

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**BANBURY CROSS**

DECLARATION FOR BANBURY CROSS  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BANBURY CROSS**

This Declaration of Covenants, Conditions and Restrictions (this “Declaration”) is made as of \_\_\_\_\_, 2006, by Banbury Cross Farm, LLC (“Declarant”).

ARTICLE I GENERAL

Section 1.1 Purpose. This Declaration is executed pursuant to and in furtherance of a common and general plan (a) to protect and enhance the quality, value, desirability and attractiveness of all property which may be subject to this Declaration; (b) to provide for an association as a vehicle to maintain and repair the Common Area (as hereinafter defined) for the benefit of owners of property within the Project Area (as hereinafter defined); (c) to define duties, powers and rights of the association; and (d) to define certain duties, powers and rights of owners of property within the Project Area.

Section 1.2 Declaration. Declarant hereby creates a planned community pursuant to the Act (as hereinafter defined) on the Project Area, to be known as Banbury Cross. Declarant, for itself, its successors and assigns, hereby declares that the Project Area shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, all of which shall run with the title to such right, title or interest in said property or any part thereof.

ARTICLE II DEFINITIONS

Section 2.1 General. The following words and phrases when used in this Declaration shall have the meaning hereinafter specified. Capitalized terms not defined in this Article II shall have the meaning given to them in the text of this Declaration.

Section 2.2 Accessory Structure. “Accessory Structure” shall mean any structure maintained by an Owner on such Owner’s Lot incidental to the use and enjoyment of such Owner’ Dwelling Unit, including without limitation, a detached deck, gazebo, out-building, barn, cabin, or guest house.

Section 2.3 Act. “Act” shall mean the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

Section 2.4 Annexable Area. “Annexable Area” shall mean the real property described on Exhibit B attached hereto.

Section 2.5 Articles. “Articles” shall mean the articles of incorporation of the Association, as the same may be amended from time to time.



Section 2.6      Assessment. “Assessment” shall mean a Common Assessment, a Special Assessment, a Supplemental Common Assessment or a Reimbursement Assessment.

Section 2.7      Association. “Association” shall mean Banbury Cross Homeowners Association, a Colorado nonprofit corporation, its successors and assigns.

Section 2.8      Budget. “Budget” shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration and prepared pursuant to Section 5.13 below.

Section 2.9      Bylaws. “Bylaws” shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, as the same may be amended from time to time.

Section 2.10     Common Area. “Common Area” shall mean: (i) the Road; (ii) common areas as designated on any Recorded Plat; and (iii) all real property or interests therein now or hereafter owned or held by the Association for the common use and enjoyment of the Owners.

Section 2.11     Common Assessment. “Common Assessment” shall mean the assessments made for the purpose of paying Common Expenses, which are to be paid by each Owner to the Association for purposes provided herein and charged to such Owner and to the Lot of such Owner.

Section 2.12     Common Expenses. “Common Expenses” shall mean (i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, improving, repairing, replacing and maintaining the Common Area; (B) managing and administering the Wildlife/Plum Creek Corridors as designated on the Plat; (C) providing facilities and services that are determined by the Association to be in the best interests of the Owners; (D) obtaining insurance as provided herein; (E) performing all other duties and functions of the Association as set forth herein, and administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (F) levying, collecting and enforcing the assessments, charges and liens imposed pursuant hereto; (G) regulating and managing the planned community created by this Declaration; and (H) operating the Association; and (ii) reserves for any such costs, expenses and liabilities.

Section 2.13     Declarant. “Declarant” shall mean Banbury Cross Farm, LLC and its successors and assigns as the terms “successors and assigns” are herein limited. A party shall be deemed a “successor or assign” of Banbury Cross Farm, LLC as Declarant only if specifically designated in a written and duly recorded instrument as a successor or assign of Declarant under this Declaration and shall be deemed a successor or assign of Declarant under this Declaration only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument except that a party acquiring all or substantially all of the right, title and interest of Banbury Cross Farm, LLC in the Project Area by foreclosure, judicial sale, bankruptcy proceedings or by other similar involuntary transfer, shall automatically be deemed a successor and assign of Banbury Cross Farm, LLC as Declarant under this Declaration.

Section 2.14     Declarant Control Period. “Declarant Control Period” has the meaning given to that term in Section 6.3 below.

Section 2.15     Design Guidelines. “Design Guidelines” has the meaning given to that term in Section 9.1 below.

Section 2.16     Design Review Committee. “Design Review Committee” means the committee or committees established by the Executive Board after the Development and Sale Period to regulate the design and construction of improvements on Lots pursuant to Article 9 below.

Section 2.17     Design Reviewer. “Design Reviewer” means the person, persons, entity or entities appointed or designated to review an application for an Improvement pursuant to Article 9 below.

Section 2.18     Development and Sale Period. “Development and Sale Period” means the period commencing on the date on which Declarant, or any person or entity under the control of, or which is controlled by, or is under common control with the Declarant forms the Association and ending on the day when the last Lot (including any property that may be annexed pursuant to Article 13 of this Declaration) within the Project Area has been sold.

Section 2.19     Director. “Director” shall mean a duly elected or appointed member of the Executive Board.

Section 2.20     Driveways. “Driveways” shall mean the private driveways running through, over and across any Lot, which connects any improvements on such Lot to the Road.

Section 2.21     Dwelling Unit. “Dwelling Unit” shall mean a residential building designed for occupancy by a single family on a Lot, including an attached garage, but excluding any Accessory Structure.

Section 2.22     Executive Board. “Executive Board” shall mean the Executive Board of the Association.

Section 2.23     First Mortgagee. “First Mortgagee” shall mean a Mortgagee whose Mortgage with respect to a Lot is superior to the Mortgage of all other Mortgagees.

Section 2.24     Government Mortgage Agencies. “Government Mortgage Agencies” shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development, including such department or agency of the United States government as shall succeed to the FHA in insuring notes secured by Mortgages (which includes deeds of trust) on residential real estate, the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, the Federal National Mortgage Association, the Government National Mortgage Association, the Veterans Administration of the United States of America, including such department or agency of the United States government as shall succeed to the VA in its present function of issuing guarantees with respect to notes secured by Mortgages on residential real estate, and including any succes-

sors to any or all of the foregoing, or any similar entity, public or private, authorized, approved or sponsored by any governmental agency to insure, guarantee, make or purchase Mortgage loans.

Section 2.25 Improvement. “Improvement” shall mean any landscaping, improvement, structure or appurtenance of every type and kind, including, without limitation, grading, excavation and filling or similar disturbance to the surface of the land; landscaping features; clearing or removal of trees, shrubs, grass or plant; satellite dish; antenna; Dwelling Units; Accessory Structure; underground drains; swimming pools, tennis courts, basketball hoops, skateboard ramps and other recreational improvements; patios and patio covers; decks; awnings; exterior paint, trim and other finish materials; solar collectors; dog runs; dog houses; walkways; trails; additions to existing structures; alteration to exterior surfaces of approved buildings, structures, landscaping, or grading (including without limitation, any change of exterior appearance, color, roofing materials or texture); alteration of the drainage pattern with respect to any Lot or onto any other Lot or Common Area; sprinkler systems; garages and carports; driveways; paving and gravel; fences; walls (whether for screening or retention); stairs; exterior lighting; signs; exterior tanks and utilities (whether for air conditioning, cooling, heating, water softening or any other purpose); or any change to, or demolition or destruction (by voluntary action) of, any of the foregoing, or any other exterior change visible from any location outside the Lot.

Section 2.26 Lot. “Lot” shall mean any of the numbered parcels within the Project Area, as now or hereafter depicted upon a recorded plat or plats thereof. For purposes of the Act, each Lot constitutes a “Unit,” as that term is used in the Act.

Section 2.27 Manager. “Manager” shall mean any one or more Persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

Section 2.28 Member. “Member” shall mean the Person, or if more than one, all Persons collectively, who constitute the Owner of a Lot.

Section 2.29 Mortgage. “Mortgage” shall mean any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt.

Section 2.30 Mortgagee. “Mortgagee” shall mean a mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgagee.

Section 2.31 No Build Area. “No Build Area” shall mean the portion of the Project Area designated as such on the Plat.

Section 2.32 Notice and Hearing. “Notice and Hearing” shall mean a written notice and a hearing before the Executive Board or a hearing committee appointed by the Executive Board, in the manner provided in the bylaws of the Association.

Section 2.33 Officer. “Officer” shall mean a duly elected or appointed officer of the Association.

Section 2.34 Owner. “Owner” shall mean the Person, including Declarant, or if more than one, all Persons collectively, who hold fee simple title to a Lot.

Section 2.35 Person. “Person” shall mean a natural person, a corporation, a partnership, a limited liability company or any other entity.

Section 2.36 Plat. “Plat” shall mean that certain plat for the Hritz Exemption recorded in the office of the Douglas County Clerk and Recorder on \_\_\_\_\_, 2006, at Reception Number \_\_\_\_\_ and any amendment thereof or supplement thereto.

Section 2.37 Plat Notes. “Plat Notes” shall mean the requirements and restrictions imposed by the Plat upon the properties shown thereon, including the Lots.

Section 2.38 Project. “Project” shall mean the planned community created by this Declaration and commonly known as Banbury Cross.

Section 2.39 Project Area. “Project Area” shall mean all of the real property that is part of the planned community created by this Declaration, which shall be the real property described in Exhibit A attached hereto, together with all additional real property that is annexed into the planned community created by this Declaration, excluding, however, those portions of such real property that are withdrawn from the planned community pursuant to Section 14.1 of this Declaration. The Project Area includes all rights and easements, if any, appurtenant to the real property described in Exhibit A attached hereto. The use and enjoyment of any of such rights and easements by any person shall be subject to the terms and provisions of this Declaration.

Section 2.40 Record. “Record,” “Recorded” or “Recordation” shall mean the filing for record of any document in the office of the Clerk and Recorder of Douglas County, Colorado.

Section 2.41 Recreational Vehicle. “Recreational Vehicle” means a vehicle primarily designed as temporary living quarters for recreational, camping, travel or seasonal use, either self powered or mounted on or towed by another vehicle. “Recreational Vehicle” includes, but is not limited to, a camping trailer, fifth-wheel trailer, travel trailer or truck camper.

Section 2.42 Reimbursement Assessment. “Reimbursement Assessment” shall mean a charge against a particular Owner and his Lot for the purpose of reimbursing the Association for expenditures and other costs of the Association incurred on behalf of any Owner in accordance with this Declaration, or in curing any violation, directly attributable to the Owner, of this Declaration or any Rules and Regulations adopted pursuant to Section 7.17 below, together with late charges and interest as provided herein.

Section 2.43 Related User. “Related User” shall mean any member of the family of an Owner who resides with such Owner; guests and invitees of an Owner; employees of an

Owner; and occupants, tenants and contract purchasers residing in a Dwelling Unit of an Owner who claim by, through, or under an Owner.

Section 2.44     Restrictions. “Restrictions” shall mean covenants, conditions, restrictions, limitations, reservations, exceptions and equitable servitudes affecting real property.

Section 2.45     Road. “Road” shall mean the 60’ access easement shown on the Plat which provides primary access to the Project Area.

Section 2.46     Rules and Regulations. “Rules and Regulations” shall mean the rules and regulations adopted by the Executive Board pursuant to Section 7.17 below, as they may be amended from time to time, including rules or regulations, however denominated, which are adopted for the regulation and management of the Project.

Section 2.47     Share of Common Expenses. “Share of Common Expenses” shall mean the share of Common Expenses allocated to each Lot in accordance with the terms and conditions of Section 5.10 below.

Section 2.48     Special Assessment. “Special Assessment” shall mean a charge against each Owner and his Lot representing a portion of the costs to the Association for the purpose of funding major capital repairs, maintenance, replacements and improvements, pursuant to Section 5.17 below.

Section 2.49     Special Declarant Rights. “Special Declarant Rights” shall mean the rights reserved by Declarant for itself, its successors and assigns in this Declaration.

Section 2.50     Successor Declarant. “Successor Declarant” shall mean any person who succeeds to any Special Declarant Right.

Section 2.51     Supplemental Common Assessment. “Supplemental Common Assessment” shall mean a supplemental Common Assessment adopted by the Board pursuant to Section 5.11.

