



2629180

Page: 1 of 72

09/22/2004 03:43P

Boulder County Clerk, CO PROT CVNTS R 361.00

D 0.00

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
NIWOT HILLS

✓ THIS DOCUMENT WAS DRAFTED BY,
AND AFTER RECORDING, RETURN TO:
Wells, Love & Scoby, LLC
225 Canyon Blvd.
Boulder, CO 80302
(303) 449-4400

Copyright © 2004
By Wells, Love & Scoby, LLC
All Rights Reserved
9/21/04



TABLE OF CONTENTS

PREAMBLE.....1

ARTICLE ONE: DEFINITIONS.....2

1.1 ACT.....2

1.2 ALLOCATED INTERESTS.....2

1.3 ARTICLES.....2

1.4 ASSESSMENTS.....2

1.5 ASSESSMENT LIEN.....2

1.6 ASSOCIATION.....2

1.7 BOARD OF DIRECTORS or BOARD.....2

1.8 BUDGET.....3

1.9 BYLAWS.....3

1.10 COMMON AREAS.....3

1.11 COMMON AREA IMPROVEMENTS.....3

1.12 COMMON EXPENSE ASSESSMENTS.....3

1.13 COMMON EXPENSE ASSESSMENT LIABILITY.....3

1.14 COMMON EXPENSES.....3

1.15 COSTS OF ENFORCEMENT.....3

1.16 COUNTY.....3

1.17 DECLARANT.....3

1.18 DECLARANT RIGHTS.....4

1.19 DECLARATION.....4

1.20 DESIGN REVIEW COMMITTEE.....4

1.21 DESIGN REVIEW GUIDELINES.....4

1.22 DWELLING UNIT OR UNIT.....4

1.23 ELIGIBLE MORTGAGEE.....4

1.24 FINES.....4

1.25 FIRST MORTGAGEE.....4

1.26 FIRST SECURITY INTEREST.....4

1.27 GUEST.....4

1.28 IMPACTED OWNER.....5

1.29 IMPROVEMENTS.....5

1.30 LOT.....5

1.31 LOTS THAT MAY BE CREATED.....5

1.32 MANAGING AGENT.....5

1.33 MEMBER.....5

1.34 NOTICE AND HEARING.....6

1.35 OWNER.....6

1.36 PARTICIPATING BUILDER.....6

1.37 PERIOD OF DECLARANT CONTROL.....6

1.38 PERSON.....6

1.39 PHASE.....6

1.40 PLANNED COMMUNITY.....6

1.41 PLAT.....6



1.42 PROJECT DOCUMENTS6

1.43 RULES6

1.44 SECURITY INTEREST6

1.45 SPECIAL ASSESSMENTS6

1.46 SUPPLEMENTAL DECLARATION6

ARTICLE TWO: SCOPE OF THE DECLARATION.....7

2.1 Property Subject to this Declaration7

2.2 Conveyances Subject to this Declaration.....7

2.3 Owner's Rights Subject to this Declaration.....7

2.4 Number of Lots7

2.5 Identification of Lots.....7

2.6 Lot Boundaries7

ARTICLE THREE: THE COMMON AREAS7

3.1 Common Areas Dedication7

3.2 Title to the Common Areas7

3.3 Duty to Accept the Common Areas Transferred by Declarant8

3.4 Duty to Manage and Care for the Common Areas.....8

3.5 Owner's Rights in the Common Areas8

3.6 Delegation of Use.....9

ARTICLE FOUR: THE ASSOCIATION9

4.1 Name9

4.2 Purposes and Powers.....9

4.3 Board of Directors/Managing Agent.....9

4.4 Articles and Bylaws9

4.5 Membership.....9

4.6 Voting Rights10

4.7 Declarant Control of the Association10

4.8 Election by Owners10

4.9 Delivery of Documents by Declarant.....11

4.10 Budget12

4.11 Association Agreements.....12

4.12 Indemnification13

4.13 Certain Rights and Obligations of the Association13

4.14 Certain Rights and Obligations of Declarant and Participating Builder14

4.15 Disclaimer Regarding Security14

ARTICLE FIVE: ASSESSMENTS.....14

5.1 Obligation.....14

5.2 Purpose of the Common Expense Assessments.....14

5.3 Date of Commencement of the Assessments; Declarant's Right Of Offset15

5.4 Levy of Assessments and Fines15

5.5 Due Date.....16

5.6 Remedies for Nonpayment of Assessments16



5.7 Assessment Lien.....17
 5.8 Assignment of Assessments.....18
 5.9 Surplus Funds.....18
 5.10 Working Capital Fund.....18
 5.11 Certificate of Assessment Status.....19
 5.12 No Offsets19

ARTICLE SIX: ARCHITECTURAL APPROVAL/DESIGN REVIEW19

6.1 Approval of Improvements Required.....19
 6.2 Membership of the Committee.....20
 6.3 Address of the Committee.....20
 6.4 Submission of Plans/Design Review Fee.....20
 6.5 Delegation/Waiver21
 6.6 Criteria for Approval.....21
 6.7 Decision of the Committee.....21
 6.8 Appeal to the Board of Directors22
 6.9 Failure of Committee to Act22
 6.10 Prosecution of Work After Approval.....22
 6.11 Notice of Completion.....23
 6.12 Inspection of Work.....23
 6.13 Notice of Noncompliance23
 6.14 Failure of Committee to Act After Completion23
 6.15 Appeal to the Board of Directors of Finding of Noncompliance.....23
 6.16 Correction of Noncompliance23
 6.17 Meetings of the Committee.....24
 6.18 No Implied Waiver or Estoppel24
 6.19 Estoppel Certificates24
 6.20 Architectural Standards/Design Guidelines24
 6.21 No Liability for Committee Action.....24

ARTICLE SEVEN: LAND USE AND OTHER RESTRICTIONS25

7.1 Limitations and Restrictions25
 7.2 Land Use and Occupancy.....25
 7.3 Building Locations, Height Restrictions, and Lot Coverage26
 7.4 Temporary Structures.....26
 7.5 Restrictions on Trash.....26
 7.6 Nuisances26
 7.7 No Annoying Lights, Sounds, or Odors.....27
 7.8 No Hazardous Activities27
 7.9 No Unsightliness27
 7.10 Utilities.....27
 7.11 Restrictions on Signs and Advertising Devices27
 7.12 Compliance with Insurance Requirements.....27
 7.13 Restoration of a Dwelling Unit in the Event of Damage or Destruction27
 7.14 Compliance with Laws.....28
 7.15 Pets/Other Animals28



7.16 Vehicular Parking, Storage, and Maintenance29
7.17 Owner Caused Damages29
7.18 Exterior Equipment Prohibition30
7.19 Antennas and Satellite Dishes30
7.20 Lease of a Dwelling Unit30
7.21 Fences and Other Exterior Improvements30
7.22 Initial Landscaping31
7.23 Rules31
7.24 Waiver of Summary Abatement31
7.25 Exemptions for Declarant and Participating Builders31
7.26 Enforcement31
7.27 Construction Ongoing31

