee shall, by majority vote, have the right to disapprove construction, additions, alterations or repairs if it finds that the Owner's proposal will not be in the interests of the Association or its Members. This power amounts to a veto. It may be enforced if necessary by legal action if the Association's Board of Directors so decides.

Section 6.7 No Liability. Neither Declarant, the Board nor the Architectural Committee or any member thereof shall be liable in damages or otherwise to anyone submitting plans to them for approval or requesting a variance, or to any Owner by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve any plans, specifications or variance. Approval by the Architectural Committee shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Committee to comply with all codes, ordinances and regulations.

ARTICLE 7

ASSOCIATION OPERATION

Section 7.1 Association Structure The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in the Association Documents. As more specifically set forth hereinafter, the Association shall have Board of Directors to manage its affairs. The Board of Directors shall be elected by its Members, provided, however, that the Declarant shall have the sole right to appoint a majority of the members of the Board of Directors for the period of time provided in Section 7.5.

Section 7.2 Board of Directors The affairs of the Association shall be managed by a Board of Directors. The number, terms and qualifications of the members of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws of the Association. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration or by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon all Members, Owners, Related Users and other Persons.

Section 7.3 Membership in Community Association Each owner shall be a Member of the Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot, Declarant shall hold one membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from the fee simple title to a Lot, except that an Owner and as Member of the Association to a contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the First Mortgage, sales contract or tenancy. The assignment of rights by an Owner pursuant to this section shall not be subject to any present or future statutory time limit for the duration of duly notarized proxy rights, but shall be in writing, and delivered to the Association before such Person shall be entitled to exercise any membership rights or privileges. All rights, title and privileges of membership shall be subject to the Association Documents.

Section 7.4 Voting Rights of Members Members shall have the right to cast votes for the election of Board of Directors and on such other matters to be voted on by the Members, as provided in the Association Documents. One vote is allocated to each Lot and Members shall have one vote for each Lot owned. Subject to the provisions of Section 310 of the Colorado Common Interest Ownership Act, Section 38-33.3-310, Colorado Revised Statutes, if more than one Person is the Owner of the Lot, the vote allocated to that Lot may be divided fractionally among the Owners in any manner they agree upon, or equally among them if they are unable to agree; provided, however, that not more than one vote may be cast for any one Lot. Voting rights and procedures may be further defined in the Articles and Bylaws of the Association. Notwithstanding the foregoing, Declarant shall have the reserved rights set forth in Section 7.5

Section 7.5 Declarant's Reserved Right to Appoint Notwithstanding any contrary provision, but subject to Section 303(6) of the Colorado Common Interest Ownership Act, Section 38-33.3-303(6), Colorado Revised Statutes, the Declarant hereby reserves the right to appoint a majority of the members of the Board of Directors, at all times subsequent to the date of recordation of this Declaration, which right shall terminate upon the occurrence of the first of the following events:

- (a) December 31, 2004,
- (b) by written notice from the Declarant to the President or Secretary of the Association of the Declarant's intent to terminate its right to appoint the majority of the members of the Board of Directors,
- (c) upon that date which is sixty days after 37 Lots have been sold to Owners other than Declarant; or
- (d) two years after the last conveyance of a Lot by Declarant in the ordinary course of business.

ARTICLE 8

DUTIES AND POWERS OF ASSOCIATION

Section 8.1 General Duties and Powers of Association The Association has been formed to further the common interests of the Members. The Association, acting through the Board or representatives to whom the Board has delegated such powers, shall have the duties and powers given non-profit corporations, including without limitation those hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance the Association Properties, and to improve and enhance the attractiveness, desirability and safety of the Common Area. The Association shall have and may exercise all powers enumerated in Section 302 of the Colorado Common Interest Ownership Act, Section 38-33.3-302, Colorado Revised Statutes. Except as expressly otherwise provided in the Association Documents or by Colorado law, the Association shall act through the Board of Directors,

without the vote or meeting of the Members, and the Board may exercise all rights, powers and interests of the Association, as described in this Article or elsewhere in the Association Documents.

Section 8.2 Duty to Accept Property and Facilities Transferred by Declarant The Association shall accept title to any property, including without limitation any Improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration. No representation, express or implied, is made that the Declarant will or will not transfer property to the Association.

Section 8.3 Duty to Manage and Care for Property The Association shall manage, operate, care for, maintain and repair all Association Properties and keep the same in an attractive and desirable condition for the use and enjoyment of the Members, provided however, maintenance responsibilities for any Association Properties shall not commence until Assessments commence. This maintenance obligation specifically includes the obligation to maintain all Landscaped areas within Lots owned by the Owners of the Lots, except those areas inside fence lines erected pursuant to Section 4.11, which the Owner is obligated to maintain as provided in Section 4.11. The Association shall maintain all private roads and utilities.

Section 8.4 Not included in original

Section 8.5 Duty to Maintain Insurance The Association shall obtain and keep in full force and effect at all times insurance coverage in accordance with this Declaration and as required by Colorado law. Insurance shall include liability coverage for the Association's common areas and easements, as more particularly provided in Article 12.

Section 8.6 Duty to Levy and Collect Assessments The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 8.7 Duties with Respect to Architectural Approvals The Association shall perform functions to assist the Architectural Committee as elsewhere provided in this Declaration.

Section 8.8 Power to Acquire and Maintain Property and Construct Improvements The Association may acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The Association may construct or reconstruct Improvements on property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Community Area, whether or not owned by the Association. This shall include maintenance of private roads, utilities and walkways.