### ARTICLE III VARIOUS RIGHTS AND EASEMENTS

#### Section 3.1     Declarant’s Easements.

(a)     Upon the Common Area. Declarant hereby reserves for itself, its successors and assigns a general easement over, across, through and under the Common Area to:

- (i)     make improvements within the Project Area;
- (ii)    discharge Declarant’s obligations under this Declaration;
- (iii)   exercise any of Declarant’s rights under this Declaration; and
- (iv)    access or provide utilities to any real property owned by Declarant which is not part of the Project Area, including but not limited to Tract 1, Hritz Exemption.

(b) Creation of Additional Easements. Declarant hereby reserves for itself, its successors and assigns, the right to establish from time to time utility and other easements, permits or licenses over, across, through and under the Common Area and over, across, through and under the No Build Area, setbacks and easements within any Lot that are in the best interest of the Owners and the Association or are necessary to access or develop other real property owned by Declarant, whether such property is within the Project Area or not.

Section 3.2 Association Easements. Declarant hereby expressly creates and reserves for the benefit of the Association, its designees, successors and assigns, the following easements:

(a) Easements Over Lots for Use and Maintenance of Common Area. Easements over, across, through and under each Lot as may be necessary or appropriate for the construction, use, enjoyment, maintenance, repair and replacement of Common Area and any improvements constructed thereon or therein, and for access, ingress and egress necessary for such use, enjoyment, maintenance, repair and replacement.

(b) Easements for Project Signs, Trash and Postal Pads. Easements over, across, through and under each Lot and the Common Area as may be necessary for the installation, maintenance, repair, upkeep and replacement of signs identifying the Project, trash dumpsters necessary for refuse management and mailboxes (including the pads therefor) for the United States Postal Service (all of which may be installed on one or more Lots).

(c) Easements for Drainage. Easements over, across, through and under Lots and Common Area for stormwater drainage, as shown on any Recorded Plat or any drainage plan on file with any governmental authority having jurisdiction over the Project Area, and/or as subsequently required by the development of the Project Area.

(d) Easements for Perimeter Wall and Retaining Walls. Easements over, across, through and under each Lot as may be necessary for the installation, maintenance, repair and replacement of a perimeter wall or fence along all or a portion of the boundary of the Project Area and any retaining walls.

(e) Easements for Dust Mitigation Measures. Easements over, across, through and under each Lot and the Common Area for the purpose of performing, or causing to be performed, such dust mitigation measures (including, without limitation, treatment of Driveways with dust suppressant) as the Association may from time to time deem necessary or desirable.

(f) Easements for Enforcement. Easements over, across, through and under each Lot and the Common Area as reasonably necessary for the purpose of enforcing the Rules and Regulations and the obligations of the Association imposed by the Plat.

Section 3.3 No Duty Created. Neither the Declarant nor the Association shall have any duty or obligation to build, create or establish any improvements on the Project Area.

Section 3.4      Owners' Easements. Declarant hereby expressly creates and reserves for the benefit of each Lot, and for the benefit of the Owner of such Lot and Related Users, the following easements:

(g)      Easements Over Common Area for Access. Easements over, across and through the Road for access to and from such Lot.

(h)      Easement Over Common Area for Mail and Trash Facilities. Easements over, across, through and under the Road for Owners' collection of mail and disposal of trash in designated dumpsters or other drop off sites shown on the Plat or established pursuant to Section 3.2(b).

(i)      Easements Over Lots and Common Area for Utilities. An easement over, across, through and under the Lots and the Common Area, in the location where such utilities and related facilities are originally installed by Declarant or in such other location as may be designated from time to time by the Association, for the purpose of installation, operation, maintenance, repair and replacement of underground utilities and related surface facilities necessary for the use, enjoyment and operation of the Dwelling Unit constructed on such Lot, including, but not limited to, water lines, sewer lines, stormwater drainage systems and facilities, gas lines, electric lines, telephone lines, television cable lines, and all equipment and facilities incidental thereto, and for access, ingress and egress necessary for such installation, operation, maintenance, repair and replacement.

(j)      Easements for Use and Enjoyment. An easement over, across and through the Common Area for the use and enjoyment of such areas by Owners and Related Users.

Section 3.5      Fire Department Easement. Declarant hereby expressly creates and reserves for the benefit of any fire or emergency agency or organization, an easement over each Lot for the use of water contained in any cistern on such Lot for purposes of fighting fires within the Project or upon adjacent lands.

Section 3.6      Easements Deemed Appurtenant. The easements and rights herein created shall be binding upon and inure to the benefit of the Declarant, the Association, or each Lot in the Project Area and the Owner of each such Lot, as the case may be, and all conveyances of and other instruments affecting title to any such Lot shall be deemed to grant and reserve the easements and rights as are provided for herein, even though no specific reference to such easements appears in any such conveyance.

Section 3.7      Recorded Easements and Licenses. The recording data for recorded easements and licenses appurtenant to, or included in, the Project Area or to which any portion of the Project Area is or may become subject is set forth on Exhibit C attached hereto.

#### ARTICLE IV

#### THE ASSOCIATION

Section 4.1 Association. The Association has been formed as a Colorado corporation under the Colorado Revised Nonprofit Corporations Act. The Association shall have the duties, powers and rights set forth in this Declaration and in the Articles and Bylaws.

Section 4.2 Executive Board. The affairs of the Association shall be managed by an Executive Board. The Executive Board 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 Executive Board of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Executive Board or any duly authorized executive committee, officer, agent or employee without a vote of the Members of the Association, except as otherwise specifically provided in this Declaration.

Section 4.3 Membership in Association. Each Owner of a Lot within the Project Area shall be a Member of the Association. There shall be one such Membership in the Association for each Lot within the Project Area. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Lot (subject to payment of any fee assessed by the Association in accordance with the Rules and Regulations to cover costs incurred by the Association to record such transfer on its books). Declarant shall hold a Membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot except that an Owner may assign some or all of his rights as an Owner and as Member of the Association to a tenant or Mortgagee and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Declaration, but no Owner shall be permitted to relieve himself of the responsibility for fulfillment of the obligations of an Owner under this Declaration. Any transfer or encumbrance of a Membership other than as permitted in this Section 4.3 shall be void and have no force or effect.

Section 4.4 Voting Rights of Members.

(a) Each Member of the Association shall have the right to cast votes for each Lot owned by such Member for the election of members of the Executive Board as hereinafter provided. Except as set forth in this Declaration, the Bylaws shall provide for the manner, time, place, conduct, and voting procedures for Member meetings for the purpose of electing the Executive Board.

(b) Each Membership shall be entitled to one vote, regardless of the number of Owners of the Lot to which the Membership is appurtenant. Fractional voting shall not be allowed. If the Owners of a Lot cannot agree among themselves as to how to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a certain Membership, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the Membership, unless objection thereto is made to the Person presiding over the meeting at the time the vote is cast. If more than one vote is cast for any particular Membership, none of such votes shall be counted and all of such votes shall be deemed null and void.



(c) In any election of Directors to the Executive Board, every Membership shall have the number of votes equal to the number of Directors to be elected. Cumulative voting shall not be allowed in the election of Directors of the Executive Board or for any other purpose.

(d) The Association shall have no voting rights for any Membership appurtenant to any Lot owned by the Association.

(e) At the direction of the Executive Board or upon the request of twenty (20) percent of the Owners who are present at the meeting or represented by proxy, if a quorum has been achieved, a vote on any matter affecting the Association on which all Owners are entitled to vote shall be by secret ballot.

(f) Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be Owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the Executive Board or another presiding during that portion of the meeting. The volunteers shall not be members of the Executive Board and, in the case of a contested election for an Executive Board position, shall not be candidates.

## ARTICLE VASSESSMENTS, BUDGETS AND ACCOUNTS

Section 5.1 Operating Account to be Established. The Association shall establish and maintain a separate operating account (the "Operating Account"). The Operating Account shall contain monies for the routine operations of the Association and may also contain monies for reserves for any purpose for which the Association may establish reserves. The Operating Account shall be established as one or more trust savings or trust checking accounts at any financial institution in which deposits are insured by an agency of the federal government. Monies for reserves may, but shall not be required to be, deposited in one or more accounts separate from the account(s) in which monies for routine operations are held.

Section 5.2 Establishment of Other Accounts. The Association may establish other accounts ("Accounts") as and when needed including, without limitation, any Account or Accounts for reserves, and nothing herein shall limit, preclude or impair the authority of the Association to establish other Accounts for specified purposes authorized by this Declaration. If the Association establishes any additional Accounts, the Executive Board shall designate an appropriate title for the Account to distinguish it from the other Accounts maintained by the Association. Each such Account shall be established as one or more trust savings or trust checking accounts at any financial institution in which deposits are insured by an agency of the federal government.

Section 5.3 Deposits of Common Assessments to Operating Account. Monies received by the Association from Common Assessments shall be deposited in the Operating Account.

Section 5.4 Other Deposits to Accounts. The Association shall deposit monies received by the Association from sources other than Common Assessments in the Account (if more than one then exists) determined by the Executive Board to be most appropriate. For example, Reimbursement Assessments shall be deposited to the Account from which the costs and

expenses were or will be paid which form the basis for such Reimbursement Assessments; and Special Assessments for capital repairs, maintenance, replacement and improvements shall be deposited to a separate Account for reserves, if one exists. Interest and late charges received on account of delinquent assessments may be allocated among the Accounts in the same proportions as the delinquent assessments were allocated or, at the discretion of the Executive Board, may be allocated to any one or more of the Accounts.

Section 5.5 Disbursements from Operating Account. All amounts deposited in the Operating Account or other Accounts shall be used solely for the common benefit of all the Members for purposes authorized by this Declaration. Disbursements from particular Accounts shall be limited to specified purposes as follows: (a) disbursements from the Operating Account may be made for any purposes as are necessary or proper under this Declaration, except those purposes for which disbursements are to be made from any separate Account for reserves, if then existing; and (b) disbursements from any separate Account for reserves, if then existing, shall be made solely for purposes of funding those functions which cannot be expected to recur on an annual or more frequent basis and for the purposes of repairs, replacements, and other restorative work. If funds are accumulated in the Operating Account in excess of that required for operating expenses (and after all reserves have been funded), then the excess funds may be deposited into a savings or other similar account to allow for a higher rate of interest to be earned upon such funds.

Section 5.6 No Commingling of Accounts. The Association shall not commingle any amounts deposited in any one Account with amounts deposited in any other Account.

Section 5.7 Authority for Disbursements. The Executive Board shall have the authority to make or to authorize an agent to make disbursements of any monies in the Operating Account or other Accounts.

Section 5.8 Funding of Reserves. The Executive Board, in budgeting and levying assessments, shall endeavor, whenever possible, to fund reserves by regularly scheduled payments included as part of the Common Assessments, rather than by Special Assessments. Unless the Executive Board finds and determines that it is not necessary, the Common Assessments shall include a component for funding reserves.

Section 5.9 Common Assessments. For each calendar year, the Association shall levy Common Assessments against Owners of the Lots. Each Owner shall be obligated to pay the Common Assessments levied against, and allocated to, such Owner and the Lot of such Owner as hereinafter more particularly set forth.

Section 5.10 Apportionment of Common Assessments-Assessment Units.

(a) For purposes of Common Assessments, each Lot shall constitute one (1) assessment unit regardless of the size, value, location or use of such Lot. Except as otherwise set forth in this Declaration, the amount of the Common Assessments for any calendar year, payable by an Owner for the Lot of such Owner, shall be computed by multiplying the total amount to be raised by Common Assessments for that calendar year, as shown in the Budget for that calendar year, by a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Project Area as of the date of such calculation.

(b) If the Association determines that it is appropriate to do so: (i) any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the benefited Lots, and (ii) the costs of utilities or services contracted for by the Association shall be assessed in proportion to usage. Without limiting the generality of the foregoing, the Executive Board, if it deems it appropriate to do so, shall assess Common Expenses which primarily benefit only Lots on which there are completed Dwelling Units, against the Lots on which, from time to time, a completed Dwelling Unit is located. Notwithstanding any provision of this Declaration to the contrary, if any Common Expense is caused by the misconduct of any Owner, the Association shall assess that expense exclusively against such Owner's Lot.

(c) If any Lots are added to or withdrawn from the Project, the Shares of Common Expenses for all Lots within the Project after such withdrawal shall be recalculated in accordance with the formula set forth in Section 5.10(a) above.