ARTICLE EIGHT: EASEMENTS32
8.1 Easements for the Board of Directors32
8.2 Emergency Easements32
8.3 Recording Data Regarding Easements32
8.4 Utility Easements32
8.5 Easements for Encroachments33
8.6 Easements Deemed Appurtenant33

ARTICLE NINE: INSURANCE33
9.1 Authority to Purchase/General Requirements33
9.2 Hazard Insurance34
9.3 Liability Insurance35
9.4 Fidelity Insurance36
9.5 Additional Insurance36
9.6 Payment of Insurance Premiums37

**ARTICLE TEN: RESTORATION UPON DAMAGE OR DESTRUCTION AND
CONDEMNATION37**
10.1 Damage or Destruction37
10.2 Use of Insurance Proceeds38
10.3 Condemnation38

ARTICLE ELEVEN: MAINTENANCE38
11.1 Maintenance of the Common Areas and Common Area Improvements38
11.2 Maintenance of the Dwelling Units and Lots38
11.3 Owners Failure to Maintain, Repair, and/or Reconstruct39
11.4 Maintenance of Drainage Pattern39
11.5 Association Responsibility39
11.6 Board of Directors Access39

ARTICLE TWELVE: DEVELOPMENT RIGHTS – SUBMITTING UNITS40
12.1 Reservation of Right to Expand the Number of Lots in the Planned Community40
12.2 Supplemental Declarations40



12.3 Expansion of Definitions.....40
 12.4 Declaration Operative on New Properties.....40
 12.5 Interests on Enlargement.....40
 12.6 Taxes, Assessments and Other Liens41
 12.7 Project Treated as a Whole41
 12.8 Termination of the Right of Expansion.....41

ARTICLE THIRTEEN: DECLARANT RIGHTS.....41

13.1 Reservation.....41
 13.2 Rights Transferable42
 13.3 Limitations42
 13.4 Interference with the Declarant Rights42
 13.5 Use by Declarant42
 13.6 Models, Sales Offices, and Management Offices43
 13.7 Declarant's Easements.....43
 13.8 Signs and Advertising43
 13.9 Other Reserved Rights43
 13.10 Exercise of Declarant Rights.....43
 13.11 Declarant's Personal Property43

ARTICLE FOURTEEN: FIRST MORTGAGEE PROVISIONS.....44

14.1 Notices of Action44
 14.2 Amendment to Documents/Special Approvals44
 14.3 Special FHLMC Provisions46
 14.4 Implied Approval46
 14.5 Books and Records.....46

ARTICLE FIFTEEN: MANDATORY DISPUTE RESOLUTION.....46

15.1 Statement of Clarification46
 15.2 Alternative Method for Resolving Disputes47
 15.3 Claims47
 15.4 Claims Subject to Approval47
 15.5 Notice of Claim48
 15.6 Timely Initiation.....48
 15.7 Right to be Heard48
 15.8 Right to Inspect and Repair.....48
 15.9 Good Faith Negotiations49
 15.10 Mediation50
 15.11 Arbitration50
 15.12 Consensus for Association Action52
 15.13 Liability for Failure to Maintain an Action Against Declarant.....53
 15.14 Utilization of Funds Resulting from the Cause of Action.....53
 15.15 Exclusive Remedy.....53
 15.16 Binding Effect53
 15.17 Amendment53



ARTICLE SIXTEEN: DURATION, AMENDMENT, AND TERMINATION OF THE DECLARATION

- 16.1 Duration.....54
- 16.2 Amendments by Owners54
- 16.3 Amendments by Declarant.....54
- 16.4 Amendment Terminology55
- 16.5 Consent of Declarant Required55
- 16.6 Consent of Eligible Mortgagees Required55
- 16.7 Termination55

ARTICLE SEVENTEEN: GENERAL PROVISIONS.....55

- 17.1 Right of Action.....55
- 17.2 Successors and Assigns.....55
- 17.3 Severability55
- 17.4 No Waiver56
- 17.5 Registration by Owner of Mailing Address/Notices.....56
- 17.6 Conflicting Provisions.....56
- 17.7 Captions.....56
- 17.8 Numbers and Genders56
- 17.9 Mergers56

EXHIBIT A LEGAL DESCRIPTION OF THE REAL PROPERTY SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NIWOT HILLS

EXHIBIT B LEGAL DESCRIPTION OF THE COMMON AREAS SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NIWOT HILLS

EXHIBIT C LEGAL DESCRIPTION OF THE PROPERTY THAT MAY BE SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NIWOT HILLS

EXHIBIT D THE RECORDING DATA FOR RECORDED EASEMENTS, LICENSES, AND OTHER MATTERS OF RECORD WHICH THE PLANNED COMMUNITY IS OR MAY BECOME SUBJECT TO

EXHIBIT E ARBITRATION PROCEDURES



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

NIWOT HILLS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NIWOT HILLS is made on the date hereinafter set forth, by NIWOT HILLS, LLC, a Colorado limited liability company ("Declarant").

PREAMBLE

WHEREAS, Declarant is the owner of certain real property located in Boulder County, Colorado, as more particularly described on the attached Exhibit A and Exhibit B;

WHEREAS, Declarant intends to create a residential planned community on the real property together with other improvements thereon; and

WHEREAS, Declarant will convey the real property, subject to the protective covenants, conditions, and restrictions, as hereinafter set forth.

NOW THEREFORE, Declarant hereby submits the Property described on Exhibit A and Exhibit B attached hereto, together with all easements, rights, and appurtenances thereto and improvements thereon to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 et seq., as it may be amended from time to time. In the event the Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

Declarant hereby declares that all of the Property described on Exhibit A and Exhibit B shall be held or sold, and conveyed subject to the following covenants, conditions, and obligations, all of which are declared and agreed to be for the protection of the value of the Property, and for the benefit of any persons having any right, title, or interest in the Property and which shall be deemed to run with the land and shall be a burden and a benefit to any persons acquiring the interest, their grantees, heirs, legal representatives, successors, and assigns.



ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ACT means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as it may be amended from time to time.

1.2 ALLOCATED INTERESTS means the Common Expense Assessment Liability and the votes in the Association that are allocated to each of the Lots in the Planned Community. The formulas used to establish the Allocated Interests are as follows:

(a) Common Expense Assessment Liability. All Common Expenses shall be levied against Lots on the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Lots in the Planned Community.

(b) Votes. Owners shall be entitled to one vote for each Lot owned in the Planned Community; provided, however, in any election of directors, each Owner shall have the number of votes equal to the number of directors to be elected, to be cast no more than one vote per candidate (up to the number of directors to be elected).

1.3 ARTICLES means the Articles of Incorporation of the Association.

1.4 ASSESSMENTS mean the (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, (d) Fines and (e) Costs of Enforcement levied pursuant to this Declaration.

1.5 ASSESSMENT LIEN means the statutory lien on a Lot for any Assessment levied against that Lot together with all Costs of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

1.6 ASSOCIATION means NIWOT HILLS HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation, its successors and assigns, the Articles of Incorporation and Bylaws, of which along with this Declaration, shall govern the administration of the Planned Community, the Members of which shall be all of the Owners of the Lots within the Planned Community.