Section 8.9 Power to Adopt Rules and Regulations The Association may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use of and enjoyment of Association Properties, and the use of any other property within the Community Area, including Lots. Any such Rules and Regulations shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Rules and Regula-

tions shall be effective upon adoption by resolution of the Board of Directors. Written notice of the adoption, amendment, or repeal of any Rule or Regulation shall be provided to all Members by the Association, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the copying cost. Each Owner, Related User, Member and other Person shall comply with such Rules and Regulations and shall see that Related Users of such Member comply with the Rules and Regulations. Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, the provisions of this Declaration shall prevail.

Section 8.10 Power to Enforce Declaration and Rules and Regulations The Association shall have the power to enforce the provisions of the Association Documents, and shall take such action as the Board deems necessary or desirable to cause compliance by each Member, other Person, and Related Users of each Member without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of the Association Documents by any one or more of the following means: (a) by entry upon any property within the Community Area after any notice and hearing required by the Bylaws (unless a bona fide emergency exists), without liability to the Owner or occupants thereof, for the purpose of enforcement of or causing compliance with the Association Documents; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach of threatened breach of the provisions of the Association Documents, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of the Association Documents; (d) by exclusion, after any notice and hearing required by the Bylaws of any Member, related User or other Person from use of any Association Properties for a period not to exceed sixty days as a penalty for any breach of the Association Documents by a Member, Related User or other person; (e) by suspension, after notice and hearing required by the Bylaws, of the voting rights of a Member during and for up to sixty days following any breach by such Member or a Related User of such Member of the Association Documents, unless the breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues; (f) by levying and collecting, after notice hearing required by the Bylaws, unless the violation consists of failure to pay any Assessment, in which case notice and hearing shall not be required, a Site Assessment against any Member for breach by the Member or a Related User of such a Member of the Association Documents; (g) by levying and collecting, after any notice and hearing required by the Bylaws, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member, Related User or other person for breach by such Member, Related User, or other person of the Association Documents, (h) by performing any duty of any Member, Related User or other Person or correcting any violation or breach of the Association Documents and oppugning, upon demand, reimbursement for all expenses related thereto as a Site Assessment; and (i) by exercising any right or remedy permitted by law or in equity.

Section 8.11 Power and Duty to Enforce Association Documents The Association shall have the power and duty to enforce the covenants, terms and provisions of the Association Documents.

Section 8.12 Power to Provide Special Services The Association shall have the power to provide special services beyond this Declaration to a Member or group of Members and any services to any other Person. Any such service or services shall be provided pursuant to an Agreement in writing, or through one or more amendments to this Declaration, which shall provide for payment to the Association by such Member or group of Members or other Persons of the costs and expenses which the Association estimates it will incur in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Member or group of Members or other Persons, and may be collected in the same manner as a Site Assessment, or, if the written agreement so provides, in installments as part of the Common Assessments or may be collected in any manner permitted by law or statute or the Association Documents.

Section 8.13 Power to Operate and Charge for Facilities The Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, including, without limitation, landscape maintenance and refuse collection, or any other similar or dissimilar function, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities, or services of the Association. Such charges or fees shall be as determined from time to time by the Board of Directors.

Section 8.14 Power to Grant Easements The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under Association Property for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, or other uses or services to some or all of the Members.

Section 8.15 Power to Employ Managers The Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management of any functions for which the Association has responsibility under this Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to the manager. Any contract or agreement with a manager shall be terminable by the Association for cause on no more than thirty days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety days' prior written notice. No such contract or agreement shall be for a term of more than one year. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, power and functions. In addition to a manager, the Association may employ and pay a consultant, which may be Declarant, an affiliate of Declarant, or a third party, to assist in operating and managing the Association after the Declarant's reserved rights under Section 7.5 terminate. Notwithstanding any contrary provision, any management agreements entered into prior to the termination of the Declarant's reserved rights under Section 7.5 shall be subject to review and approval by FHA or VA as to length and other provisions, and shall terminate absolutely, in any event, no later than thirty days after the Declarant's reserved rights under Section 7.5 terminate.

Section 8.16 Power to Engage Employees, Agents and Consultants The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and retain and pay for such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Association Documents.

Section 8.17 General Corporate Power The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act and all powers contained in Section 302 of the Colorado Common Interest Ownership Act, Section 38-33.3-302, Colorado revised Statutes, subject to any limitations, restrictions, or requirements expressly set forth in the Association Documents.

Section 8.18 Other Powers The Association shall have the power to regulate the days and hours during which trash and solid waste may be collected or put out to collection in any portion of the Community Area, and the Association may require all Owners to use a common trash collection company or entity selected by the Board. The Association shall also have the power to provide services for the collection of trash and solid waste within all or any portions of the Community Area. The Association shall have the power, but not any duty, to sponsor or conduct various community activities or special events of a social or recreational nature, to hire and provide a security or courtesy patrol, which shall be unarmed and shall not be a substitute for the municipal police, and to provide general informational services which may include, without limitation, community newsletter, radio broadcast, cable television services, and similar services.

ARTICLE 9
ASSOCIATION PROPERTIES

Section 9.1 Right of Association to Regulate Use To the extent the Association hereafter owns, holds or has property, the provisions of the Article 9 shall apply. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members to enhance further the overall rights of use and enjoyment of all Members, including without limitation, imposing limits on the times of use and numbers of guests permitted to use Association Properties. The Association will maintain all Association Properties as provided in Section 8.3.