Section 5.11 Supplemental Common Assessments. If the amounts levied as Common Assessments prove inadequate for any reason, including nonpayment of any Owner's Common Assessments, the Executive Board may, from time to time, levy Supplemental Common Assessments. Such Supplemental Common Assessments shall be assessed against the Owner of each Lot, in the same manner Common Assessments are originally assessed each calendar year by the Executive Board. Written notice of any change in the amount of any annual Common Assessments resulting from the levy of Supplemental Common Assessments shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change.

Section 5.12 Transfer Assessments. The Association shall have the authority to levy a transfer assessment against buyers of the Lots upon the transfer of title to any Lot; provided, however, that such assessment shall not exceed 1.5% of the purchase price of the Lot. Such assessment may be imposed and collected in any manner permitted by the Act.

Section 5.13 Annual Budgets.

(a) Prior to the first levy of a Common Assessment, and thereafter on or before October 1 of each calendar year, the Executive Board shall adopt a proposed annual Budget for the Association for the following calendar year that sets forth:

- (i) the Executive Board's estimates of Common Expenses for the next calendar year;
- (ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Common Assessments; and
- (iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Special Assessments.

(b) Within thirty days after adopting a proposed Budget, the Executive Board shall deliver a summary of the proposed Budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed Budget. The date of such meeting shall not be less than fourteen days nor more than sixty days after the delivery of the summary of the pro-

posed Budget to the Owners. Unless at that meeting a majority of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed Budget, the proposed Budget shall be deemed ratified. If the proposed Budget is rejected, the annual Budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent Budget proposed by the Executive Board.

(c) If the Executive Board deems it necessary or advisable to amend an annual Budget that has been ratified by the Owners under this Section 5.13 above, the Executive Board may adopt a proposed amendment to the annual Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen days nor more than sixty days after the delivery of the summary of the proposed amendment. Unless at that meeting a majority of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

Section 5.14 Commencement of Common Assessments. Common Assessments of the Association shall commence as to each Lot within the Project Area on the date of Recordation of the first deed conveying the Lot. Upon Recordation of the first deed conveying the Lot, the Common Assessments for the then current calendar year shall be prorated on the basis of the number of days in such calendar year remaining from the date of commencement of such Common Assessments to the end of such calendar year.

Section 5.15 Payments of Assessments. Common Assessments shall be due and payable in advance to the Association by the assessed Member in such manner and on such dates as the Executive Board may designate, in its sole and absolute discretion; provided, however, that in no event shall the Executive Board require payment of Common Assessments more than once each calendar month. Notice of the amount of the Common Assessments shall be given to each Member prior to the first day of each calendar year.

No abatement of Common Assessments or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to Common Area, from any action taken to comply with any law or any determination of the Executive Board or for any other reason.

Section 5.16 Failure to Fix Assessment. The failure by the Executive Board to levy an Assessment for any calendar year shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent calendar year.

Section 5.17 Special Assessment for Capital Expenditures. In addition to Common Assessments, the Executive Board may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds, not otherwise provided under the Budget from Common Assessments, to construct or reconstruct, maintain, repair or replace improvements upon any portion of the Common Area, including the costs of necessary personal property related thereto, or to provide for necessary facilities and equipment to offer the services authorized in this Declaration. The Executive Board shall not levy Special Assessments without the vote of Members of the Association representing at least sixty percent (60%) of the voting power

residing in the Owners of Lots subject to the Special Assessments. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the members shall pay any such Special Assessment in the manner so specified.

Section 5.18 Reimbursement Assessments. The Executive Board may, subject to the provisions hereof, levy an Assessment against any Member of the Association if the willful or negligent failure of the Member or a Person claiming through the Member to comply with this Declaration, the Articles or the Bylaws or rules and regulations adopted by the Association or the Design Review Committee shall have resulted in the expenditure of funds to cause such compliance. Such Assessments shall be known as Reimbursement Assessments and shall be levied only after Notice and Hearing as defined in this Declaration. The amount of the Reimbursement Assessments shall be due and payable to the Association fifteen (15) days after notice to the Member of the decision of the Executive Board that the Assessment is owing.

Section 5.19 Late Charges and Interest. If any Common Assessments, Special Assessments, Supplemental Assessments or Reimbursement Assessments or any installment thereof is not paid within fifteen (15) days after it is due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Executive Board. Any Assessment or installment of an Assessment which is not paid within fifteen (15) days after the date of any notice of default given under Section 5.20 and prior to the Recordation of Notice of Lien under Section 5.23 hereof shall bear interest from the date such Assessment became due and payable at the annual rate of eighteen percent (18%).

Section 5.20 Notice of Default and Acceleration of Assessments. If any Common Assessments, Special Assessments, Supplemental Assessments or Reimbursement Assessments or any installment thereof is not paid within fifteen (15) days after its due date, the Executive Board may mail a notice of default to the Owner and to each First Mortgagee of the Lot who has requested a copy of the notice. The notice shall specify (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than fifteen (15) days from the date the notice is mailed to the Member, by which such default must be cured; and (d) that a failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or in the installments of the Assessment for the then current calendar year and the filing and foreclosure of the lien for the Assessment against the Lot of the Member. If the delinquent Assessment or installment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Executive Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or in this Declaration, subject to the protection afforded to Mortgagees under this Declaration.

Section 5.21 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special, Supplemental or Reimbursement, the Executive Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

Section 5.22     Lawsuit to Enforce Assessments. The Executive Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest and other costs of enforcement including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Owner or Member.

Section 5.23     Lien to Enforce Assessments. The Executive Board may also elect to file a claim of lien against the Lot of the delinquent Owner or Member by Recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection 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 continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and Record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Executive Board to cover the cost of preparing and recording the release of the lien. Unless paid or otherwise satisfied, the lien may be foreclosed in the manner for foreclosure of Mortgages in the State of Colorado. Such lien shall have the priority specified in Section 316 of the Act.

Section 5.24     Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Executive Board, and upon the written request of any Member and any Person with, or intending to acquire, any right, title or interest in the Lot of such Member, the Association shall furnish, within 10 days after the receipt of such a request, 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 Assessments levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association and all Persons for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied under or pursuant to this Declaration.

Section 5.25     No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 5.26     Reserve Fund. At the closing of the first sale of each Lot within the Project Area, the purchaser shall make a contribution to the Association in an amount equal to one-quarter of the annual Common Assessment payable by such Lot as of the date of sale, which funds shall be held by the Association as a working capital reserve fund. The Association shall have no obligation to pay interest on such contribution to any Owner. Such working capital reserve fund shall be maintained in a segregated Account for the use and benefit of the Association as it deems desirable, including but not limited to assuring that the Executive Board will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Executive Board to be necessary or desirable. Such contribution to the working capital reserve fund shall not relieve an Owner from making payment of Common Assessments as the same become due, including the first Common Assessments payable. An Owner

who has made such contribution to the working capital reserve fund shall, upon transfer by such Owner of his Lot, be entitled to a credit from the transferee (but not from the Association) for such contribution.

## ARTICLE VI EXECUTIVE BOARD

Section 6.1      Number and Election of Directors.    The Executive Board shall consist of not less than three and not more than five Directors. Subject to such limitations, the number of Directors shall be three until changed by resolution of the Executive Board. Directors shall be appointed or elected as provided in Section 6.3 below.

### Section 6.2      Powers of the Executive Board.

(a)      Except as provided in this Declaration, the Articles and the Bylaws, the Executive Board may act on behalf of the Association in all instances.

(b)      The Executive Board may not act on behalf of the Association to:

- (i)      amend this Declaration;
- (ii)     terminate the Association, this Declaration or the Project;
- (iii)    elect Directors to the Executive Board, other than to fill a vacancy for the unexpired portion of any Director's term; or
- (iv)    determine the qualifications, powers and duties, or terms of office, of Directors.

### Section 6.3      Declarant Control Period.

(a)      Subject to the terms and conditions of Section 6.3(b) and (c) below, but notwithstanding anything else to the contrary contained in this Declaration, the Articles or the Bylaws, Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period. The phrase "Declarant Control Period" means the longer of the periods described in clauses (i) and (ii) below, specifically: (i) the longest period permitted by the Act during which Declarant shall be entitled to appoint and remove all Directors and Officers; and (ii) the period commencing on the date on which Declarant forms the Association and ending on the earliest to occur of:

- (i)      sixty days after conveyance to purchasers (other than a declarant, as such term is defined in the Act) of 75 percent of the total number of Lots that may be created by Declarant under this Declaration;
- (ii)     two years after the last conveyance of a Lot by Declarant or a Successor Declarant in the ordinary course of business; or
- (iii)    two years after any right to add new Lots was last exercised.

(b) Declarant may voluntarily surrender its right to appoint and remove Directors and Officers prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Executive Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

(c) Notwithstanding anything to the contrary contained in Section 6.3(a) above, not later than sixty days after the conveyance to purchasers (other than a declarant, as such term is defined in the Act) of 25 percent of the Lots that may be created under this Declaration, one Director appointed by Declarant shall be replaced with a Director elected by Members other than Declarant. Such Director shall take office upon election.

(d) Not later than the expiration of the Declarant Control Period, the Members shall elect the Executive Board, at least a majority of whom must be Members other than Declarant or designated representatives of Members other than Declarant. Such Directors shall take office upon election.

Section 6.4      Removal of Directors. Notwithstanding any provision of this Declaration, the Articles or Bylaws to the contrary, the Members, by more than a 67 percent vote of all Memberships represented and entitled to vote at any meeting at which a quorum is present, may remove any Director, with or without cause, other than a Director appointed by Declarant during the Declarant Control Period.

Section 6.5      No Compensation of Directors. No Director shall have the right to receive any compensation from the Association for serving as such Director except reimbursement of expenses as may be approved by resolution of disinterested members of the Executive Board.

## ARTICLE VII DUTIES AND POWERS OF THE ASSOCIATION

Section 7.1      General Duties and Powers of the Association. The Association has been formed to further the common interests of the Members of the Association. The Association, acting through its Executive Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members of the Association, to own, maintain, improve and enhance Common Area; and to improve and enhance the attractiveness and desirability of the Project Area.

Section 7.2      Duty to Accept Common Area, Easements, Property and Facilities Transferred by Declarant. To the extent that rights in the Common Area do not run to the benefit of the Owners or Association by operation of law or otherwise, Declarant shall cause the Common Area to be conveyed to the Association prior to the first conveyance by Declarant of any Lot. Any Common Area that is hereafter created in any portion of the Annexable Area that is made subject to this Declaration shall be conveyed to the Association by Declarant prior to the first conveyance by Declarant of any Lot that is created in the portion of the Annexable Area that is made subject to this Declaration. The Association shall accept title to, and the obligations in connection with, Common Area and the easements for the benefit of the Association as con-



tained herein, and title to any personal property or equipment transferred to the Association by Declarant, together with the responsibility to perform all of the functions set forth in this Declaration in connection therewith.

Section 7.3      Duty to Manage and Care for Common Area. Upon commencement of Assessments, the Association shall manage, operate, care for, maintain and repair the Common Area and all improvements located thereon. The obligations of the Association under the preceding sentence shall include, but not be limited to, the duty to maintain and to perform snow removal from the Road as the Association shall deem necessary or desirable to provide reasonable access, ingress and egress to each Lot within the Project Area; provided, however, that the Association shall have the right, but not the obligation, to perform such functions with regard to portions of the Road that are shared with other users. The Association shall keep the Common Area in a good and clean condition for the use and enjoyment of the Owners of Lots within the Project Area. If the Association is required to incur costs and expenses of maintenance, repair or care for any of the foregoing due to the willful or negligent act or failure to act of an Owner or a Related User of an Owner, the amounts incurred shall be payable by such Owner to the Association, secured by a lien as hereinafter provided in this Declaration. If parking areas, if any, walks, utilities, or any other improvements have not been installed by Declarant in the Common Area when such Common Area is conveyed to the Association, Declarant, for itself, its successors and assigns, excepts and reserves an easement on, over, across and under such Common Area as may be necessary for the installation of parking areas, if any, walks, utilities, or other improvements.

Section 7.4      Duty to Pay Taxes and Assessments. The Association shall be obligated to pay all taxes and assessments levied on any property or facilities transferred to or acquired and owned by the Association except taxes and assessments applicable to the period prior to transfer of such property or facilities by Declarant which shall be prorated as of the time of such transfer and paid by Declarant. The Association may contest the validity or applicability of any such taxes, assessments or impositions so long as such contest does not jeopardize the title of the Association to any such property or facilities.