1.7 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by Declarant as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association.

The term Board of Directors as used herein is synonymous with the term Executive Board as the latter term is used in the Act.



- 1.8 BUDGET means the annual budget of the Association prepared and adopted in accordance with Paragraph 4.10 hereof.
- 1.9 BYLAWS mean the Bylaws that are adopted by the Board of Directors for the regulation and management of the Association.
- 1.10 COMMON AREAS means the real property (including all Common Area Improvements thereon) owned by the Association, held for the common use and enjoyment of the Owners, the legal description of which is set forth on the attached Exhibit B, including all outlots, buildings, irrigation systems, fences and other improvements and utility easements within the Property, and all drainage facilities, detention ponds, and other drainage features installed by Declarant.
- The term Common Areas as used herein is synonymous with the term Common Elements as the latter term is used in the Act.
- 1.11 COMMON AREA IMPROVEMENTS means those Improvements located on the Common Areas, that are owned by the Association for the common use and enjoyment of the Owners and their Guests.
- 1.12 COMMON EXPENSE ASSESSMENTS means the funds required to be paid by an Owner in payment of the Owner's Common Expense Liability as more fully defined in Paragraph 5.2 hereof.
- 1.13 COMMON EXPENSE ASSESSMENT LIABILITY means the liability for the Common Expense Assessments allocated to each Lot determined in accordance with that Lot's allocated Interests as set forth in Paragraph 1.2(a) hereof.
- 1.14 COMMON EXPENSES means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves.
- 1.15 COSTS OF ENFORCEMENT means all fees, late charges, interest and expenses, including receiver's fees, and reasonable attorneys' fees and costs incurred by the Association in connection with the collection of Assessments and Fines, and the enforcement of the terms, conditions and obligations of the Project Documents.
- 1.16 COUNTY means Boulder County, Colorado.
- 1.17 DECLARANT means NIWOT HILLS, LLC, a Colorado limited liability company, or its successors and assigns. A Person shall be deemed a "successor and assign" of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of the Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of the Declarant under this Declaration which are specifically designated in the written instrument.



- 1.18 DECLARANT RIGHTS means the development, special declarant and other rights granted to or reserved by Declarant of the benefit of Declarant as set forth in this Declaration and the Act.
- 1.19 DECLARATION means this Declaration, the Plat and any supplements and amendments thereto recorded in the Office of the Boulder County Clerk and Recorder.
- 1.20 DESIGN REVIEW COMMITTEE means the Committee formed pursuant to ARTICLE SIX hereof to review and approve or disapprove plans for Improvements as defined herein as more fully provided for by this Declaration.
- 1.21 DESIGN REVIEW GUIDELINES means (i) any rules and regulations, guidelines, standards or requirements that may be adopted from time to time by the DESIGN REVIEW COMMITTEE, including any amendments and supplementations thereof, pursuant to ARTICLE SIX of this Declaration and (ii) any design guidelines or standards required, adopted or approved for the Planned Community by the County of Boulder. These guidelines may, among other things, establish requirements or standards applicable to all aspects of the design and construction of Improvements, including, but not limited to design, materials, colors, exterior cosmetics, heights, size, location, of structures and the maximum and minimum setbacks that will be considered in Design Approval.
- 1.22 DWELLING UNIT OR UNIT means the residence constructed on each Lot within the Planned Community and any replacement thereof and the Lot on which the Dwelling Unit is constructed.
- 1.23 ELIGIBLE MORTGAGEE means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Lot encumbered by its First Security Interest, requesting that the Association notify them on any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.
- 1.24 FINES means those fines described in Paragraph 5.4(c) hereof.
- 1.25 FIRST MORTGAGEE means any Person that owns, holds, insures or is a guarantor of a Security Interest as herein defined, which is a First Security Interest encumbering a Lot within the Planned Community.
- 1.26 FIRST SECURITY INTEREST means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).
- 1.27 GUEST means (a) any person who resides with an Owner within the Planned Community; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Dwelling Unit within the Planned Community, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract purchaser.



1.28 IMPACTED OWNER means an Owner who would reasonably be affected by any proposed Improvement, excluding the Owner making the proposal to the Committee. Impacted Owners are identified by the Design Review Committee and take into account the physical proximity of their Lots to the proposed Improvement and as well as other factors deemed pertinent by the Committee.

1.29 IMPROVEMENTS mean:

(a) all exterior improvements, structures, auxiliary structures, and any appurtenances thereto or components thereof of every type or kind;

(b) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, and change of drainage pattern;

(c) all landscaping features, including, but not limited to, buildings, outbuildings, auxiliary buildings, patios, patio covers, awnings, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, private drives, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, cooling, heating and water softening equipment; and

(d) any change, alteration, modification, expansion, or addition to any previously approved Improvement, including any change of exterior appearance, finish material, color, or texture.

1.30 LOT means each numbered, platted Lot shown on the Plat that is subject to this Declaration, together with all appurtenances and improvements now or hereafter located thereon. Lot shall include any Dwelling Unit constructed thereon as the term Dwelling Unit is herein defined.

The term Lot as used herein is synonymous with the term Dwelling Unit as the latter term is used in the Act.

1.31 LOTS THAT MAY BE CREATED means forty-six (46) Lots or the maximum number of Lots allowed by any governmental entity having jurisdiction over the Planned Community, including the Lots that maybe added and made subject to the Declaration. No more than the maximum number of Dwelling Units allowed by applicable state law or County ordinance may be erected on any one Lot.

1.32 MANAGING AGENT means the person the Board of Directors may engage to administer and manage the affairs of the Association.

1.33 MEMBER means each Owner, as defined in Paragraph 1.35 hereof.



- 1.34 NOTICE AND HEARING means a written notice and an opportunity for a hearing before the Board of Directors in the manner provided in the Bylaws.
- 1.35 OWNER means the record Owner of the fee simple title to any Lot that is subject to this Declaration.
- 1.36 PARTICIPATING BUILDER means and refers to a Person or Persons who acquires a portion of the Planned Community for purposes of improving the Lots in accordance with any development plans for resale to third party purchasers, and who is designated by the Declarant by an instrument duly recorded in the Office of the Boulder County Clerk and Recorder.
- 1.37 PERIOD OF DECLARANT CONTROL means that period of time as defined in Paragraph 4.7 hereof.
- 1.38 PERSON means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.
- 1.39 PHASE means each phase of development of the Planned Community as determined from time to time by Declarant.
- 1.40 PLANNED COMMUNITY means the real property and the improvements located thereon as more fully described on Exhibit A and Exhibit B attached hereto. The name of the Planned Community is NIWOT HILLS.
- 1.41 PLAT means the final plat of NIWOT HILLS, recorded in the records of the Office of the Boulder County Clerk and Recorder, and any supplements or amendments thereto.
- 1.42 PROJECT DOCUMENTS means this Declaration, the Plat, the Articles, the Bylaws, and the Design Review Guidelines, as they may be amended or supplemented from time to time.
- 1.43 RULES means the rules and regulations adopted by the Board of Directors for the regulation and management of the Planned Community as amended from time to time.
- 1.44 SECURITY INTEREST means an interest in real estate or personal property created by contract that secures payment of an obligation. The term includes a lien created by a deed of trust, contract for deed, land or sales contract and UCC-1.
- 1.45 SPECIAL ASSESSMENTS means those Assessments defined in Paragraph 5.4(d) hereof.
- 1.46 SUPPLEMENTAL DECLARATION means a written instrument, which is recorded, that submits and/or incorporates additional Lots into the Planned Community located on any portion of the real property described on Exhibit C hereof. In the event additional real property and/or Lots are made subject to this Declaration in the manner provided for in ARTICLE TWELVE hereof, the terms defined herein shall be expanded to encompass the additional real property



and/or Lots from the date the additional real property and/or Lots are made subject to this Declaration.