Section 9.2 Property That Must Be Conveyed No later than thirty days after Declarant transfers the last Lot in the Community Area to an Owner other than Declarant, Declarant shall convey to the Association the tract of land owned by Declarant and identified on the Plat as Open Space.

Section 9.3 No Partition of Association Properties No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

Section 9.4 Liability of Owners for Damage Each Owner shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or a Related User of the Owner, and for any violation by such Owner or a Related User of the Owner, and for any violation by such owner or Related user of the Association Documents. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Site Assessment against a member, Owner, Residential Site, Related User, or other Person to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of the Association Documents, including without limitation, interest, costs, expenses and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 9.5 Damage to Association Properties In the event of damage or destruction of all or a portion of the Association Properties due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, then the Association shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to this Declaration and shall proceed to make such repairs or reconstruction, unless the Owners and First Mortgagees agree not to repair and reconstruct such damage in accordance with the terms and provisions of this Declaration. No distributions of insurance proceeds shall be made to the Owners, unless made jointly payable to Owners and the First Mortgagees, if any. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction or replacement, the Association may use the excess for future maintenance, repair, and operation of and improvements to Association Properties.

Section 9.6 Association Powers in the Event of Condemnation.

- (a) If proceedings are initiated by any government or agency thereof seeking to take any real property owned by the Association or any interests therein or part thereof; including any Improvements, the Association shall give prompt notice thereof, including a description of the part of or interest in the property owned by the Association nor Improvements thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the property owned by the Association, any part

thereof or any interest therein, and each Owner hereby appoints the Association as the Owner's attorney-in-fact for such purposes. Any award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

- (b) If all of the property owned by the Association is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, any award or settlement shall be apportioned by the Association on such fair and equitable basis as the Association determines to be appropriate in the circumstances, or as determined by judicial decree. If the allocation of the condemnation award is already established in the negotiations, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent that it is relevant and applicable.
- (c) If less than all of the property owned by the Association is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condemnation award shall first be applied by the Association to the rebuilding and replacement of those Improvements on the property owned by the Association which are damaged or taken by the condemning public authority, if such rebuilding or replacement is reasonably practical, unless Members with at least sixty-seven percent of the voting power of the Association and unless sixty-seven percent of the First Mortgagees (based upon one vote for each First Mortgage held) agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be distributed by the Association on the same basis as indicated in the subparagraph (b) of this section. No provision of this Declaration or any other document relating to the property owned by the Association shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee, pursuant to a first mortgage, awarding distribution of insurance proceeds or condemnation awards for losses to or taking of property owned by the Association.

ARTICLE 10

DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

Section 10.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Community Area, the Association and the Association Properties for a period of ten years after the date this Declaration as recorded in the real property records of El Paso County, Colorado, or until such earlier date when Declarant ceases to own any real property within the Community Area. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment.

Section 10.2 Declarant's Development Rights For the period stated in Section 10.1. Declarant shall have the following development rights:

- (a) Declarant may add real property to the Community Area, but only if the property to be added is adjacent to or surrounded by the real property described on Exhibit A and only to the extent necessary to correct errors or omissions in the legal description contained in Exhibit A;

- (b) Declarant may create additional Association Properties within the Community Area or convert any of the Lots within the Community Area to Association Properties, subject to the limitation contained in Section 10.8; and
- (c) Declarant may withdraw any portion of the real estate contained within the Community Area, as described on Exhibit A and as shown on the Nat, from the Community Area and release such withdraw property from the provisions of this Declaration.

All of the foregoing development rights shall be exercised by Declarant, if at all, in accordance with section 210 of the Colorado Common Interest Ownership Act, Section 38-33.3-210, Colorado Revised Statutes. Except as specifically limited in section 10.2 (a) with respect to Declarant's right to add real property to the Community Area, all of the development rights set forth above may be exercised by Declarant with respect to all or any portion of the Community Area. No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of the Community Area may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them. If Declarant does exercise a development right in any portion of the Community Area, Declarant is not obligated to exercise that development right in all or any other portion of the remainder of real estate affected by the exercise of the development right or in all or any other portion of the remainder of the Community Area.

Section 10.3 Change in Number of Lots If Declarant exercises its rights to convert Lots to Association Properties or to withdraw Lots as provided in Section 10.2, voting rights shall continue to be allocated to each new Lot in accordance with section 7.4 (i.e., one vote is allocated to each lot), and each Lot shall bear its share of Assessments in accordance with Article 11.

Section 10.4 Special Declarant Rights For the period stated in Section 10.1, and as more particularly set forth in this Article 10 or elsewhere in this Declaration, Declarant shall have the following special Declarant rights:

- (a) to complete any Improvements shown on the Plat or any Supplemental Plat;
- (b) to exercise any development rights set forth in Section 10.2;
- (c) to maintain anywhere within the Community Area, sales offices, management signs advertising the Community Area and model homes;
- (d) to use easements through the Association Properties for the purpose of making improvements within the Community Area; and
- (e) to appoint or remove any officer of the Association or any member of the Board Directors appointed by Declarant.

Section 10.5 Right to Construct Additional Improvements on Association Properties Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional Improvements on Association Properties at any time and from time to time in accordance with this Declaration for the improvement and enhancement of the Association Properties and for the benefit of the Association and the owners.