Section 7.5      Duty to Provide for Trash Removal. The Association may arrange for such trash removal services as the Executive Board deems appropriate from time to time, including but not limited to, contracting for trash pickup services or common dumpsters. However, the Association shall not be responsible for trash removal from any Lot on which a Dwelling Unit is in the process of being constructed or on which a Dwelling Unit has been constructed but has not been occupied as a residence; the Association shall require the contractor building such Dwelling Unit to be responsible for and to provide removal of construction debris and trash from such Lot. The Association may promulgate, and each Owner shall be bound by and comply with, such Rules and Regulations regarding trash removal service as the Association may reasonably desire, including regulations regarding the days and hours during which trash and solid waste may be collected or put out for collection and the location upon any Lot of trash dumpsters or other trash collection device.

Section 7.6      Duty to Maintain Casualty Insurance on Common Area. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable at a reasonable cost, casualty, fire and extended coverage insurance with respect to all insurable improvements to real property owned by the Association, if any, including coverage

for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake and war risk. Casualty, fire and extended coverage insurance with respect to insurable property shall, to the extent reasonably obtainable, be for the full insurable value based on current replacement cost. Insurance premiums for such insurance and any other insurance premiums paid by the Association shall be an expense to be included in the Common Assessments payable by Members. Such insurance shall be written in the name of, and the proceeds thereof shall be payable to the Association as the trustee and attorney-in-fact for the Members, and in the event of damage or destruction to any insured improvements, the proceeds of such insurance shall be applied by the Association, to the extent necessary, to cause the damaged or destroyed improvements to be restored or replaced to its original condition.

Section 7.7      Duty to Maintain Liability Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, broad form commercial liability insurance covering public liability of the Association for bodily injury and property damage including, if the Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Public liability insurance shall, to the extent reasonably obtainable at a reasonable cost, have limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

Section 7.8      General Provisions Respecting Insurance. Insurance obtained by the Association may contain such deductible provisions as the Executive Board deems appropriate. Insurance obtained by the Association shall, to the extent reasonably possible without undue cost, contain a waiver of rights of subrogation as against the Association, each Member and any Person claiming by, through or under such Member and as against any officer, director, agent or employee of any of the foregoing. Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance policies and insurance coverage shall be reviewed at least annually by the Executive Board to ascertain whether coverage under the policies is sufficient in light of the possible or potential liabilities of the Association. Casualty, fire and extended coverage insurance may be provided under blanket policies.

Section 7.9      Fidelity Bonds Required. To the extent it is reasonably practical to do so without undue cost, the Association shall obtain and keep in force at all times a fidelity bond or bonds for every Person handling funds of the Association including, but not limited to, employees of any Manager. Each such bond shall name the Association as obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to two (2) months' aggregate assessments on all Dwelling Units plus reserve funds.

Section 7.10      Other Insurance and Bonds. To the extent it is reasonably practical to do so without undue cost, the Association shall obtain such other insurance as may be required by law and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 7.11 Insurance and Bonds Required by Government Mortgage Agencies. To the extent it is reasonably practical to do so without undue cost, the Association shall obtain and keep in full force and effect such insurance and bonds as may be required by Government Mortgage Agencies to the extent that any such Government Mortgage Agency holds, or has agreed to insure or to guarantee, any Mortgage on any Lot within the Project Area, except to the extent such insurance or bond is not available or has been waived in writing by such Government Mortgage Agency.

Section 7.12 Duty to Prepare Budgets. The Association shall prepare Budgets for the Association as elsewhere provided in this Declaration.

Section 7.13 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 7.14 Duty to Provide Accounting. The Association shall prepare an annual accounting of the accounts of the Association. If required by a Government Mortgage Agency such accounting shall be an independent audit. Copies of such accounting and the report of any such audit shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same.

Section 7.15 Duties with Respect to Design Review Committee. The Association shall perform functions to assist the Design Review Committee, as provided in ARTICLE IX of this Declaration.

Section 7.16 Power to Acquire Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners, including improvements and personal property. The Association may construct improvements on the property and may demolish improvements owned by the Association.

Section 7.17 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, and the use of any property within the Project Area, including Lots. Any such Rules and Regulations shall be effective only upon adoption by the Executive Board and shall be reasonable and uniformly applied. Notice of the adoption, amendment or repeal of any Rule or Regulation shall be given in writing to each Member of the Association at the address for notices to Members as elsewhere provided in this Declaration or by the Bylaws, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such rules and regulations and shall see that Related Users comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 7.18 Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and its Rules and Regulations and shall take such action as the Executive Board deems necessary or desirable to cause such compliance by each Member of the Association and each Related User. Without lim-

iting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (a) by entry upon any property within the Project Area after Notice and Hearing as defined in this Declaration (unless a bona fide emergency exists), without liability to the Owner thereof, for the purpose of enforcement or causing compliance with this Declaration or Rules and Regulations of the Association; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations of the Association, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations of the Association; (d) by suspension, after Notice and Hearing as defined in this Declaration, of the voting rights of a Member of the Association during and for up to sixty (60) days following any breach of such Member or a Related User of such Member of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (e) by levying and collecting, after Notice and Hearing as defined in this Declaration, a Reimbursement Assessment against any Member of the Association for breach of this Declaration or such Rules and Regulations by such Member or a Related User of such Member; and (f) by levying and collecting, after Notice and Hearing as defined in this Declaration, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member of the Association for breach of or failure to comply with this Declaration or such Rules and Regulations by such Member or a Related User of such Member.

Section 7.19 Power to Provide Special Services for Members. The Association shall have the power to provide services to a Member or group of Members. Any service or services to a Member or group of Members shall be provided pursuant to an agreement in writing, or through one or more Supplemental Declarations, which shall provide for payment to the Association by such Member or group of Members of the reasonably estimated costs and expenses of the Association of providing such services, including a fair share of the overhead expenses of the Association and shall contain reasonable 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 and that the payment for such services shall be secured by a lien on the property of the Member or group of Members. Any such agreement or Supplemental Declaration may provide that payments to the Association for special services shall be payable by Members benefited on the basis of usage or on the basis of the number of Lots benefited by the special services.

Section 7.20 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 or 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 any such Manager. Any contract or agreement with any such Manager shall be terminable by the Association for cause on no more than thirty (30) days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than thirty (30) days prior written notice. Any such contract or agreement shall be for a term of no more than one (1) year but may be subject to renewal for succeeding terms of no more than one (1) year each. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Association, the Association and its Executive Board shall remain ultimately responsible

for the performance and exercise of such duties, powers and functions. Any agreement or contract with a Manager shall contain any other provisions which are required to be contained therein by any Government Mortgage Agency to the extent that any such Government Mortgage Agency holds, or has agreed to insure or to guarantee, any Mortgage on any Lot within the Project Area.

Section 7.21 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

Section 7.22 Power to Perform Dust Mitigation Measures. The Association shall have the power to perform, or cause to be performed, such dust mitigation measures anywhere within the Project Area (including, without limitation, treatment of the Road and Driveways with dust suppressant) as the Association may from time to time deem necessary or desirable.

Section 7.23 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Revised Non-profit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Declaration or the Articles or Bylaws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles and Bylaws.

Section 7.24 Legal Action. Notwithstanding any provision of this Declaration to the contrary, the Association is not empowered to institute or conduct any legal action that fails to comply with the requirements and limitations, if any, stated in its Articles of Incorporation.

Section 7.25 Owner Education. The Association shall provide Owner education on Association operations as well as the rights and responsibilities of Owners, the Association, and the Executive Board as required by the Act.

Section 7.26 Enforcement of Plat Notes. The Plat Notes are hereby incorporated as a part of this Declaration. The Association is authorized and obligated to enforce the terms of the Plat Notes, and may exercise all powers granted to it by the Act and this Declaration for such purpose, including but not limited to the power to enact Rules and Regulations and to enforce the same pursuant to Section 7.18. The Association shall further be authorized and obligated to enforce the Plat Notes against other properties outside of the Project Area that are subject to the Plat, to the extent required by the Plat Notes and subject to the provisions of applicable easements granting the Association access to such properties for such purpose.

## ARTICLE VIII OWNERS INSURANCE

Section 8.1 Insurance by Owners.

(k) Casualty Insurance. Each Owner shall be responsible for obtaining and keeping in full force and effect at all times casualty insurance with respect to the Dwelling Unit of such Owner for the full replacement value thereof based on current replacement cost, including coverage for fire and extended coverage, vandalism and malicious mischief and, if available, and if deemed appropriate by the Executive Board, flood, earthquake or war risk coverage. In the event of damage or destruction to any Dwelling Unit, the Owner of such Dwelling Unit shall promptly cause the damaged or destroyed Dwelling Unit to be restored or replaced to its original condition (or such other condition as may be approved in writing by the Architectural Review Committee). The cost and expenses of the restoration or demolition of a damaged or destroyed Dwelling Unit which exceed the available insurance proceeds shall be paid by the Owner of the Dwelling Unit.

(l) Other Insurance. Each Owner shall be responsible for obtaining all such other insurance such Owner deems desirable, including insurance covering Accessory Structures not part of the Dwelling Unit, contents, furnishings, fixtures and other property of any kind belonging to such Owner, and covering personal liability of that Owner and that Owner's Related Users.

(m) Insurance Provisions. Any insurance policy obtained by an Owner shall, to the extent possible at reasonable cost, contain a waiver of the right of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and their Related Users. A copy of any insurance policy obtained by an Owner shall be furnished to the Association upon request of the Association.

## ARTICLE IX DESIGN REVIEW

Section 9.1 General. All Improvements are subject to standards for design, landscaping and aesthetics adopted pursuant to this Article 9 ("Design Guidelines") and the approval procedures set forth in this Article 9, except as may be provided otherwise in this Article 9 or the Design Guidelines. No Owner other than Declarant may make any Improvements without the prior written approval of the Design Reviewer; provided, however, that no prior approval of the Design Reviewer is necessary to repaint the exterior of an existing structure using the color scheme for such structure most recently approved by the Design Reviewer or to rebuild or restore any damaged structure in a manner consistent with the plans and specifications most recently approved for such structure by the Design Reviewer. In addition, no approval is required for work done to the interior of a structure, except that window coverings visible from outside of the structure and modifications to the interior of screened porches, patios and any other portions of a structure that are visible from outside of the structure shall require prior written approval of the Design Reviewer. This Article 9 shall not apply to the Association's activities during the Declarant Control Period or to Declarant's design and construction activities at any time.

### Section 9.2 Design Review Authority.

(n) Declarant. Until the expiration of the Development and Sale Period, Declarant shall have exclusive authority to: (i) promulgate, modify, amend and withdraw Design Guidelines from time to time; (ii) review and act upon all applications for review of proposed Improvements; and (iii) grant variances from the application of the Design Guidelines. Declarant may designate one or more Persons to act on its behalf in reviewing any application. In tak-

ing any or all of the actions described in clauses (i), (ii) and (iii) above, Declarant and its designee act solely in Declarant's interest and owe no duty to any other Person or the Association. From time to time, Declarant may delegate any or all of its rights under this Article 9 to other Persons or groups of persons, including the Design Review Committee appointed pursuant to Section 9.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to: (1) Declarant's right to revoke such delegation at any time and reassume its prior control; and (2) Declarant's right to veto any decision which it determines, in its sole and absolute discretion, to be inappropriate or inadvisable; provided, however, that Declarant has no duty to any other Person or to the Association to veto any decision. So long as Declarant has any rights under this Article 9, the jurisdiction of any other Person or the Association with respect to the review and/or approval of proposed Improvements and the other matters covered by this Article 9 shall be limited to such matters, if any, as Declarant specifically delegates.

(o) Design Review Committee.

(i) Upon termination of Declarant's rights under this Article 9, the Executive Board shall appoint a Design Review Committee to assume jurisdiction over matters covered by this Article 9. In addition, if Declarant delegates authority pursuant to Section 9.2(a) to the Design Review Committee, the Executive Board shall appoint a Design Review Committee to assume jurisdiction over the matters within the scope of such delegation.