ARTICLE TWO: SCOPE OF THE DECLARATION

2.1 Property Subject to this Declaration. Declarant, as the Owner of fee simple title to the Planned Community, by recording this Declaration does hereby subject the Planned Community to the provisions of this Declaration.

2.2 Conveyances Subject to this Declaration. All covenants, conditions, and restrictions granted or created by this Declaration are covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having any interest in the Planned Community, their respective heirs, successors, personal representatives, or assigns.

Any instrument recorded subsequent to this Declaration and purporting to establish and effect any interest in the Planned Community shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.3 Owner's Rights Subject to this Declaration. Each Owner shall own his or her Lot in fee simple and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

2.4 Number of Lots. The number of Lots initially submitted to the Planned Community is two (2).

2.5 Identification of Lots. The identification number of each Lot is shown on the Plat.

2.6 Lot Boundaries. The boundaries of each Lot are located as shown on the Plat.

ARTICLE THREE: THE COMMON AREAS

3.1 Common Areas Dedication. Declarant, in recording the Plat in the records of the Office of Boulder County Clerk and Recorder, has designated certain areas of the Planned Community as Common Areas, more fully described on the attached Exhibit B.

The Common Areas are not dedicated for use by the general public, but are dedicated to the common use and enjoyment of only the Owners of Lots located within the Planned Community and the Owners' Guests as more fully provided for in this Declaration.

The Plat is hereby incorporated herein and made a part of this Declaration.

3.2 Title to the Common Areas. Declarant hereby covenants that it will convey to the Association fee simple title to the Common Areas prior to the conveyance of the first Lot within the Planned Community to an Owner other than Declarant or Participating Builder.



3.3 Duty to Accept the Common Areas Transferred by Declarant. The Association shall accept title to the Common Areas and agrees to own and maintain any property, including all Common Area Improvements located thereon, and personal property relating thereto, transferred to the Association by Declarant as Common Areas. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association free and clear of all liens and monetary encumbrances (other than the lien of real estate taxes not then due and payable), subject to the covenants, easements, and restrictions of record.

3.4 Duty to Manage and Care for the Common Areas. The Association shall manage, operate, care for, insure, maintain, repair, reconstruct, modify, and improve all of the Common Areas and the Common Area Improvements located thereon and keep the same in an attractive and desirable condition for the use and enjoyment of all of the Owners and their Guests.

3.5 Owner's Rights in the Common Areas. Every Owner and the Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Areas that shall be appurtenant to and shall pass with the title of the Lot to the Owner, subject to the Special Declarant Rights of Declarant reserved herein and the following rights of the Board of Directors:

(a) To borrow money to improve the Common Areas and to mortgage the Common Areas as security for any loan; provided, however, that the Association may not subject any portion of the Common Areas to a security interest unless it is approved by Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant as more fully set forth in § 38-33.3-312 of the Act.

(b) To convey or dedicate all or any part of the Common Areas for such purposes and subject to such conditions as may be agreed to by the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant as more fully set forth in § 38-33.3-312 of the Act.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Paragraph as more fully set forth in § 38-33.3-312 of the Act.

(c) To promulgate and adopt Rules that each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of an Owner for any period during which any Assessment remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Declaration, Bylaws, or Rules.

(e) To take steps as are reasonably necessary to protect the Common Areas against foreclosure.



(f) To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of Common Areas by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate (also see Paragraphs 4.11 and 4.13(b) hereof).

(g) To close or limit the use of the Common Areas temporarily while maintaining, repairing and making replacements in the Common Areas, or permanently if approved by Members to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant as more fully set forth in § 38-33.3-312 of the Act.

(h) To make use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions that it is obligated or permitted to perform under this Declaration.

(i) The rights granted to the Association and Board of Directors in Paragraph 4.13 hereof.

3.6 Delegation of Use. Any Owner may delegate his or her right of enjoyment to the Common Areas and facilities to their Guests.

ARTICLE FOUR: THE ASSOCIATION

4.1 Name. The name of the Association is NIWOT HILLS HOMEOWNERS ASSOCIATION.

4.2 Purposes and Powers. The Association, through its Board of Directors, shall manage, operate, care for, insure, maintain, repair, and reconstruct all of the Common Areas and Common Area Improvements and keep the same in an attractive and desirable condition for the use and enjoyment of all of the Owners and their Guests. Any purchaser of a Lot shall be deemed to have assented to, ratified, and approved these designations and management. The Board of Directors shall have all of the powers, authority, and these duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association.

4.3 Board of Directors/Managing Agent. The affairs of the Association shall be managed by a Board of Directors. By resolution the Board of Directors may delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws, also see Paragraph 17.6 hereof.

4.5 Membership. Members of the Association shall be every record Owner of a Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from



ownership of any Lot. Where more than one person holds interest in any Lot, all these persons shall be Members.

The membership of the Association at all times shall consist exclusively of all Lot Owners or, following termination of the Planned Community, of all former Lot Owners entitled to distributions of the proceeds under § 38-33.3-218 of the Act, or their heirs, personal representatives, successors, or assigns.

4.6 Voting Rights. The Association shall have one class of voting membership. Owners shall be entitled to one vote for each Lot owned within the Planned Community; provided, however, in any election of directors, each Owner shall have the number of votes equal to the number of directors to be elected, to be cast no more than one vote per candidate (up to the number of directors to be elected).

The vote for such Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them unless an objection or protest by any other holder of an interest of the Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves. Should the joint owners of a Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost.

4.7 Declarant Control of the Association. Subject to provisions of Paragraph 4.8 hereof, there is a "Period of Declarant Control" during which Period Declarant may appoint and remove any officer of the Association or any member of the Board of Directors. The Period of Declarant Control is a length of time expiring twenty (20) years after the recording of this Declaration; provided, however, the Period of Declarant Control in any event terminates no later than either: (1) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant or Participating Builder; or two (2) years after the conveyance of the last Lot by Declarant in the ordinary course of business to Owners other than Declarant or Participating Builder.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board of Directors, as desired in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

4.8 Election by Owners. The Board shall consist of three (3) members. For so long as Declarant owns all the Units, the Board of Directors shall be appointed by the Declarant. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots to Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the Board of Directors must be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Owners other than the Declarant, thirty-three and one-third percent (33 1/3%) of the Board of Directors must be elected by Owners other than the Declarant. The election of directors by the Owners is addressed in the Bylaws.