Section 10.6 Declarant's Rights to Use Association Properties in Promotion and Marketing. Declarant shall have and hereby reserves the right to use the Association Properties and to use the services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Community Area or nearby areas. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Association Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Community Area; may use vehicles and equipment on Association Properties for

promotional purposes; and may permit prospective purchasers of property within the boundaries of the Community to use Association Properties.

Section 10.7 Declarant's Rights to Complete Development of Community Area No Provision of this Declaration shall be construed to prevent or limit Declarant's [rights to] complete the development of property within the boundaries of the Community Area or nearby areas and to subdivide, re-subdivide, or re-zone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Community Area; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Community Area or to post signs incidental to development, construction, promoting, marketing, sales or leasing of property within the boundaries of the Community Area. Nothing contained in this declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to make changes or modification to Article 6 of this Declaration by means of an amendment to this Declaration; to change any landscaping, grading, drainage, vegetation, or view; or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant, or to use any structure on property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Community Area, nor shall anything herein be deemed to require Declarant to seek or obtain the approval of the Architectural Committee or of the Association for any such activity or Improvement to Property by Declarant on any property owned by Declarant or by the Association. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in the Association Documents, which rights are incorporated in this section by this reference.

Section 10.8 Maximum Number of Lots Notwithstanding any other provision of this Declaration, the maximum number of Lots that Declarant may create within the Community Area is 49.

Section 10.9 Declarant's Approval Until Declarant no longer has the right to appoint a majority of the Board, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Association Properties; mortgage the Associations Properties; use Association Properties other than for the benefit of Members, levy any Special Assessment; change or repeal any rules of the Architectural Committee; make any substantial reduction or change in Association services, or make any amendment of Association Documents.

ARTICLE 11

ASSESSMENTS

Section 11.1 Obligation for Assessments Each Owner, for each Lot owned within the Community Area, by acceptance of a deed therefore or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments which are described in the Association Documents and which shall be both a personal obligation of the Owner and a lien against his Lot as provided therein. Each Owner shall be jointly and severally liable to the Association for the payment of all Assessments attributable to them and/or their Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for herein by non-use of the Association Properties or the facilities contained therein, by abandonment or leasing of his Lot, or by asserting any claims against the Association, the Declarant or any other person or entity. In addition, of the foregoing Assessments, charges, fees and other sums, each Owner

shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot. All property dedicated to and accepted by a public or governmental authority and the Association Properties shall be exempt from Assessments hereunder.

Section 11.2 Purpose of Assessment The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Association Properties as more specifically provided herein.

Section 11.3 Common Assessments The Common Assessment may include, but shall not be limited to, the following common expenses:

- (a) expenses of management of the Association and its activities;
- (b) taxes and special assessments upon the Association's real and personal property;
- (c) premiums for all insurance which the Association is required or permitted to maintain;
- (d) common services to Owners as approved by the Board;
- (e) landscaping and care of the Association Properties, including Landscaped areas within Lots, and any recreational or other Association facilities or improvements located thereon;
- (f) repairs and maintenance that are the responsibility of the Association;
- (g) wages for Association employees and payments to Association contractors;
- (h) legal and accounting fees for the Association;
- (i) any deficit remaining from a previous Assessment year;
- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of Association Property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by Special Assessments;
- (k) the creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies, and
- (l) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

Common Assessments shall be paid monthly as provided in Section 11.6.

Section 11.4 Declarant's Obligation Until assessments are first levied by the Association pursuant to this Article 11, Declarant shall pay all common expenses of the Association described in Section 11.3.

Section 11.5 Maximum Common Assessments

- (a) Subject to the authority of the Board of Directors to set reduced assessments for early or lump-sum payment of Common Assessments, or portions thereof, the payment of Common Assessment on Lots, until the commencement of the second fiscal year of the Association, shall be no more than \$1,440 per Lot.
- (b) Effective with commencement of the second and each subsequent Association fiscal year, the maximum annual Common Assessment against each lot may, at the Board's option, be increased effective each fiscal year by the greater of: (i) the percentage increase, if any, the Consumer Price Index published by the U.S Department of Labor, Washington, D.C., for All Items and Major Group Figures for the Denver, Colorado Metropolitan Area (1967=100) ("Consumer Price Index) for the one year period ending with the last month prior to commencement of the Association's fiscal

year for which the Consumer Price Index has been published at the time the Common Assessment is determined; or (ii) ten percent. The aforesaid annual increase in the maximum annual Common Assessment shall occur automatically upon the commencement of each Association fiscal year without the necessity of any action being taken with respect thereto by the Board unless it directs otherwise. In the event that the Consumer Price Index is not published, for whatever reason, then the increase in the maximum annual Common Assessment, as provided herein, shall be calculated by using a substantially comparable index designated by the Board of Directors.

- (c) Effective with the commencement of the second and each subsequent Association fiscal year, the maximum annual Common Assessment may be increased for the next succeeding fiscal year and subsequent fiscal years above that established in accordance with subsection (b) of this section by a vote of the Members with at least sixty-seven percent of the total voting power of the Association at a meeting duly called for this purpose, written notice of which setting forth the purpose therefore shall be sent to all Members not less than thirty days or more than sixty days in advance of such meeting.
- (d) The Board of Directors may, at any time and from time to time, after consideration of the projected maintenance costs and other financial needs of the Association, fix the actual Common Assessment against each Lot in an amount less than the maximum; provided, however, the written notice of any change in the amount of the actual; Common Assessment (whether to an amount less than or equal to the maximum), shall be sent to every Owner at least thirty days in advance of the effective date of such change.