(ii) The Design Review Committee shall consist of three, five or seven persons (as determined by the Executive Board) who shall serve and may be removed and replaced in the discretion of the Executive Board. The Executive Board may also appoint alternate members of the Design Review Committee to act when there is not a quorum of regular members of the Design Review Committee. The regular term of office for each member of the Design Review Committee shall be one year. Any such member may be removed with or without cause by the Executive Board at any time by written notice. A successor appointed to fill any vacancy on the Design Review Committee shall serve the remainder of the term of the former member. Members of the Design Review Committee need not be Owners or representatives of Owners. The Design Review Committee may, but need not, include architects, engineers or similar professionals.

(iii) Until expiration of Declarant's rights under this Article 9, the Design Review Committee shall notify Declarant in writing within three business days of any action (i.e., approval, partial approval or disapproval) it takes under this Article 9. A copy of the application and any additional information Declarant may require shall accompany the notice. Declarant shall have ten (10) business days after receipt of such notice to veto any such action, in its sole and absolute discretion, by written notice to the Design Review Committee.

(p) Design Reviewer. For purposes of this Article 9, the Person having jurisdiction in a particular case shall be referred to as the "Design Reviewer." The Design Reviewer may be Declarant, Declarant's designee, a Person or group of Persons to whom Declarant has delegated authority or the Design Review Committee.

Section 9.3      Design Review Committee Procedures, Guidelines and Rules.

(q)      Design Review Committee Operation. The Design Review Committee shall select its own chairman and vice-chairman from among its members. The chairman or, in the chairman's absence, the vice-chairman shall be the presiding officer of its meetings. In the absence of both the chairman and the vice-chairman from a meeting, the members present shall appoint a member to serve as acting chairman at such meeting. If a Design Review Committee is appointed, it shall meet from time to time as necessary to perform its duties hereunder. Meetings shall be held upon call of the chairman or vice-chairman at the offices of the Association or at such other location as shall be selected by the chairman. A majority of members shall constitute a quorum for the transaction of business. An alternate member may participate at any meeting at which there is not a quorum and shall have all of the authority of a regular member while so participating. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the Design Review Committee shall constitute the action of the Design Review Committee on any matter before it. The Design Review Committee may establish guidelines or rules and regulations with respect to its operation and with respect to procedures, materials to be submitted and additional factors that will be taken into consideration in connection with the review of any application for approval of any proposed Improvement. Unless limited by any delegation by Declarant, such guidelines or rules and regulations may specify circumstances under which the strict application of limitations or restrictions under this Declaration may, in the sole and absolute discretion of the Design Review Committee, be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. Unless limited by any delegation by Declarant, such guidelines or rules and regulations may also waive the requirement for approval of certain Improvements or exempt certain Improvements from the requirement for approval if, in the sole and absolute discretion of the Design Review Committee, such approval is not reasonably required to carry out the purposes of this Declaration. Such guidelines or rules may elaborate or expand upon the provisions herein relating to procedures and criteria for approval. A copy of the Design Review Committee's guidelines or rules and regulations, if any, shall be filed with the Secretary of the Association and shall be maintained in the records of the Association and shall be subject to inspection by all Owners and Mortgagees. Notwithstanding any provision of this Article 9 or this Declaration to the contrary, any guidelines or rules and regulations of the Design Review Committee shall apply only to an application for approval of an Improvement for which the Design Review Committee is the Design Reviewer and shall not in any manner limit or impair Declarant's right to veto the action of the Design Review Committee pursuant to Section 9.2(b).

(r)      Professionals. The Design Review Committee is hereby authorized to retain, at the expense of the Association (subject to reimbursement by the Applicant as provided in Section 9.5(c)), the services of one or more consulting architects, landscape architects, engineers, urban designers or other professionals to advise and assist the Design Review Committee in performing the design review functions prescribed in this Article 9.

(s)      Design Review Committee Representative. The Design Review Committee may, from time to time, by resolution in writing adopted by a majority of the members, designate a Design Review Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee,



except the granting of approval to any Improvement and the granting of variances. The action of such Design Review Committee Representative within his or her authority or the written consent or the vote of a majority of the members of the Design Review Committee shall constitute action of the Design Review Committee.

(t) Records of Actions. The Design Review Committee shall report in writing to the Executive Board all final action of the Design Review Committee and the Executive Board shall keep a record of such reported action for a period of twenty-four months after receiving such report.

(u) Submission of Material. Any material to be submitted or notice given to the Design Review Committee shall be submitted at the office of the Association.

#### Section 9.4      Design Guidelines.

(v) Declarant's Authority. Declarant may prepare the initial Design Guidelines. Design Guidelines may exempt certain Improvements from the approval requirements of this Declaration, and may waive strict application of the limitations and restrictions of this Declaration, particularly where application thereof would be unreasonable or unduly harsh under the circumstances. Design Guidelines may expand upon the provisions of this Declaration relating to procedures and criteria for approval, and may specify rules and regulations pertaining to the construction of Improvements. Design Guidelines shall have the same force and effect as if they were set forth in this Declaration, but the terms of this Declaration shall prevail in the event of any conflict. In Declarant's sole and absolute discretion, Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. In Declarant's sole and absolute discretion, the effect of Recordation of any Design Guidelines may be terminated at any time upon the recording of an instrument terminating such recording.

(w) Amendments. Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 9.2(a). Declarant's right to amend the Design Guidelines shall continue even if Declarant delegates reviewing authority to the Design Review Committee or to any other Person or group of Persons, unless Declarant also delegates the power to amend the Design Guidelines. No delegation of the power to amend the Design Guidelines shall be inferred, unless the delegation of such power is explicit and expressly refers to this Section 9.4(b). Upon expiration of Declarant's rights under this Article 9, the Design Review Committee may amend the Design Guidelines with the consent of the Executive Board. In addition, any new Design Guidelines adopted by a Design Review Committee after the Development and Sale Period shall require the consent of the Executive Board. Amendments to the Design Guidelines shall apply prospectively only. Amendments shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any work on such structures that was not described in the plans or other materials previously approved by the Design Reviewer must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, except that amendments to the Design Guidelines may not address the interior of any structure, except with respect to window coverings and the interior of screened porches, patios and any other portions of a structure that are visible from outside of the structure.

Amendments to the Design Guidelines may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive, or may make them more restrictive.

(x) Acknowledgment by Owners. By accepting title to any Dwelling Unit or any other property within the Project Area, an Owner acknowledges and agrees that the Design Guidelines are intended to provide guidance to Owners, architects and contractors regarding matters of particular concern to the Design Reviewer. The Design Guidelines are not the exclusive basis for the Design Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval. The Design Reviewer shall make the Design Guidelines available to Owners and their architects and contractors upon request.

#### Section 9.5      Design Review.

(y) Submission of Application. Prior to commencement of work to accomplish any proposed Improvement the Person proposing to make such Improvement ("Applicant") shall submit to the Design Reviewer at its offices (which, for the Design Review Committee, shall be the offices of the Association) a written application for approval, which must be accompanied by such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, samples of materials and colors, and other information as the Design Reviewer and/or the Design Guidelines require. The Design Reviewer may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement. Until receipt by the Design Reviewer of all required materials in connection with the proposed Improvement, the Design Reviewer may postpone review of any materials submitted for approval.

(z) Criteria for Evaluation. In reviewing each application, the Design Reviewer may consider any factors it deems relevant, including, without limitation: (i) maintenance and protection of the surrounding natural environment; (ii) whether the proposed Improvement will be in compliance with the applicable Design Guidelines; (iii) harmony of the proposed external design with surrounding structures, with surrounding areas of the Project Area and with the environment; (iv) whether the proposed Improvement might be detrimental to the appearance of the Project Area in the vicinity of the proposed Improvement; (v) whether the proposed Improvement might detract from the beauty, wholesomeness and attractiveness of the Project Area or the enjoyment thereof by Owners; and (vi) whether upkeep and maintenance of the proposed Improvement might become a burden on the Association. Decisions of the Design Reviewer may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

(aa) Fees; Professional Assistance. The Design Reviewer may establish and charge processing and review fees for considering any requests for approvals submitted to it, which fees shall be paid at the time the request for approval is submitted. Such fees may not be identical or uniform for each proposed Improvement and may be based upon the estimated cost of the proposed Improvement or any other basis determined by the Design Reviewer in its reasonable judgment. Such fees may also include costs incurred in having professionals (such as, without limitation, architects and engineers) review any application. After the Development and Sale Period, the Executive Board may include the compensation of such professionals (to the extent not charged to Applicants) in the Association's annual operating budget.

(bb) Timing of Design Review Decisions. The Design Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Design Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Design Reviewer may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. As part of any approval, the Design Reviewer may require that construction commence within a specified time period. The Design Reviewer shall notify the Applicant in writing of the final determination on any application no later than thirty (30) days after its receipt of a completed application and all required submissions; however, with respect to any determination of the Design Review Committee that is subject to Declarant's veto right under Section 9.2(b), the Design Reviewer shall notify the Applicant of the final determination within fifty (50) days after its receipt of the completed application and all required submissions. If the Design Reviewer disapproves an application, it shall inform the applicant in writing the reasons for such disapproval.

(cc) Failure of Design Reviewer to Act on Application. If the Design Reviewer fails to respond to an application within the applicable time period provided in Section 9.5(d), approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with a specific objective provision of the Design Guidelines (such as, without limitation, a height restriction) unless a written variance has been granted pursuant to Section 9.16.

(dd) No Appeal to Board. Decisions of the Design Reviewer or the Design Review Committee under this Agreement and the Design Review Guidelines are considered to be final and cannot be appealed to the Executive Board.

(ee) Matters Outside Scope of Design Review. In reviewing any matter, the Design Reviewer shall not be responsible for reviewing, nor shall its approval of any Improvement be deemed approval of, the Improvement from the standpoint of safety, whether structural or otherwise, functionality or conformance with building codes or other governmental laws or regulations. Under no circumstances shall the approval of any Improvement by the Design Reviewer limit or affect in any way the Applicant's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, development guides, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

**Section 9.6** No Waiver of Future Approvals. By accepting title to any Lot, an Owner acknowledges and agrees that the Persons reviewing applications under this Article 9 will change from time to time, and opinions on aesthetic matters, as well as interpretations and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features of an Improvement until work is completed. In such cases, the Design Reviewer may elect not to require changes to objectionable features. However, the Design Reviewer may refuse to approve similar proposals in the future. Approval of applications, plans or other matters shall not constitute a waiver of the right to withhold approval as to any similar application, plans or other matters subsequently or additionally submitted for approval. The approval of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold

approval or consent for any similar Improvement or any similar proposals, plans, specifications or other materials submitted with respect to other Improvements.

Section 9.7      Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible, subject to delays caused by adverse weather conditions, and in complete conformity with the description of the proposed Improvement, any plans and specifications and other materials approved by the Design Reviewer in connection with the proposed Improvement and any conditions imposed by the Design Reviewer. If the Design Reviewer's approval requires that construction commence within a specified time period and construction does not commence within the required period, the approval shall expire, and the Applicant must reapply for approval before commencing any activities in connection with the Improvement. Once construction is commenced, it shall be diligently pursued to completion. Except as otherwise stated in the Design Reviewer's approval, work upon the subject Improvement shall be completed within eighteen months after the date of the Design Reviewer's approval unless the Design Reviewer, in its sole and absolute discretion, grants an extension in writing.

Section 9.8      Observation of Work. The Design Reviewer and its designated representatives shall have the right to examine any Improvement prior to or after completion, provided that the right of inspection shall terminate sixty (60) days after the Design Reviewer shall have received a Notice of Completion from the Applicant. The Design Reviewer and its designated representatives may enter upon any Lot at any reasonable time or times to determine the progress, work status or completion of any Improvement. In addition to the remedies described in Section 9.15 below, the Design Reviewer may withdraw approval of any Improvement and require all activity at such Improvement be stopped, if deviations from the approved plan or approved construction practices are not corrected or reconciled promptly after written notification to the Applicant specifying such deviations. The Design Reviewer's inspection under this section is solely for the purpose of determining compliance with these Declarations and the Design Guidelines, and does not impose any obligation upon the Design Reviewer to determine the compliance of the work with any building code, fire regulation or other code or regulation.

Section 9.9      Notice of Completion. Upon completion of the Improvement, the Applicant shall give written Notice of Completion to the Design Reviewer. Until the date of receipt of such a Notice of Completion, the Design Reviewer shall not be deemed to have notice of completion of such Improvement, whether or not the Design Reviewer or its designated representatives have made inspections of the Improvement.