Not later than the termination of the Period of Declarant Control as set forth in Paragraph 4.7 hereof, the Owners shall elect a Board of Directors consisting of three (3) members, at least a majority of whom shall be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board shall elect the officers. The Board members elected to the Board and the officers shall take office upon election.

4.9 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than Declarant elect a majority of the members of the Board of Directors, as set forth in Paragraph 4.8 hereof, Declarant shall deliver without charge to the Board of Directors all property of the Owners and of the Association relating to the Planned Community held by or controlled by Declarant, including, without limitation, the following items:

- (a) The original or a certified copy of the recorded Declaration, with all amendments and supplements thereto, the Association's Articles of Incorporation, together with a Certificate of Good Standing, Bylaws, minute books, other books and records, to include all income tax returns filed, and any Rules which may have been promulgated;
- (b) An accounting of Association funds and an audited financial statement from the date the Association received funds and ending on the date the Period of Declarant Control ends in accordance with § 38-33.3-303(9)(b) of the Act;
- (c) The Association funds or control thereof;
- (d) All of the tangible personal property that has been represented by Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the Common Elements;
- (e) A copy of any plans and specifications used in the construction of any improvements in the Common Elements, and an inventory of these properties;
- (f) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;
- (g) Any permits issued by governmental bodies applicable to the Planned Community and which are currently in force or which were issued within one (1) year prior to the date on which Owners other than Declarant took control of the Association;
- (h) Written warranties of the contractor, subcontractors, suppliers, and manufacturers which are still effective;
- (i) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records;
- (j) Employment contracts in which the Association is a contracting party; and



(k) Any service contract in which the Association is a contracting party or in which the Association of the Owners have any obligation to pay a fee to the persons performing the services.

(l) Recorded deeds conveying the Common Areas to the Association.

4.10 Budget:

(a) In accordance with § 38-33.3-303 of the Act, the Board of Directors shall cause to be prepared, at least sixty (60) days prior to the commencement of each calendar year, a budget for such calendar year. Within thirty (30) days after the adoption of any budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) days nor more than sixty (60) days after delivery of the summary, provided, however, such meeting must be held prior to the end of the Association's calendar year.

Unless at that meeting Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated reject the budget, the budget shall be deemed ratified whether or not a quorum is present. In the event the budget is rejected, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(b) If the Board of Directors deems it necessary or advisable to amend a budget that has been ratified by the Owners pursuant to Paragraph 4.10(a) above, the Board may adopt a proposed amendment to the 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 (14) days, nor more than sixty (60) days, after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated reject the amended budget, the amended budget shall be deemed ratified whether or not a quorum is present.

4.11 Association Agreements. Any agreement for professional management of the Planned Community or any contract providing for services of Declarant, may not exceed one (1) year. Any agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days written notice.

The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Period of Declarant Control unless the Association is provided with a right of termination of the contract or lease without cause, exercisable without penalty at any time after conversion on not more than thirty (30) days notice to the other party thereto.



4.12 Indemnification. Each Officer, Director and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed on him or her in any proceeding that he or she may be a party, or that he or she may become involved, by reason of his or her being or having been an Officer, Director or committee member of the Association, or any settlements thereof, whether or not he or she is an Officer, Director or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law.

4.13 Certain Rights and Obligations of the Association:

(a) Attorney-in-Fact: This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact as herein provided to deal with the Planned Community upon its damage, destruction, condemnation and/or obsolescence.

The Board of Directors is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of Owners in the Common Areas so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Planned Community upon its destruction, condemnation or obsolescence as hereinafter provided.

Acceptance of any interest in any Lot shall constitute an appointment of the Board of Directors as attorney-in-fact as provided above and hereinafter. The Board of Directors shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Planned Community and to perform all of the duties required of it.

(b) Contracts, Easements, and Other Agreements: Subject to Paragraph 4.11 above, the Board of Directors shall have the right to enter into, grant, perform, enforce, cancel and vacate: contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use by Owners, their Guests, and other persons, concerning the Common Areas (see also Paragraph 3.5(f) hereof).

Any of such contracts, licenses, leases, agreements, easements, and/or rights-of-way, shall contain the terms and conditions as may be agreed to from time to time by the Board of Directors, without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

(c) Other Association Functions: The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Members on a self-supporting, Special Assessment or Common Expense Assessment basis.

(d) Implied Rights: The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights, or privileges.



4.14 Certain Rights and Obligations of Declarant and Participating Builder. So long as there are unsold Lots within the Planned Community owned by Declarant and/or Participating Builder, Declarant and Participating Builder shall enjoy the same rights and assumes the same duties as they relate to each individual unsold Lot.

4.15 Disclaimer Regarding Security. The Association may, but shall not be obligated to, take measures or maintain or support certain activities within the Planned Community designed to make the Planned Community more secure than it otherwise might be. Neither the Association nor Declarant or any representative or agent or either of them, shall in any way be considered insurers or guarantors of safety or security within the Planned Community, nor shall either of them be held liable of any loss or damage by reason of failure to provide adequate security or of the ineffectiveness of any such security measures taken. No representation or warranty is made that any fire protection system, burglar alarm system or security system cannot be compromised or circumvented, nor that any such systems or security measure undertaken will prevent loss or provide the detection or protection for which the system is designed or intended.

ARTICLE FIVE: ASSESSMENTS

5.1 Obligation. Each Owner, including Declarant, shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Fines, (d) Individual Assessments, and (e) Costs of Enforcement, which shall be a continuing lien on the Lot against which the Assessment is levied.

The obligation for payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Lot shall be jointly and personally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Lot. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

The omission or failure of the Board of Directors to levy Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. No Owner may waive or otherwise escape liability for the Common Expense Assessment provided for herein by the non-use of the Common Areas or the abandonment of such Owner's Lot.

5.2 Purpose of the Common Expense Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the welfare and interests of the residents of the Planned Community and the Members of the Association including (a) providing for the administration and management of the Planned Community, (b) providing for the upkeep, improvement, repair, maintenance and reconstruction for the Common Areas and Common Area Improvements, (c) providing comprehensive hazard insurance for the insurable Common Area Improvements, (d) providing comprehensive general liability insurance to cover incidents occurring on the Common Areas, (e) performing all other obligations of the



Association hereunder and under the other Project Documents, and (f) satisfying any other purpose reasonable, necessary or incidental to such purposes.

Assessments shall include the establishment and maintenance of a Reserve Fund for those items which the Association has an on going duty to repair, maintain or reconstruct on a periodic basis, provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purposes of constructing capital improvements.

5.3 Date of Commencement of the Assessments; Declarant's Right Of Offset. The Common Expense Assessment shall commence as to all Lots no later than sixty (60) days after the first Lot is conveyed to an Owner other than Declarant or Participating Builder.