Section 11.6 Common Assessment Procedure

- (a) After this Declaration is recorded, the Board of Directors shall set the total annual Common Assessment for 1997 based upon an estimated budget for the Association for 1997. No later than ninety days before the beginning of each year after 1997, the Board of Directors shall set the total annual Common Assessment based upon an advanced budget of the Association's requirements for the following Assessment year. Within thirty days after adoption of the Association's budget for each year by the Board, the Board shall mail by ordinary first-class mail, or otherwise deliver, a summary of the budget to all Owners and shall set a date for a meeting of the to consider ratification of the budget not less than fourteen nor more than sixty days after mailing or other delivery of the budget summary. Unless at that meeting a majority of all Owners rejects the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.
- (b) After approval of the budget by the Owners, the Board shall cause to be prepared, delivered or mailed to each Owner, at least thirty days in advance of the date payment is due, a payment statement setting forth the annual Common Assessment. That annual Common Assessment shall be payable in advance in monthly installments due on the first day of each successive month. All payments of Common Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Board. Common Assessments shall be applicable to all Lots, including those owned by Declarant. Each Owner other than Declarant shall become responsible for Common Assessments on a Lot as of the date the Lot is transferred to such Owner. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as established pursuant to the Bylaws of the Association.
- (c) At the first closing of the purchase of each Lot after a house has been constructed on that Lot, the Purchaser, who shall become an Owner upon closing of the purchase, shall pay to the Association at such closing an amount equal to the Common Assessment for the Lot for the balance of the month in which closing occurs. If Declarant

has previously paid the Common Assessment for that month, the Association shall refund to Declarant an amount equal to the Common Assessment paid to the Association by the new Owner As provided in Section 11.6 (b) above, the Board may adopt Rules and Regulations requiring prepayment of the Common Assessments for an additional period not to exceed an additional two months.

Section 11.61 Declarant's Rights to Suspend Common Assessments Declarant shall have and hereby reserve the right to suspend the collection of Common Assessment dues at their discretion. In the event Common Assessment dues have been suspended for such period of time, the Declarant shall be responsible for all cost and expenses incurred by the Association during this period. During the suspension period, Common Assessment dues shall not be considered to be in arrears for each Lot owner. Declarant shall notify each Lot owner in writing 30 days prior to suspending dues and 30 days to reinstating such dues as described in Section 11.6.

Section 11.7 Rates of Assessment Common Assessments and Special Assessments shall be sufficient to meet the expected needs of the Association. Special Assessments shall be allocated equally and uniformly among all Lots, so that each Owner is obligated to pay an equal Special Assessment for each Lot owned. The rate for Special Assessments shall be determined by dividing the total Special Assessments payable for any Assessments period, as determined by the ratified budget, by the number of Lots then subject to this Declaration. The resulting quotient shall be the amount of the Special Assessment payable with respect to each Lot Common Assessments shall differ depending on whether or not a Lot contains a completed Dwelling Unit. The Common Assessment payable with respect to a Lot upon which a Dwelling Unit has been substantially completed shall be five times the Common Assessment for a Lot on which a Dwelling Unit has not been substantially completed Common Assessments shall be determined according to the following formula

$$X(VL) + 5X (LDU) = CE$$

In the foregoing formula, "VL" is the number of Lots within the Community Area without substantially completed Dwelling Units on them, "LDU" is the number of Lots within the Community Area on which substantially completed Dwelling Unit exists, and "CE is the total expenses of the Association for the period in question to be paid by Common Assessments, as determined by the approved budget. When these numbers are inserted in the equation an it is solved for X, X will be the annual Common Assessment for a Lot without a substantially completed Dwelling Unit and 5 times X will be the annual Common Assessment for a Lot with a substantially completed Dwelling Unit. If a Dwelling Unit is completed on a lot after the Common Assessment for a year has been levied and paid, the Assessment for that Lot will not be changed until the following year. After such time as there are no longer any Lots without substantially completed Dwelling Units on them, the rate for Common Assessments shall be determined by dividing the total expenses of the Association for the period in question to be paid by the Common Assessments, as determined by the approved budget, by the number of Lots then subject to this Declaration, so that each Owner is obligated to pay an equal Common Assessment for each Lot owned The amount of the Common Assessment must be ratified by the Owners s Part of the budget in accordance with the procedures set forth in Section 11.6(a).

Section 11.8 Failure to Fix Assessments The failure by the Board of Directors to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period.

Section 11.9 Special Assessments In addition to Common Assessments, the Board of Directors may, subject to the provisions of this section and upon the approval of a budget for Special Assessments approved by the Owners substantially in accordance with the procedures set forth in Section 11.6(a), and upon receipt of any necessary approval by the FHA or VA until Decla-

rant's reserved rights under Section 7.5 terminate, levy Special Assessments for the purpose of raising funds to construct or reconstruct, repair or replace capital Improvements upon Association Properties, including personal property relating thereto; to add to the Association Properties: to provide for necessary facilities and equipment; to offer the services authorized in this Declaration, to correct any deficit or cost overrun; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments shall be equally, uniformly imposed upon Lots as provided in Section 11.7. At any time that insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed Improvements on the Association Properties, or on any other property which the Association maintains, the Association may levy Special Assessments for the purpose of repair or reconstruction of such damaged or destroyed Improvements, all such Special Assessments shall be equal to the amount by which the cost of repair or reconstruction of Improvements exceeds the sum of insurance proceeds awarded for the damage or destruction, and shall be set in the same manner as other Special Assessments. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owner shall pay any such Special Assessment in the manner so specified.