Section 9.10      Notice of Noncompliance. If, as a result of inspections or otherwise, the Design Reviewer finds that any Improvement has been commenced or completed without obtaining the approval of the Design Reviewer, or was not done in substantial compliance with the plans, specifications and other materials approved by, and any conditions imposed by, the Design Reviewer, or has not been accomplished as promptly and diligently as possible, then the Design Reviewer shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within sixty (60) days after the Design Reviewer receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

Section 9.11 Failure of Design Reviewer to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Design Reviewer fails to notify the Applicant of any noncompliance within sixty (60) days after receipt by the Design Reviewer of written Notice of Completion from the Applicant, the Improvement shall be deemed in compliance if the Improvement was, in fact, completed as of the date of Notice of Completion.

Section 9.12 Correction of Noncompliance. If the Design Reviewer gives an Applicant a notice of noncompliance, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the notice. If the Applicant does not remove the noncompliance within the time period required by this Section 9.12, the Design Reviewer or Declarant shall have the rights and remedies set forth in Section 9.13 below, in addition to all other rights and remedies it may have under this Declaration, at law or in equity.

Section 9.13 Enforcement of Restrictions.

(ff) Enforcement Person. The Design Reviewer shall have primary responsibility to enforce the provisions and restrictions set forth in this Article 9 and the Design Guidelines; provided, however, that such responsibility shall not limit the right of Declarant or the Association to take action under any provision of this Declaration. If the Design Reviewer does not take action to enforce such restrictions within fifteen days after being requested to do so by the Declarant or the Executive Board, the Association may assume responsibility for enforcing such restrictions in any case in which the Design Reviewer declines to act and, during the Development and Sale Period, Declarant may assume responsibility for enforcing such restrictions in any case in which the Design Reviewer declines to act.

(gg) Rights and Remedies. If an Applicant or an Owner violates any term or condition set forth in this Article 9 or in the Design Guidelines, the Design Reviewer and the Association and, during the Development and Sale Period, Declarant, shall have the following rights and remedies:

(i) The right, at its option, to record a notice of noncompliance against the real property on which the noncompliance exists.

(ii) The right, by written notice to the Applicant, to revoke any approval previously granted to the Applicant, in which event the Applicant shall, upon receipt of such notice, immediately cease any development, improvement, alteration, landscaping or other activity covered by the approval so revoked.

(iii) The right to enter upon the real property upon which the violation exists and remove the non-complying Improvement or otherwise cure such violation, at the Applicant's sole cost and expense and the Applicant shall reimburse the Design Reviewer, Declarant or the Association, as the case may be, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Design Reviewer, Declarant or the Association, as the case may be, the Executive Board may levy a Reimbursement Assessment against the Owner of the Lot, Dwelling Unit or other real property for such costs and expenses, and the Owner shall pay the Reimbursement Assessment to the Association within thirty days after the

Owner receives a written invoice therefor. If such expenses are owed to the Design Reviewer or Declarant, the Executive Board shall, at the request of the Design Reviewer or the Declarant, levy a Reimbursement Assessment against the Owner of the Lot, Dwelling Unit or other property for such costs and expenses, and the Association shall pay such costs and expenses to the Design Reviewer or Declarant, as the case may be.

(iv) The right to sue the Applicant to enjoin such violation, or to require specific performance of an Owner's obligations.

(v) The right to sue the Applicant for all damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by the Design Reviewer, Declarant or the Association as a result of the violation.

(vi) All other rights and remedies available to it under this Declaration, at law, or in equity.

The Person with enforcement authority is not obligated to exercise any right or remedy or any particular right or remedy or to exercise its rights and remedies in any particular order. All rights and remedies shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. No action or failure to act with respect to any violation shall constitute a waiver or estoppel with respect to any future similar or dissimilar violation. Nothing in this Section 9.15 is intended to or does limit the rights of Declarant or any other Owner to pursue an action against another Owner to enforce any legal rights or remedies available to Declarant or such Owner as a result of losses or damage arising out of another Owner's failure to satisfy his obligations under this Declaration or the Design Guidelines.

Section 9.14 Variances. The Design Reviewer may authorize variances from compliance with any of the provisions of the Design Guidelines and any procedures set forth in this Article 9 or the Design Guidelines when it determines that circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations justify such a variance; however, the Design Reviewer shall under no circumstances be obligated to grant variances. No variance shall: (i) be effective unless in writing; (ii) be contrary to this Declaration or be deemed to have waived any of the provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and particular provisions of this Article 9 or the Design Guidelines covered by the particular variance; (iii) prevent the Design Reviewer from denying a variance in other circumstances, whether or not similar; or (iv) limit or affect in any way the Applicant's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, development guides, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction. A variance requires Declarant's written consent during the Development and Sale Period and, thereafter, requires the Board of Director's written consent. During the Development and Sale Period, if the Design Reviewer is Declarant or is appointed by Declarant, the Executive Board may not overrule a decision of the Design Reviewer to grant or deny a variance. After the Development and Sale Period or during such period if the Design Reviewer is not Declarant or appointed by Declarant, the Executive Board may grant a variance that was denied by the Design Reviewer, but only in accordance with the appeal provisions set forth in Section 9.6.

Section 9.15 Compensation. The Design Reviewer (including members of the Design Review Committee, if any, and Declarant) shall receive reimbursement from the Association for reasonable out-of-pocket expenses incurred by it in the performance of its duties hereunder. Members of the Design Review Committee may receive compensation from the Association for the performance of such duties, if and only if such compensation is approved by the Executive Board. The Executive Board has no duty to approve any compensation for members of the Design Review Committee. The Design Reviewer, if other than the Design Review Committee, may receive compensation from Declarant for the performance of such duties, if and only if such compensation is approved by Declarant. Declarant has no duty to approve any compensation for the Design Reviewer.

Section 9.16 Certificate of Compliance. Any Owner may request in writing that the Association issue a certificate of compliance certifying that there are no known violations of this Article 9 or the Design Guidelines with regard to the Owner's Dwelling Unit or other property. The Association, after confirming the necessary facts with the Design Reviewer, shall either grant or deny such written request within thirty (30) days after receipt and may charge a reasonable administrative fee. Any Person, without actual notice to the contrary, shall be entitled to rely on such certificate with respect to all matters set forth therein. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any violation of this Article 9 or the Design Guidelines with regard to the Owner's Dwelling Unit or other property known to the Association on the date of such certificate.

Section 9.17 Limitation of Liability.

(hh) No Duty Created. This Article 9 establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Project Area. This Article 9 and any standards and procedures established pursuant to this Article 9 do not create any duty to any Person. Review and approval of any application may be based purely on aesthetic considerations. The Design Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners, none of which may be the case.

(ii) No Liability. There shall be no liability imposed on the Design Reviewer, any Design Review Committee, any member of the Design Review Committee, any Design Review Committee Representative, the Association, the Executive Board, the officers of the Association, Declarant or any employee or designee of Declarant, or any Person to whom Declarant delegates any rights or duties pursuant to this Article 9, for any loss, damage or injury arising out of or in any way connected with the performance of any duties of such Person or entity unless due to the willful misconduct or bad faith of the party to be held liable. Without limiting the generality of the previous sentence, the Design Reviewer, any Design Review Committee, any member of the Design Review Committee, any Design Review Committee Representative, the Association, the Executive Board, the officers of the Association, Declarant and any employee or designee of Declarant shall not be liable for: (i) soil conditions, drainage, or other general site conditions or site work; (ii) any defects in plans or specifications revised or approved under this Article 9; (iii) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents; or (iv) any

injury, damages or loss arising out of the manner or quality or other circumstances of approved construction on or modification to any Improvement. In all matters subject to this Article 9, the Association shall defend and indemnify the Design Reviewer, any Design Review Committee, any member of the Design Review Committee, any Design Review Committee Representative, the Executive Board, the officers of the Association, Declarant and any employee or designee of Declarant, in the manner provided in the Bylaws with respect to indemnification of Directors.

Section 9.18 Construction Period Exception. During the course of actual construction of any permitted Improvement, and provided construction is proceeding with due diligence, enforcement of the provisions of this Declaration and the Design Guidelines shall be temporarily suspended as to the property upon which the construction is taking place to the extent necessary to permit such construction in accordance with the approval of the Design Reviewer, any plans and specifications submitted to the Design Reviewer and any deadlines for commencement and/or completion of construction required by this Article 9, the Design Guidelines and/or the approval of the Design Reviewer; provided that, during the course of any such construction, nothing is done that will result in a violation of any of the provisions of this Declaration upon completion of construction and nothing is done that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

Section 9.19 No Restriction upon Declarant. Notwithstanding any provision to the contrary contained in this Article 9 or elsewhere in this Declaration, Declarant shall be exempt from the limitations, prohibitions and requirements contained in this Article 9, but this provision shall not in any way limit, restrict or abrogate Declarant's rights and authority under this Article 9.

## ARTICLE X DEVELOPMENT COVENANTS

Section 10.1 Accessory Structures. Accessory Structures may be built and maintained on Lots only after the approval of the Design Review Board and in accordance with the Design Guidelines.

Section 10.2 Septic Systems. Individual sewage disposal systems installed within any Lot shall comply with requirements, rules and regulations of the Colorado Department of Health, the Tri County Health Department and other applicable governmental and quasi-governmental entities. Prior to the construction of any system, soil evaluation and percolation tests shall be conducted in accordance with all applicable requirements, rules and regulations.

Section 10.3 Geologic Hazards/Wetlands. The owner of each Lot shall be responsible for identifying and avoiding any geologic hazards (e.g., land slides, mud flows, avalanches, subsidence, flood, etc.) or wetlands that may exist within such Lot.

Section 10.4 Utility Lines. All utility lines serving any Lot shall be located underground and, unless otherwise approved by the Design Reviewer, shall follow the alignment of the driveway accessing such Lot.

Section 10.5 Drainage/Erosion Control. The owner of each Lot shall be responsible for minimizing site disturbance so as to minimize erosion and complying with applicable



requirements imposed by the Design Guidelines. Each Owner shall be liable for any drainage onto adjacent property in excess of the historic flows.

Section 10.6     Lighting. All exterior lighting within any Lot shall minimize impact on the night sky and shall be subject to specific regulation in the Design Guidelines and approval by the Design Reviewer. Subject to the foregoing, each Lot shall be allowed to maintain lights at the point of intersection of the Driveway and the Road to demarcate the entry to the Driveway.

Section 10.7     Building Materials and Colors. Building materials, including but not limited to roofs, shall be in accordance with the Design Guidelines.

#### ARTICLE XI OWNERS MAINTENANCE RESPONSIBILITY

Section 11.1     Maintenance of Lots. Each Owner shall be responsible for performing and paying for all necessary maintenance and repair of such Owner's Lot, Dwelling Unit and Accessory Structures so as to present at all times a pleasing and attractive appearance, as determined by the Association in its reasonable discretion. If any Owner fails to perform any such maintenance or repair within thirty (30) days after demand by the Association, the Association may (but shall not be obligated to) cause such maintenance or repair to be done, and any costs incurred by the Association in connection therewith may be collected by the Association from such Owner as a Reimbursement Assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Lot of such Owner as provided elsewhere in this Declaration for assessments or other charges.

Section 11.2     Owner Caused Damage. If, due to the act or neglect of an Owner or a Related User of an Owner, whether by virtue of the exercise by such Owner or Related User of any easement or right granted to him herein or otherwise, loss or damage shall be caused to any person or property, including the Common Area, and, in the case of damage to property, such Owner does not promptly repair and restore any such damaged property to the condition it was in prior to such damage at such Owner's sole cost and expense, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as a Reimbursement Assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Lot of such Owner as provided elsewhere in this Declaration for assessments or other charges.

Section 11.3     Conformance With Plat Notes. Each Owner shall conform to the requirements and restrictions of the Plat Notes. If any Owner fails in any material respect to comply with the Plat Notes and such non-compliance is not cured within thirty (30) days after demand by the Association, the Association may (but shall not be obligated to) cure such non-compliance with the Plat Notes, and any costs incurred by the Association in connection therewith may be collected by the Association from such Owner as a Reimbursement Assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Lot of such Owner as provided elsewhere in this Declaration for assessments or other charges. In the alternative, the Association may enforce the Owner's obligations to comply with

the Plat Notes in any other manner permitted by this Declaration, the Act or other Colorado law, including but not limited to a legal action for injunctive or other equitable relief.