Until the commencement of the collection of the Common Expense Assessment, Declarant shall pay all of the expenses incurred and paid for by the Association. Declarant may at any time advance operating funds to the Association. Declarant shall be entitled to offset such amounts so paid or advanced as a credit against future Common Expense Assessments payable by Declarant.

5.4 Levy of Assessments and Fines:

(a) Common Expense Assessments: Common Expense Assessments shall be levied on all Lots based on a Budget of the Association's cash requirements. The Common Expense Assessment Liability shall be allocated among the Lots in accordance with that Lot's Common Expense Assessment Liability as set forth in Paragraph 1.2 hereof and shall commence in accordance with Paragraph 5.3 hereof.

To the extent that any Common Expenses or a portion thereof benefit fewer than all of the Lot Owners, the expenses may be assessed exclusively against the Lots benefited as provided in C.R.S. § 38-33.3-315(3)(b) of the Act.

(b) Individual Assessments: The Board of Directors shall have the right to individually levy on any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges levied under Paragraphs 6.16, 7.5, 7.13, 7.15, 7.16, 7.17, 9.2, 9.6, 10.2, 11.3 and 11.5 hereof.

No Individual Assessment shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws. Individual Assessments shall be collected as part of the Costs of Enforcement. Individual Assessments may be levied at any time as required and are exempt from any voting requirements by the membership required by other Assessments called for under the Declaration.

(c) Fines: The Board of Directors shall have the right to levy a fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules. No fine shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws.



Fines may be levied in a reasonable amount as determined from time to time by the Board of Directors in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement. Fines may be levied at any time as required and are exempt from any voting requirements by the membership required for other Assessments called for under the Declaration.

(d) Special Assessments: In addition to the other Assessments authorized herein, the Board of Directors, subject to the requirements set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to, the cost of any construction, reconstruction, improvement, repair, or replacement of a capital improvement upon the Common Areas, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Association provided that any such Assessment shall have the approval of Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated, who are voting in person or by proxy at a meeting duly called for this purpose.

Any Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance with Paragraph 1.2 hereof. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

5.5 Due Date. Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

All other Assessments shall be levied on an annual basis and shall be due and payable in installments, in advance, in such frequency as the Board of Directors determines in its discretion from time to time, provided that the initial assessments shall be adjusted to reflect the time remaining in the first Association's fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a prorated share.

Special Assessments shall be due and payable as established by the Board of Directors but may be payable on an installment basis as determined by the Board. Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due. Mortgagees are not required to collect Assessments.

5.6 Remedies for Nonpayment of Assessments. If any Assessment (to include Costs of Enforcement) is not fully paid within fifteen (15) days after it becomes due and payable, then interest shall accrue at the default rate set by the Board of Directors on any amount of the Assessment in default accruing from the due date until date of payment, and the Board may assess a Late Fee in an amount as determined in the Board's discretion. In addition the Board may in its sole discretion:

(a) accelerate and declare immediately due and payable all unpaid installments of the Assessment payable for the balance of the fiscal year during which the default occurred;



(b) bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and

(c) proceed to foreclose its lien against the Lot pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments.

Failure to pay assessments does not constitute a default under an insured mortgage.

5.7 Assessment Lien. The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Board of Directors and for Costs of Enforcement levied against such Lot Owners when the Lot Owner fails to pay as required by the Declaration. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances on a Lot except the following:

- (a) liens and encumbrances recorded prior to the recording of this Declaration; and
- (b) real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

The Act does not affect the priority of mechanics' or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the Association's lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may prepare, and record in the Office of the Boulder County Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Lot shall not affect the lien for Assessments except that sale or transfer of any Lot pursuant to foreclosure by any First Mortgagee, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.



Any First Mortgagee who acquires title to a Lot by virtue of foreclosing a first deed of trust or mortgage or by virtue of a deed in lieu of foreclosure will take the Lot free of any claims for unpaid Assessments and Costs of Enforcement against that Lot which have accrued prior to the time such First Mortgagee acquires title to the Lot, except to the extent the Act grants lien priority for Assessments of the Association.

The Association shall be entitled to the appointment of a receiver to take control of the Unit of the defaulting Owner, collect all rents and income therefrom, and to pay assessments and other obligations prior to or during the pendency of the action. The costs of the receiver shall be a Cost of Enforcement recoverable from the Owner as part of the assessment lien.

The Assessment Lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Lot for Assessments and Costs of Enforcement shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against the Assessment Lien.

5.8 Assignment of Assessments. The Board of Directors shall have the unrestricted right to assign its right to receive Common Expense Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any assignment is approved in writing by Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant.

5.9 Surplus Funds. Any surplus funds of the Association remaining at the close of the Association's fiscal year after payment of the Association's expenses and funding the Reserve Fund shall be retained by the Association as unallocated reserves and need not be credited to the Owners to reduce their future Assessment Liability.

5.10 Working Capital Fund. At the closing of the initial sale, and each subsequent resale, of a Lot to an Owner other than Declarant or Participating Builder, a non-refundable contribution shall be made by such Owner or subsequent Owner to the Working Capital Fund of the Association in an amount equal to two (2) months Common Expense Assessment then in effect. The Working Capital contribution shall be collected and transferred to the Association at the time of closing of the sale of each Lot and shall be held by the Association for the use and benefit of the Association including meeting unforeseen expenditures or purchasing additional equipment or services.



The contribution to the Working Capital Fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the later sale or transfer of his or her Lot, an Owner shall NOT BE ENTITLED to a credit from the Association for the aforesaid contribution.

Declarant is prohibited from using the Working Capital Fund to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficits during Declarant Control Period.

5.11 Certificate of Assessment Status. The Association shall furnish to an Owner or the Owner's First Mortgagee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's Registered Agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot.

The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or First Mortgagee, delivered personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party, then the Association shall have no right to assert a priority lien upon the Lot for unpaid Assessments which were due as of the date of the request (See C.R.S. § 38-33.3-316).

5.12 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 Board of Directors is not properly exercising its duties and powers under this Declaration. Declarant is exempt from the requirements of this Paragraph 5.12.

ARTICLE SIX: ARCHITECTURAL APPROVAL/DESIGN REVIEW

Each Improvement within the Planned Community must be constructed in accordance with the Design Review Guidelines and approved in accordance with this ARTICLE SIX.

The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Design Review Committee (the "Committee") if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

6.1 Approval of Improvements Required. Except original first built Improvements constructed by Declarant, no Improvements shall be commenced, installed, constructed, altered, removed or maintained on any portion of the Planned Community without the prior written approval of the Committee in accordance with this ARTICLE SIX. This approval of the Committee is in addition to any required review and approval by the County.



The purchase of any Lot within the Planned Community does not grant any implied guarantee of approval of any Improvement to be located thereon by the Committee. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, the decisions of the Committee established hereunder.

The Declarant, in its sole discretion, may construct original first built improvements on Lots, Common Areas or any other portion of the Planned Community without application to or approval of the Committee or Board. Public Improvements required by the County in connection with the Planned Community are not subject to the requirements of this Article.