Section 11.10 Site Assessments. The Board of Directors may, subject to the provisions of this section, levy a Site Assessment against any Member, Owner, or Lot if the willful or negligent acts or omissions of the Member, Owner or a Related User cause any violation of the Association Documents or cause any loss or damage to the Association or Association Properties or cause an expenditure of funds in connection with the enforcement powers of the Association. Except for a default consisting solely of a failure to timely pay any Assessment, including, without limitation, Special Assessments or Common Assessments, which shall not require any notice and hearing, a Site Assessment shall be levied only after such notice and hearing, as may be required by the Bylaws. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is owing. Imposition or non-imposition of Site Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies.

Section 11.11 Costs of Enforcement, Late charges and Interest. If any Assessment is not paid within ten days after it is due, the Member, Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys fees, court costs, witness expenses, and all related expenses, and to pay a reasonable late charge to be determined by the Board. Any Assessment which is not paid within ten days after the date of any notice of default given under Section 11.13 shall bear interest from the due date at a rate determined by the Board, not to exceed the lower of twenty-one percent (21%) per annum, or the maximum rate permitted by law, from the due date until paid.

Section 11.12 Attribution of Payments If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board of Directors, in its discretion, determines.

Section 11.13 Notice of Default and Acceleration of Assessments If any Assessment is not paid within thirty days after its due date, the Board of Directors may mail a notice of default to the Owner and to each First Mortgage of the Lot who has requested a copy of such notice. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default, (c) a date not less than twenty days from the date of mailing of the notice by which such default must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for the Assessment against the Lot of the Owner. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of

payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all charges and interest thereon in any manner authorized by law or in the Association Documents.

Section 11.14 Remedies to Enforce Assessments Assessment levied hereunder shall be a separate, distinct and person all debt and obligation of the Owner against whom it is assessed. In the event of a default in payment any Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and expenses of collection, and this covenant shall be a charge on the land and a continuing lien upon the Residential Site against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is (filed in accordance with Section 11.16).

Section 11.15 Lawsuit to Enforce Assessments The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement against the defaulting Owner, including, without limitation, reasonable attorneys' fees.

Section 11.16 Lien to Enforce Assessments The Association shall have a lien for Assessments (the "Lien") as provided in Section 316 of the Colorado Common Interest Ownership Act, Section 38-33.3-316, Colorado Revised Statutes. In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its lien as provided by law and in this section. The Board may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth (a) the amount of the claimed delinquency, (b) the interest and expenses of collection of which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The Lien shall have the priority provided by the Colorado Common Interest Ownership Act and shall be prior to any declaration of homestead rights recorded after the time that the Lot becomes part of the Community Area. The acceptance of a deed to a Lot subject to this declaration shall constitute a waiver by the Owner of the homestead exemption as against said Lien, the Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all court costs, recording costs and filing fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same. The lien under this section shall be subject to the provisions and restrictions of Section 14.7 hereof.

Section 11.17 Estoppel Certificates Upon the payment of such reasonable fee as may be determined from time to time by the Board of Directors, and upon the written request of any Member or Owner and any Person which has, or intends to acquire, any right, title or interest in the Lot of such Member or Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Site which is not yet due and payable. Such statement shall, with respect to the Person whom it is issued, if

relied thereupon it in good faith and without actual knowledge to the contrary, be conclusive against the Association.

Section 11.18 No Offsets All Assessments shall be payable in the amounts specified in the levy thereof, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association, including the making of repairs or Improvements to Association Properties, or because an Owner claims that particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

Section 11.19 First Owner Assessments The Board may, at its option, require the first Owner, at the time when Assessments commence under section 11.6, to make a non-refundable contribution to the Association of an amount not to exceed the Common Assessment payable for three months with respect to the Lot in effect on the date of delivery of the deed conveying the Lot. All such contributions shall be maintained in a non-segregated working capital account for the use and benefit of the Association for, among other purposes, meeting unforeseen expenditures or purchasing additional equipment, property or services. The working capital contribution shall be in addition to the Assessment, and shall not relieve the owners from paying all Assessments as the come due.

ARTICLE 12

INSURANCE

Section 12.1 Insurance on Association Properties The Association shall maintain insurance covering all insurable Association Properties. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article 12, the Association may also consider, in determining the type and amount of insurance it needs to obtain, the then-existing requirements of the Agencies.

- (a) A policy of property insurance covering all insurable Association properties for broad form covered causes of loss, in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date. exclusive of land, excavations, foundations and other items normally excluded from property policies Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:
 - (i) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
 - (ii) such other risks as at the time are customarily covered with respect to associations having property similar in construction, location and use, including all periods normally covered by the standard "all risk" endorsement, where such is available
- (b) A comprehensive policy of commercial general liability insurance covering all of the Association Properties, insuring the Association in an amount considered acceptable to FNMA but not less than \$1,000,000.00, covering bodily injury, including death, personal injury and property damage liability arising out of a single occurrence Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths in connection with the operation, maintenance or use of the Association Properties, legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-

owned and hired automobiles Such coverage may also include, if applicable, comprehensive automobile liability insurance, garagekeepers liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and insurance coverage of such other risks as are customarily required by private institutional mortgage investors with respect to associations having property similar in construction, location and use. This policy shall insure the Association, the Board of Directors, the Associations managing agent (if any), and their respective employees, agents and all persons acting as agents. Declarant shall be included as an additional insured in its capacity as an Owner of Lots. The Owners shall be included as additional insureds but only for claims and liabilities arising from the ownership, existence, use or management of the Association Properties. The insurance shall cover claims of one or more insured parties against other insured parties

- (c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all other who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum of finds, including reserves, held by the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two months aggregate Common Assessments on all Lots, plus the Associations reserve finds. Such fidelity coverage or bonds shall meet the following requirements
 - (i) all such fidelity coverage or bonds shall name the Association as an obligee,
 - (ii) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of person who serve without compensation from any definition of "employee" or similar expression.