## ARTICLE XIISPECIAL DECLARANT RIGHTS

Section 12.1 Improvements. Declarant hereby reserves for itself, its successors and assigns the right, but is not obligated, to construct:

(a) any improvements shown on any Recorded Plat of the Project Area, as the same may be amended from time to time; and

(b) any other buildings, structures or improvements that Declarant desires to construct on property owned by it within the Project Area, or the Annexable Area, or any other real estate owned by Declarant, whether or not the same ever become part of the Project Area.

### Section 12.2 Development and Other Rights.

(a) Declarant hereby reserves for itself, its successors and assigns:

(i) the right to supplement or amend this Declaration and Plat to add all or any portion of the Annexable Property to the Project Area;

(ii) the right to amend this Declaration to create additional Lots and additional Common Area on all or any portion of the Project Area or Annexable Property; provided, however, that the maximum number of Lots that may be created under this Declaration shall be twenty (20).

(iii) the right to subdivide any Lot owned by Declarant, provided that in no event shall the average size of any Lot (including for such purpose the acreage of any Common Area created in conjunction with the subdivision of such Lot) be less than ten acres in size;

(iv) the right to combine any Lots owned by Declarant;

(v) the right to reconfigure (including changing the size of) and/or re-plat any Lot or Lots owned by Declarant, including Lots created by subdividing and/or combining Lots owned by Declarant;

(vi) the right to convert any Lot owned by Declarant into Common Area;

(vii) the right to withdraw from the Project Area any Lot or all Lots owned by Declarant prior to the conveyance of such Lot or Lots to a purchaser, and, after the addition of any portion of the Annexable Property or other real property to the Project Area, the right to withdraw any real estate owned by Declarant and located within such portion at any time prior to the conveyance of a Lot located in such portion to a purchaser.

(b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment to this Declaration in accordance with the requirements set forth in Section 38-33.3-210 of the Act.

Section 12.3 Sales Offices, Model Homes, Construction Trailers, Etc. Declarant hereby reserves for itself, its successors and assigns the right to maintain sales offices, management offices, models, construction trailers, fenced and unfenced storage areas and paved and unpaved parking areas upon any Lot owned or leased by Declarant and any and all Common Area. Such offices, models and construction trailers may be of such size and number as Declarant determines and may be located and relocated as often and as many times as Declarant determines. Declarant shall continue to be the owner of any such office, model, trailer, storage area or parking area, and such office, trailer, etc., shall not be or become part of the Common Area and the Association shall not own or become the owner of any such office, model, trailer, storage area or parking area, unless Declarant fails to remove the same within the applicable time specified in this Section 12.3 above. Declarant shall have the right to remove any such office, model, trailer, storage area or parking area at any time that Declarant is the Owner of the Lot on which such office or model is located and within one (1) year after Declarant ceases to be the Owner of such Lot. Declarant shall have the right to remove any such office, model, trailer, storage area or parking area located on Common Area at any time that Declarant owns any Lot within the Project Area and within two (2) years after Declarant ceases to be the Owner of any Lot within the Project Area. Declarant also reserves for itself, its successors and assigns the right to construct, maintain and remove signs advertising the Project or individual Lots on the Common Area and upon Lots owned by Declarant.

Section 12.4 Merger. Declarant hereby reserves for itself and its successors and assigns the right to merge or consolidate the common interest community created by this Declaration with any other common interest community.

Section 12.5 Exercising Special Declarant Rights. Declarant may exercise its Special Declarant Rights at any time prior to the later to occur of the date on which the Declarant Control Period expires and the date that is fifty years after the date on which this Declaration is Recorded. Declarant may exercise its Special Declarant Rights with respect to different parcels of real estate at different times and in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights. If Declarant exercises any Special Declarant Right with respect to any portion of the Project Area, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project Area.

Section 12.6 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule or regulation that interferes with or diminishes any Special Declarant Right, without Declarant's prior written consent.

Section 12.7 Rights Transferable. Declarant may transfer any Special Declarant Right reserved to it under this ARTICLE XII or under any other provision of this Declaration in accordance with the terms and conditions of the Act.

## ARTICLE XIII ANNEXATION OF ADDITIONAL PROPERTY

Section 13.1 Annexation to the Project Area. Property located within the Annexable Area may be annexed to the Project Area and made subject to this Declaration by Declarant at any time and from time to time, without the consent of the Association or Owners.

Section 13.2 Manner of Annexation. Additions to the Project Area may be made by Declarant by the Recordation of one or more supplements to this Declaration (each, a "Supplemental Declaration") or other written instruments signed by Declarant or by a statement in a deed from Declarant conveying a Lot that such Lot has been annexed to the Project Area. Such Supplemental Declarations, deeds or other instruments shall contain legal descriptions of the additional real property located within the Annexable Area which shall become part of the Project Area and shall declare that such property shall be subject to this Declaration. In connection with the annexation of property, Declarant may, as necessary or appropriate, record one or more additional plats or supplements to the Plat dividing the subject portion of the annexed area into Common Area and Lots.

Section 13.3 Effect of Annexation. Upon the recording of a Supplemental Declaration, deed or other written instrument annexing property to the Project Area, the property described therein shall be subject to all of the provisions of this Declaration. The property described therein may be made subject to additional and different Restrictions which are set forth in the Supplemental Declaration provided such Restrictions are no less restrictive than those contained in this Declaration.

## ARTICLE XIV WITHDRAWAL OF PROPERTY

Section 14.1 Withdrawal of Property by Declarant. Property within the Project Area may be withdrawn from the Project and from this Declaration by Declarant to correct a surveyor error or other technical or clerical error or for any other reason or no reason, in Declarant's sole, absolute and unreviewable discretion. At the request of Declarant, the Association shall promptly execute, have acknowledged and deliver to Declarant a deed conveying to Declarant (or to any person or entity designated in writing by Declarant) the property within the Project Area that is withdrawn from the Project. The Association's failure to execute and deliver such deed shall not affect or defeat the withdrawal of such property from the Project Area, which shall be effective in the absence of such deed. In addition, any Lot or all Lots owned by Declarant may be withdrawn from the Project and from this Declaration prior to the conveyance of such Lot or Lots to a purchaser. Any withdrawal permitted by this Section 14.1 above may be accomplished by the execution, acknowledgment and Recordation of a Notice of Withdrawal. The Notice of Withdrawal (a) shall be executed and acknowledged by the Owner of the property to be withdrawn; (b) shall, if the property to be withdrawn is not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Project Area or Annexable Area; (c) shall contain an adequate legal description of the property to be withdrawn; and (d) shall contain a statement and declaration that the property to be withdrawn is withdrawn from the Project and shall not thereafter be subject to this Declaration. The withdrawal shall be effective upon Recording of the Notice of Withdrawal and, upon Recording of the Notice of Withdrawal, the property described therein shall no longer be part of the Project or subject to this Declaration.

## ARTICLE XV USE RESTRICTIONS

Section 15.1 Residential Use. One single family Dwelling Unit and approved Accessory Structures may be placed on each Lot in accordance with the terms of this Declaration. All leases or rental agreements for any Lot, Dwelling Unit or Accessory Structure shall be in writing, shall be specifically subject to this Declaration, and shall be for a term of at least twelve (12) months. The name(s), secondary address(es) and daytime phone number(s) of any lessee(s) shall be submitted to the Executive Board for its records. No Lot, or any building, structure or improvement on such Lot, shall be used for any business, commercial or professional use. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that the following conditions are satisfied:

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

(b) The existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted; provided, however, that signage consistent with the character of the Project may be permitted at the sole discretion of the Design Reviewer in accordance with the Design Guidelines;

(c) The business does not result in an undue volume of traffic or parking, which determination may be made by the Executive Board in its sole discretion from time to time;

(d) The business conforms to all zoning requirements and is lawful in nature; and

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

Section 15.2 Accessory Structures. Accessory Structures, whether attached to or detached from the Dwelling Unit, such as, without limitation, a garden shed, utility shed, greenhouse, detached garage, livestock stable, detached deck, guest house or cabin may be permitted only after the approval of the Design Review Board and in accordance with the Design Guidelines.

Section 15.3 Play Equipment. All Improvements associated with play and sports equipment (including, without limitation, basketball hoops, swing sets or jungle gyms) shall either be fully and completely concealed from view from other Lots, Driveways, and Common Area or shall comply with landscaping and screening requirements approved by the Design Reviewer.

Section 15.4 Improvements. No Owner shall make any Improvement except in accordance with ARTICLE IX above.

Section 15.5 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no offensive odors, lights or noises

shall be permitted to arise or emanate from any Lot, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot or to the occupants of such other Lot. No other activity or condition shall be permitted to exist or take place upon any Lot so as to be offensive or detrimental to, or disturb the peace, quiet, comfort or serenity of, other Owners and their use and enjoyment of their Dwelling Units.

Section 15.6     Unsightly Activities. All storage piles, equipment, furniture, tools or other personal property shall be located so that all of the same are fully and completely concealed from view from other Lots, Driveways, and Common Area.

Section 15.7     Vehicles. No horse trailer, tent, folding camping trailer, trailer, snowmobile, motor home, watercraft, motorcycle, minibike, boat, hauling or utility trailer, or truck or van, or accessories relating to any of the foregoing shall be parked, stored or maintained on any Lot, or on any street or elsewhere within the Project Area, unless it is either fully and completely concealed from view from other Dwelling Units, Driveways, and Common Area or is in compliance with landscaping and screening requirements approved by the Design Reviewer. Except as specifically permitted by the Rules and Regulations, Recreational Vehicles shall not be parked, stored or maintained on any Lot except during periods of loading and unloading. Nothing contained in the foregoing is intended to prohibit the parking of (a) passenger vehicles in an Owner's driveway on such Owner's Lot, or (b) vehicles parked on a street, driveway, or guest parking area to the extent such right is protected by the Act.

Section 15.8     Garage Doors. Except when in use, all garage doors shall be kept in a closed position so that the contents thereof and therein are fully concealed from view from any other Lot, Driveways, and Common Area.

Section 15.9     Operation of Motor Vehicles. No unlicensed driver shall be permitted to operate an automobile or other motor vehicle upon or within the Project Area; no motor vehicle, motorcycle, motorbike, ATV, motor scooter, or snowmobile shall be operated, stored or maintained upon or within the Project Area by anyone licensed or unlicensed which causes or produces any noise that will or might disturb the peace, quiet, comfort, or serenity of Owners or Related Users, or of the occupants of surrounding properties. In no event shall any motorized vehicle be operated within the Common Area, except for (a) maintenance of such areas by the Declarant or the Association, (b) emergency purposes, or (c) motor vehicles utilizing the Road.

Section 15.10   Pets. The keeping of pets and livestock upon Lots shall be subject to regulation by the Association pursuant to the Rules and Regulations, provided, however, that the Rules and Regulations shall permit at least two domestic household pets (including dogs, cats or birds) and no more than six horses to be kept and maintained on each Lot. Poultry shall be limited to four per lot. No kennels, domestic or exotic animals shall be kept for the purpose of breeding or sale. No vicious pets shall be allowed on or be kept within the Project Area, nor shall pets be allowed to run at large. No animals of any kind shall be kept or maintained or permitted in any of the Common Area, except when the same are under the complete control of the owner. Pens and corrals shall be maintained and cleaned regularly. Owners shall manage manure and other animal waste so that no nuisance (including odor or flies) is caused to other Owners, and shall comply with all Rules and Regulations pertaining thereto. Each Owner and Related User shall promptly remove any waste from the Common Area caused by such Owner's or Related User's pet or livestock.

Section 15.11 Signs and Billboards. No billboards or advertising signs or similar devices of any character shall be erected, placed, permitted or maintained by any Owner or Related User on any Lot, except such signs as may be specifically approved by the Design Reviewer or the Rules and Regulations. Without limiting the foregoing, the Executive Board may prohibit signs advertising a Dwelling Unit for sale or for lease, or the Executive Board may adopt uniform standards relating to the dimensions, color, style and/or location of such signs. The provisions of this Section 15.11 above shall not apply to (a) any signs that Declarant may erect, place, permit or maintain pursuant to any right to do so granted by other provisions of this Declaration, or (b) any political sign or American flags the display of which is protected by the Act.