6.2 Membership of the Committee. The initial Committee shall consist of up to three (3) members, the number and members of which shall be determined and appointed by the Declarant in its sole discretion. The Declarant shall have the continuing right to appoint and reappoint the members of the Committee until the Declarant relinquishes such right or until the completion of initial approved single family Improvements on all Lots within the Planned Community. Thereafter, the Committee shall consist of three (3) members and the Board of Directors shall have the right to appoint the members of the Committee. Members of the Committee appointed by the Board of Directors must be Members of the Association.

Members of the Committee appointed by Declarant need not be Members of the Association, may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

6.3 Address of the Committee. The address of the Committee shall be that of the principal office of the Association. The Committee may, from time to time, designate addresses, facsimile transmission numbers, or e-mail addresses to be used for purposes of communications and notices under this Article.

6.4 Submission of Plans/Design Review Fee. Prior to commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement ("Applicant") shall submit to the Committee, at its office, or at such other place as the Committee may designate, a written application complying with the Design Review Guidelines and including such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors, or other items or information as the Committee may require or request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement. Any application shall provide an email address or facsimile transmission number to be used for purposes of any decision, notice, action, or communication by the Committee.

The Committee, in the Design Review Guidelines or otherwise, may provide for the payment of an application fee to accompany each request for approval of any proposed Improvement. The Committee shall determine the amount of the application fee and may establish different amounts and categories of fees for different types or scopes of Improvements as it deems appropriate. The Committee may engage consultants as it deems necessary to assist



the Committee in the performance of its duties and may, as part of the application fee or otherwise, require that any Applicant pay the consultant costs related to that application. Members of the Committee may be reimbursed for services rendered and for directly related out-of-pocket expenses.

The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement. Until receipt by the Committee of all required materials in connection with the proposed Improvement, the Committee may postpone review of any materials submitted for approval by a particular Applicant.

No Improvement of any kind shall be erected, altered, placed, or maintained within the Planned Community except to the extent of, and strictly in accordance with, the prior written approval of the Committee or a Final Decision hereunder.

6.5 Delegation/Waiver. The Committee may at its discretion delegate to the Board of Directors any of its powers granted to it by this Article by a recorded written notice to the Board of Directors indicating what powers and authority are granted to the Board. The delegation shall be effective from the date such notice is recorded. In such event, there shall be no appeal rights and any decision of the Board shall be final.

The approval or consent of the Committee, any representative thereof, or the Board of Directors, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

6.6 Criteria for Approval. The Committee shall have the right to disapprove any proposed Improvement that is (a) not in accordance with the Design Review Guidelines, or (b) not suitable, appropriate or desirable in the Committee's opinion for aesthetic or other reasons.

In reviewing the proposed Improvement the Committee shall have the right to take into consideration all aspects of the proposed Improvement and its relation to, and affect, upon other areas of the Planned Community, including (but not limited to): (1) the nature and suitability of the proposed Improvement; (2) the design; (3) the color scheme; (4) the materials; (5) the location on the Lot; (6) any impacts on views from other Lots; (7) the site; (8) the harmony with the surroundings; (9) the topography of the land; (10) any other effect on the Planned Community or other Lots or Improvements therein; (11) compliance with the Design Review Guidelines; and (12) any other factor deemed relevant by the Committee. Decisions on any application are committed to the discretion of the Committee, which shall not be subject to review except as provided herein. The Committee may approve the application in whole or in part, reject the application, attach conditions to the approval, or take any other action it deems appropriate.

6.7 Decision of the Committee. The decision of the Committee shall be made in writing within thirty (30) days after receipt by the Committee of a completed application, all materials



required under the Design Review Guidelines, and all other materials or information required or requested by the Committee (the "Decision Period") as set forth in this paragraph. The Decision Period will not commence to run unless and until the Committee has executed a written acknowledgement that the thirty (30) day decision period has commenced (the "Decision Period Notice"), and the Committee shall have no obligation to issue a Decision Period Notice except on written request of the Applicant. The Committee and Applicant may, by written agreement, extend the thirty (30) day decision period. The decision of the Committee shall be in writing and shall, in general, indicate the reasons for the denial of any material part of the application and for any conditions attached to the approval. The decision of the Committee shall be promptly transmitted to the Applicant. Any decision or notice of the Committee shall be deemed to have been delivered to Applicant upon personal delivery, actual delivery to the Applicant's address, including delivery by guaranteed delivery service, or facsimile transmission or e-mail per the information included in the application.

All decisions of the Committee shall be by majority vote, and the Committee shall keep an appropriate record of its votes and decisions. Upon request by the Board of Directors, the Committee shall report any requested decisions to the Board of Directors. The Committee shall not be required to keep the materials submitted or records of decisions beyond one (1) year from date of decision.

6.8 Appeal to the Board of Directors. Any decision of the Committee may be appealed to the Board of Directors by (i) the Applicant and/or (ii) any Impacted Owner. To initiate an appeal, the appealing Party shall provide written notice of such appeal to the Board of Directors and the Committee within ten (10) days after the delivery of the decision of the Committee to the Applicant as set forth above. The Board of Directors shall hear the appeal with reasonable promptness after Notice and Hearing and may, in its discretion, approve, disapprove or modify the decision of the Committee, or take any other action that the Board deems appropriate. The decision of (i) the Committee if no appeal is filed or (ii) the Board of Directors' decision on an appeal (collectively the "Final Decision"), shall be final, binding on the parties concerned, and not subject to further review. Decisions of the Committee may not be acted upon by the Applicant until the expiration of the ten (10) day appeal period.

6.9 Failure of Committee to Act. Any request for approval of a proposed Improvement shall be deemed approved if the Committee has not issued a decision, or made written request for further information, within thirty (30) days of the Decision Period Notice. Any Decision Period Notice shall be terminated by any written request of the Committee for further information or by any submission of additional materials by the Applicant, and the Decision Period shall not commence until the Committee issues a new Decision Period Notice. Any approval pursuant to this Paragraph 6.9 shall be deemed a decision of the Committee made and transmitted to the Applicant on the date of the expiration of the Decision Period Notice, but shall be subject to appeal by an Impacted Owner as set forth above.

6.10 Prosecution of Work After Approval. Work on an Improvement approved under a Final Decision (the "Approved Improvements") shall commence and be completed as soon as reasonably practicable and shall be carried on and completed in strict accordance with the Final Decision. Unless the Final Decision expressly extends the period for completion, all Approved



Improvements shall be completed within twelve (12) months of the commencement of any construction and within twenty-four (24) months of the Final Decision.

6.11 Notice of Completion. Upon completion of the Approved Improvements, the Applicant shall give written Notice of Completion to the Committee (the "Notice of Completion"). Until the date of receipt of a Notice of Completion, the Committee shall not be deemed to have notice of completion of any Improvement.

6.12 Inspection of Work. The Committee or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion; provided that the right of inspection shall terminate thirty (30) days after the Committee receives a Notice of Completion from the Applicant.