In the event that the Association has delegated some or all of its responsibility for the handling of finds to a manager, the Association may require the manager to purchase, at the manager's own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of the paragraph (c).

- (d) In addition, the Association may obtain insurance against such other risks of similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association and the members of the Architectural Committee and other representatives.
- (e) Notwithstanding any other provision of the Association Documents, all insurance acquired by the Association shall satisfy the requirements of Section 313 of the Colorado Common Interest Ownership Act, Section 38-33.3-313, Colorado Revised Statutes.
- (f) Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and a fidelity bond, meeting the insurance and fidelity bond requirements established by FNMA, GNMA, FH.LMC, VA and FHA. as applicable, so long as any of the foregoing is an owner or holder or insurer of a First Mortgage and has filed with the Board a written request that the Association conform with such insurance requirements, except to the extent such coverage is not available or has been waived in writing by FHLMC, FNMA, GNMA, VA and FHA, as applicable Certificates of insurance shall be issued to each Owner and mortgagee upon written request and payment of a reasonable fee.

Section 12.2 General Provisions of Insurance Policies All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association, or its designee, as trustee and attorney-in-fact for all Owners, as the insured, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the

Association. The policy or policies shall contain a standard non-contributory First Mortgagees clause in favor of each First Mortgagee, and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty days' prior written notice thereof is given to the insured and to each First Mortgagee, insurer or guarantor of a First Mortgage. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest including First Mortgagees, upon request and payment of a reasonable fee. Any such Owner's policy shall also contain waivers of subrogation. Additionally, all policies shall contain waivers of any defense based on invalidity arising from any act or neglect of an Owner where such Owner is not under the control of the Association. Insurance obtained by the Association, to the extent reasonably feasible, and provided that Declarant reimburses the Association for any additional premium payable as a result, shall name Declarant as an additional insured and shall contain a waiver of subrogation rights against Declarant. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

Section 12.3 Deductibles No policy or insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of \$10,000.00 or one percent of the face amount of the policy. Any deductible shall be payable by the Person responsible for the repair and maintenance of the damaged or destroyed property which is the subject of an insurance claim. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the parties sharing in such joint duty, or may be partly or wholly borne by the Association, at the election of the Board of Directors.

Section 12.4 Insurance Trustee The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interests may appear.

Section 12.5 Acceptable Insurance Companies Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current credit or financial rating, which meets any applicable requirements of the Agencies, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy in (a) the terms of the insurance company's charter, bylaws, or policy provide that contributions or assessments may be made against mortgagor or mortgagee's designee, or (b) the terms of the carrier's charter, bylaws, or policy provide that loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent First Mortgagees or any Owner from collecting insurance proceeds.

Section 12.6 Other Insurance to be Maintained by Owners Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot, and hazard insurance coverage on the Improvements owner by each Owner shall be the responsibility of the Owner of such Lot.

Section 12.7 Annual Review of Insurance Policies All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association

Section 12.8 Owners' Negligence Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Association Property is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction may be collected as Site Assessment as provided in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by law. A determination of the negligence or willful act or omission of any Owner or any Related User of such Owner, and the amount of the Owner's liability therefore, shall be determined by the Board of Directors at a hearing after any notice required by the Bylaws to be given to the Owner, but any determination by the Board of Directors shall be subject to judicial review as appropriate.

ARTICLE 13

EASEMENTS

Section 13.1 Easement for Encroachments If any portion of an Improvement encroaches upon the Association Property, including any fixture encroachments arising or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, the Board may grant a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restrictions imposed by the Board.

Section 13.2 Association Easement An easement to perform its maintenance or other rights or obligations pursuant to this Declaration is hereby granted to the Association, its officers, agents, employees and assigns, upon, across, over, in and under the Community Area, together with the right to make such use of the Community Area and to enter upon any and all Lots as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

Section 13.3 Landscaping Easements Declarant hereby creates and reserves to itself (for as long as it owns real property within the Community Area) and to the Association, a perpetual alienable, divisible and releasable easement on, over, under, in and across each of the areas shown as Landscaping Easements on the Plat, to plant, cultivate, install, maintain, repair and replace Landscaping. The Association is obligated to maintain all Landscaping within these Landscaping Easements.

Section 13.4 Utilities Declarant hereby creates and reserves to itself until Declarant has sold the last Lot in the Community Area to an Owner other than Declarant, and, thereafter, to the Association:

- (a) perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the seven foot strips along and adjoining each rear Lot Line of each Lot, and each of the five foot strips along and adjoining each side Lot Line of each Lot for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, (or water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes; and
- (b) a blanket easement across, over and under the Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone and electricity.

If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The Association shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Community Area to the first Owner thereof other than Declarant. The easement provided for in this section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Community Area

Section 13.5 Easements Deemed Created All conveyance of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 13, whether or not specific reference to such easements or to this Article appears in the instrument of such conveyance.