Section 15.12 Utilities Must be Underground. All electrical service, telephone lines, cable television lines and other utilities shall be placed under ground and no outside electrical lines shall be placed or permitted to be placed overhead by any Owner or Related User.

Section 15.13 Antennae. Except as specifically approved by the Design Reviewer, no towers or radio, television, ham radio or civilian band radio antenna, satellite dish (except only a satellite dish whose diameter is not greater than 18 inches) or similar device or equipment shall be erected, placed or maintained on any part of a Lot, Dwelling Unit, or the Common Area.

Section 15.14 Trash Containers. No garbage or trash shall be placed or kept on any Lot, except in covered containers and in accordance with all Rules and Regulations pertaining thereto. No such trash containers shall be kept on any Lot in a manner such that they are visible from any other Lot or the Common Area, except on trash collection days as permitted by the Rules and Regulations. All such trash containers shall be kept in a clean and sanitary condition.

Section 15.15 Commercial and Construction Vehicles. Except as provided in Section 15.19 below, no commercial or construction vehicle of any kind shall be permitted on any Lot or any other portion of the Project Area, unless the same shall be kept and maintained in a manner such that it is not visible from any other Lot, Driveway, or Common Area, provided that this shall not apply to commercial or other vehicles making business or service calls or deliveries of a temporary nature to a Dwelling Unit or to Owners, to the Association, or contractors within the Project Area. As used herein, the term “commercial vehicle” means any automobile, truck or wheeled equipment bearing any sign, logo or writing which relates or refers to any commercial enterprise.

Section 15.16 Subdivision, Rezoning and Timesharing.

(a) No Lot may be subdivided without the prior written consent of the Declarant and the Association, which consent must be evidenced on the plat or other instrument creating the subdivision. In no event shall any Lot be less than ten acres in size.

(b) No application for rezoning of any portion of the Project Area, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of that portion of the Project Area has been approved by the Association and the proposed use otherwise complies with this Declaration.

(c) No Owner shall offer or sell any interest in any Dwelling Unit under a “timesharing” or “interval ownership” plan or similar plan.

(d) The covenants, conditions and restrictions set forth in this Section 15.16 above shall not apply to Declarant’s development of the Project Area or to Declarant’s exercise of any Special Declarant Right.

Section 15.17 Mineral Exploration. No portion of the Project Area shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, peat, earth or any earth substance of any kind.

Section 15.18 Firearms, Hunting. Hunting and the discharge of firearms are prohibited. The trapping of animals outside of a Dwelling Unit or Accessory Structure by the use of leg hold traps, snares or any trap likely to kill or maim is prohibited.

Section 15.19 Construction and Sales Activities Allowed. Nothing contained in this ARTICLE XV or elsewhere in this Declaration or in any Rules and Regulations shall be deemed to prohibit activities of Declarant normally associated with or convenient to the development of the Project Area, the sale of Lots or the construction and sale of Dwelling Units within the Project Area.

#### ARTICLE XV MISCELLANEOUS PROVISIONS

Section 16.1 Term of Declaration and Termination. This Declaration and the planned community created by this Declaration shall continue in perpetuity, unless terminated by a vote, by written ballot, of Members holding at least ninety percent (90%) of the voting power of Members of the Association, which must be present in person or by proxy at a duly constituted meeting. The agreement of the Owners to terminate this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the terms and conditions of section 38-33.3-218 of the Act. Upon the Recordation in the office of the Clerk and Recorder of Douglas County, Colorado of the termination agreement, the Project shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved. Notwithstanding the foregoing, the Owners may not terminate the Project during the Declarant Control Period without Declarant’s prior written consent, which consent Declarant may withhold in its sole discretion.

Section 16.2 Association Records. The Association shall maintain accurate and complete accounting records.

(a) The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act concerning statements of unpaid assessments.

(b) The Association shall keep as permanent records minutes of all meetings of Owners and the Executive Board, a record of all actions taken by the Owners or Executive Board by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the Executive Board in place of the Executive Board on behalf of the Association, and a record of all waivers of notices of meetings of Owners and of the Executive Board or any committee of the Executive Board.



(c) The Association or its agent shall maintain a record of Owners in a form that permits preparation of a list of the names and addresses of all Owners, showing the number of votes each unit Owner is entitled to vote.

(d) The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) Except as provided in paragraph (f) below, all financial and other records shall be made reasonably available for examination and copying by any unit owner and such owner's authorized agents.

(f) Notwithstanding paragraph (e) above, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's interest as an Owner without consent of the Executive Board. Without the consent of the Executive Board, a membership list or any part thereof may not be:

(i) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election held by the Association;

(ii) used for any commercial purpose; or

(iii) sold to or purchased by any person.

(g) The Association may charge a fee, which may be collected in advance but which shall not exceed the Association's actual cost per page, for copies of Association records.

(h) As used in this section, "reasonably available" means available during normal business hours, upon notice of five business days, or at the next regularly scheduled meeting if such meeting occurs within thirty days after the request, to the extent that:

(i) The request is made in good faith and for a proper purpose;

(ii) The request describes with reasonable particularity the records sought and the purpose of the request; and

(iii) The records are relevant to the purpose of the request.

(i) In addition to the records specified in subsection (1) of this section, the association shall keep a copy of each of the following records at its principal office:

(i) Its articles of incorporation, if it is a corporation, or the corresponding organizational documents if it is another form of entity;

(ii) The declaration;

(iii) The covenants;

(iv) Its bylaws;

(v) Resolutions adopted by its Executive Board relating to the characteristics, qualifications, rights, limitations, and obligations of Owners or any class or category of Owners;

(vi) (f) The minutes of all Owners' meetings, and records of all action taken by Owners without a meeting, for the past three years;

(vii) All written communications within the past three years to Owners generally as Owners;

(viii) A list of the names and business or home addresses of its current directors and officers;

(ix) Its most recent annual report, if any; and

(x) All financial audits or reviews conducted pursuant to the Act during the immediately preceding three years.

Section 16.3 Amendment of Declaration by Declarant. Until the last Lot subject to this Declaration (including any Lots in Annexable Area that has been annexed to the Project Area) has been conveyed by Declarant by deed Recorded in the office of the County Clerk and Recorder of Douglas County, Colorado, any of the provisions or Restrictions 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. In addition, notwithstanding the terms and conditions of Section 16.4 below, Declarant may amend this Declaration as expressly provided herein and as permitted under the Act, without the approval of the Owners.

Section 16.4 Amendment of Declaration by Members. Except for provisions of the Declaration recited in section 38-33.3-217(1) of the Act and except as otherwise provided in this Declaration, any provision or Restriction contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members of the Association holding at least sixty-seven percent (67%) of the voting power of the Association, which must be present in person or by proxy at a duly constituted meeting of such Members. The amendment or repeal shall be effective upon the Recordation in the office of the Clerk and Recorder of Douglas County, Colorado, of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the Members as herein provided. Any such amendment must be in accordance with the terms and conditions of section 38-33.3-217 of the Act. Notwithstanding the foregoing, the Owners may not amend this Declaration during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

Section 16.5 Amendment Requirement by Government Mortgage Agencies. Notwithstanding the provisions of Section 16.4 hereof requiring approval of an amendment or repeal by Members holding at least sixty-seven percent (67%) of the voting power of the Association and the provisions of Section 16.3 hereof requiring approval of repeal of this Declaration by Members holding at least ninety percent (90%) of the voting power of the Association, any provision or Restriction contained in this Declaration which any Government Mortgage Agency

requires to be amended or repealed may be amended or repealed by vote of Members holding at least two-thirds (2/3) of the voting power of the Association, which must be present in person or by proxy at a duly constituted meeting of the Members. Any such amendment or repeal shall be effective upon the Recordation in the office of the Clerk and Recorder of Douglas County, Colorado, of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the vote of the Members as herein provided.

Section 16.6 Amendment of Articles and Bylaws. The Articles and Bylaws may be amended in accordance with the provisions set forth in such instruments or, in the absence of such provisions, in accordance with the applicable provisions of the Colorado Revised Nonprofit Corporation Act.

Section 16.7 Agreements with Government Mortgage Agencies. The Association may enter into such contracts or agreements on behalf of the Association as may be required in order to satisfy the requirement or guidelines of any Government Mortgage Agency so as to allow for the purchase, guarantee or insurance, as the case may be, by a Government Mortgage Agency of First Mortgages encumbering Lots within the Project Area. Each Owner hereby agrees that it will benefit the Association and the Members thereof, as a class of potential mortgage borrowers and potential sellers of Lots within the Project Area if Government Mortgage Agencies approve the Project Area or parts thereof as qualifying under their respective policies, rules and regulations as adopted from time to time.

Section 16.8 Association Right to Mortgage Information. Each Owner hereby authorizes any First Mortgagee holding a Mortgage on such Owner's Lot within the Project Area to furnish information to the Association concerning the status of such First Mortgage and the loan which it secures.

Section 16.9 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, facsimile or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to 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 16.10 Persons Entitled to Enforce Declaration. The Association, acting by authority of the Executive Board, any Member of the Association, and Declarant shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration against any property within the Project Area and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as any action to enjoin any violation of any provision of this Declaration.

Section 16.11 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 16.12 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Project Area is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 16.13 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

Section 16.14 Costs and Attorneys' Fees. In any action or proceedings under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees.

Section 16.15 Limitation on Liability. The Association, the Executive Board, the Architectural Review Committee, Declarant and any Member or 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.

Section 16.16 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Project Area, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, 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 16.17 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 16.18 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 16.19 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 16.20 Captions for Convenience. The titles, headings and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

Section 16.21 Executive Board's Authority to Interpret. The Executive Board shall have the authority to interpret the provisions of this Declaration, the Articles, Bylaws and Rules and Regulations. Absent manifest error, any such interpretation by the Executive Board shall be binding on all Persons.

(Signature Page Follows)



EXHIBIT A  
TO  
DECLARATION  
FOR  
BANBURY CROSS

LEGAL DESCRIPTION OF PROJECT AREA

Lots 2 – 10, inclusive, HRITZ EXEMPTION, according to the plat thereof recorded in the office of the Douglas County Clerk and Recorder on \_\_\_\_\_, 2006, at Reception No. \_\_\_\_\_.

EXHIBIT B  
TO  
DECLARATION  
FOR  
BANBURY CROSS

LEGAL DESCRIPTION OF ANNEXABLE AREA

Lot 1, HRITZ EXEMPTION, according to the plat thereof recorded in the office of the Douglas County Clerk and Recorder on \_\_\_\_\_, 2006, at Reception No. \_\_\_\_\_



EXHIBIT C  
TO  
DECLARATION  
FOR  
BANBURY CROSS

RECORDING DATA FOR RECORDED EASEMENTS AND LICENSES

1. Roadway Easement recorded in the office of the Douglas County Clerk and Recorder on April 27, 2005, at Reception No. 2005036546.
2. Right of proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patents recorded January 04, 1887, in Book P at Page 36 and on July 18, 1882, in Book P at Page 20.
3. Right of way for the Alfred G. Perry Ditch as described in statement recorded April 23, 1885 in Book S at Page 433 and any and all assignments thereof or interests therein.
4. Easement granted to Intermountain Rural Electric Association, for utilities, and incidental purposes, by instrument recorded February 01, 1980, in Book 381 at Page 760.
5. Easements as set forth and granted in agreement among Jacquez Partners, Ltd., Frank S. Clapp and the Douglas County Board of Commissioners recorded March 12, 1982 in Book 436 at Page 552.
6. Any rights, interest, or easements in favor of the public which exist or are claimed to exist in and over the past and present bed, banks, or waters of Plum Creek.
7. Reservations as contained in deeds from Lafarge West, Inc., a Delaware corporation, formerly known as Western-Mobile, Inc., a Delaware corporation, successor by merger with Mobile Premix Concrete, Inc., a Colorado corporation, and successor by merger with Western-Mobile Northern, Inc., a Delaware corporation to Banbury Cross Farm, LLC, a Colorado limited liability company recorded January 21, 2003 under Reception Nos. 2003008166, 2003008167 and 2003008168.
8. Easement as set forth and granted in Grant of Regional Trail Easement between Banbury Cross Farm, LLC, and the Board of County Commissioners of Douglas County, Colorado.