Section 13.6 Easements of Record In addition to the easements created in this Article 13, the Community Area is subject to those easements and other matters currently of record in El Paso County, Colorado and identified on the attached Exhibit C.

ARTICLE 14

MISCELLANEOUS

Section 14.1 Term of Declaration Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty years after the date when this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten years which unless terminated by agreement of the Owners with at least two-thirds of the voting power of the Association, in the manner provided in Section 218 of the Colorado Common Interest Ownership Act, Section 38-33.3-218, Colorado Revised Statutes.

Section 14.2 Amendment of Declaration by Declarant or the Association

- (a) Until the first Lot subject to this Declaration has been conveyed by Declarant by recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination
- (b) Declarant may amend the Declaration to the extent it is permitted to do so by the Colorado Common Interest Ownership Act.
- (c) The Association may amend the Declaration as permitted by the Colorado Common Interest Ownership Act

Section 14.3 Amendment of Declaration by Members Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members with at least sixty-seven percent of the voting power of this Association, in accordance with the requirements of Section 217 of the Colorado Common Interest Ownership Act, Section 38-33.3-217, Colorado Revised Statutes.

Section 14.4 Agency Amendments Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies, then, subject to the following sentence of this section, Declarant

shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to the conveyance of the last Lot in the Community Area owned by Declarant to the first Owner (other than Declarant), and each such amendment must contain thereon the written approval of the VA or FHA.

Section 14.5 Required Consent of Declarant to Amendment Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot in the Community Area has been conveyed by Declarant to the first Owner other than Declarant.

Section 14.6 Special Rights of First Mortgagees Any First Mortgagee, upon filing a written request therefore with the Association, shall be entitled to (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owners obligations under the Association Documents, which default is not cured within sixty days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon request, receive a copy of financial statements of the Association, including any annual financial statement, within ninety days following the end of any fiscal year of the Association.; (d) receive written notice of all meetings of Members; (e) designate a representative to attend any meeting of Members; (f) receive written notice of abandonment or termination of the Association or of this Declaration; (g) receive notice of any amendment to this Declaration, the Articles of Incorporation or the Bylaws; (h) receive written notice of termination of any agreement for professional management of the Association or the Association Properties following a decision of the Association to assume self-management of the Association Properties; and (i) receive written notice of any damage to the Association Properties if the cost of reconstruction exceeds \$10,000.00, and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

Section 14.7 Priority of First Mortgage Over Assessment Each First Mortgagee who recorded its First Mortgage before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title, other than allocation of any deficiency prorated among all Members of the Association. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, or on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale Pursuant to a judicial foreclosure and receipt of the Sheriffs Certificate of Purchase, as the case may be.

Section 14.8 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Association Properties, and may pay any overdue premiums on hazard insurance policies for any Association Properties, or may secure new coverage if the insurance policy on any Association Properties lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 14.9 FHA/VA Approval Until the termination of Declarant's reserved rights under Section 7.5, and provided further that the FHA or the VA is insuring or guaran-

teeing or has agreed to insure or guarantee loans in any portion of the Community Area with respect to initial sales of Lots by Declarant, the following actions shall require the prior review of the FHA or the VA, in accordance with the procedure set forth herein: (a) dedication of any of the Association Properties, or (b) annexation of any additional real property to the Community Area; or (c) material amendments of the Articles of Incorporation or the Bylaws of the Association.

Section 14.10 Evidence of Required Approvals Whenever the validity of any amendment of or revocation of this Declaration is conditioned upon voting by a stated percentage of Members and approval by First Mortgagees or Agencies, or both, the recorded document implementing the amendment or revocation shall contain a certification by an officer of the Association that the approvals of the required percentages of Members, First Mortgagees and Agencies were obtained. The Association shall keep on file in its offices such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the officer's certificate on the recorded instrument shall be sufficient public notice of compliance.

Section 14.11 Notices Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, telephone or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person of the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

Section 14.12 Persons Entitled to Enforce Declaration The Association, acting by authority of the Board, or any Member, shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or the other Association Documents. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents and at law or in equity.

Section 14.13 Violations Constitute a Nuisance Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 14.15 Remedies Cumulative Each remedy provided under the Association Documents is cumulative and not exclusive.

Section 14.16 Costs and Attorneys Fees. In any action or proceeding under the Association Documents, the party which seeks to enforce the Association Documents and prevails, shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fee and expert witness fees.

Section 14.17 Limitation on Liability The Association, the Board of Directors, the Architectural Committee, Declarant and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by the laws of Colorado, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law, in accordance with and subject to the terms and limitations contained in the Bylaws.

Section 14.18 No Representations or Warranties No representation or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community Area, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

Section 14.19 Liberal Interpretation The provisions of the Association Documents shall be liberally construed as a whole to effectuate the purposes of the Association Documents. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

Section 14.20 Governing Law The Association Documents shall be construed and governed under the laws of the State of Colorado.

Section 14.21 Severability Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 14.22 Number and Gender Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

Section 14.23 Captions for Convenience. The titles, headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provisions of this Declaration.

Section 14.24 Mergers or Consolidation The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community Area together with the covenants and restrictions established upon any other property, as one plan.

Section 14.25 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of incorporation or the Bylaws of the Association, this Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

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

Attest:

By _____
Albert M. Rogers
Secretary

LIFESTYLE BUILDERS, INC
a Colorado Corporation

By _____
Lon P. Frohling
President