6.13 Notice of Noncompliance. If, as a result of inspections or otherwise, the Committee finds that (1) any Improvement has been done without obtaining the approval of the Committee, (2) any Improvement was not done in strict compliance with the Final Decision, or (3) the Improvement was not completed within twelve (12) months from the date of the commencement of construction or twenty four (24) months of the Final Decision (any of which is termed a "Noncompliance"), the Committee shall notify the Applicant in writing of the Noncompliance ("Notice of Noncompliance"). Any Notice of Noncompliance shall be given no later than thirty (30) days after the Committee's receipt of such Applicant's Notice of Completion. The Notice of Noncompliance shall specify the particulars of the Noncompliance and shall require the Applicant to take such action as the Committee deems appropriate to remedy the noncompliance.

6.14 Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Committee fails to notify the Applicant of any Noncompliance within thirty (30) days after receipt by the Committee of written Notice of Completion from the Applicant, the Improvement shall be deemed to be in compliance with the Final Decision, provided that the Improvement was, in fact, completed as of the date of Notice of Completion.

6.15 Appeal to the Board of Directors of Finding of Noncompliance. The Applicant may appeal any Notice of Noncompliance by giving written notice of such appeal to the Board and the Committee within ten (10) days after delivery of the Notice of Noncompliance to the Applicant. The Board may also, on its own initiative, initiate proceedings to evaluate any Noncompliance, provided that it provides written notice of the institution of such proceeding not later than thirty (30) days after the receipt by the Committee of written Notice of Completion. Upon the institution of an Appeal or such Board proceedings, the Board, after Notice and Hearing, shall determine the nature and extent of any noncompliance and may issue a Notice of Noncompliance directing such action as the Board deems appropriate. The Applicant shall promptly take all steps required in the Notice of Noncompliance issued by the Board or the Committee if its Notice of Noncompliance was not appealed (the "Final Notice of Noncompliance").

6.16 Correction of Noncompliance. The Applicant shall promptly and fully comply with any Final Notice of Noncompliance. If the Applicant does not do so, the Board of Directors may, after Notice and Hearing: (i) authorize the Association to carry out the removal, replacement or



correction of the Noncompliance, including the entry upon the property on which the Improvement is located to carry out the same; (ii) levy Fines, including per diem Fines for late completion or compliance; (iii) initiate any action at law or in equity to remove, replace or correct the Noncompliance; (iv) exercise any other remedy available under the Declaration; and (v) take any other act which it deems appropriate in the circumstances. The Board of Directors may also record a "Notice of Noncompliance" against the Lot or other property on which the Noncompliance exists.

The Board may levy an Individual Assessment in accordance with Paragraph 5.4(b) hereof against the Owner of such Lot for the any of the costs and expenses or removal, replacement or correction, Fines, legal costs and attorneys' fees, or other proper loss or charge in connection with the foregoing remedies. The right of the Board of Directors to remedy or remove any noncompliance shall be in addition to all other rights and remedies that the Board of Directors may have at law, in equity, or under this Declaration.

6.17 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder.

6.18 No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors. Specifically, the approval by the Committee 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 similar proposals, plans, specifications or other materials submitted with respect to any other Improvement.

6.19 Estoppel Certificates. The Board of Directors shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

6.20 Architectural Standards/Design Review Guidelines. The Committee may, from time to time, promulgate rules and regulations, guidelines, standards and requirements to interpret and implement the provisions of this Article, which shall be part of the Design Review Guidelines. Such rules and regulations, guidelines, standards and requirements may include (but not be limited to): (1) application requirements and fees, (2) design and construction requirements; standards, requirements and guidelines that may apply to Improvements and the review thereof by the Committee; (3) Fines for Noncompliance; and (4) such other matters as the Committee may deem appropriate. The Applicant shall be responsible to apply and pay for all permits and approvals required by the County. The Committee may review and revise the Design Review Guidelines in its sole discretion as it deems appropriate.

6.21 No Liability for Committee Action. There shall be no liability imposed on the Design Review Committee, any member of the Committee, any authorized representative of the Committee, the Association, any member of the Board of Directors or Declarant for any loss,



damage or injury arising out of or in any way connected with the performance of the duties of the Committee, if such party acted in good faith and without malice.

The actions of the Committee are solely for the benefit of the Association in carrying out the purposes set forth in this Declaration. In reviewing any matter, the Committee shall not be responsible for passing on or reviewing: the safety, or integrity of any Improvement, whether structural or otherwise; proper design or construction; site safety during construction; conformance with building codes, zoning regulations, or other governmental laws or regulations; compliance with any industry standards; quality or workmanship; or any aspect of the foregoing. Approval of an Improvement shall not be deemed to be any endorsement or approval with respect to such matters and no Applicant, Owner, or third party shall have any right to rely on such approval as an indication or representation as to quality, safety, soundness or adequacy of any design or construction of an Improvement.

ARTICLE SEVEN: LAND USE AND OTHER RESTRICTIONS

7.1 Limitations and Restrictions. All Lots and Common Areas shall be used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions for Declarant as set forth in this Declaration.

The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board of Directors or the Committee if the strict application would be unreasonable or unduly harsh under the circumstances. Any modification or waiver must be in writing.

7.2 Land Use and Occupancy. Each Owner shall be entitled to the exclusive ownership and possession of that Owner's Lot and Dwelling Unit. Subject to Declarant Rights reserved or described herein and the exemptions for Declarant set forth in Paragraph 7.26 hereof, no Dwelling Unit within the Planned Community shall be used for any purpose other than single-family residential purposes as generally defined, provided however, Owners may conduct business activities within their Dwelling Unit provided that all of the following conditions are satisfied as determined by the sole discretion of the Board of Directors:

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

(b) the existence or operation of the business is not detectable from outside of the Dwelling Unit by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

(c) the business does not result in an undue volume of traffic or parking within the Planned Community, which determination shall be made by the Board of Directors 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 Board of Directors from time to time on a uniform basis.

Uses described as "day care" or "child care" facilities (licensed or unlicensed) are expressly prohibited except with the prior written permission of the Board of Directors.

7.3 Building Locations, Height Restrictions, and Lot Coverage. The Committee shall approve the location, height, and square footage of any Improvement placed on any Lot. No Improvement shall exceed thirty (30) feet in height or any more restrictive standard as set forth in the County's zoning or building code, if any.

Every building, structure, or any other improvements to a Lot must be located within the building envelope as designated on the Final Plat.

The approval of the Committee must be obtained before commencement of any construction or alteration in accordance with ARTICLE SIX hereof.

7.4 Temporary Structures. No trailer, tent or other temporary or mobile Dwelling Unit (except in accordance with Paragraph 7.16 hereof), detached garage, shed or outbuilding or other accessory structure or building shall be placed or erected upon part of the Planned Community except with the prior written approval of the Committee obtained in each instance.

No Dwelling Unit located on the Planned Community shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans. No Dwelling Unit shall be occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth.

7.5 Restrictions on Trash. Each Owner shall keep all of his or her trash, garbage and other refuse ("Trash") in a container in the Owner's garage. Each Owner shall provide for the regular removal of that Owner's trash. Each Owner agrees to use the trash company designated by the Board of Directors, if one is so designated. Each Owner shall keep their Lot at all times in a neat and clean condition, and grass and weeds shall be kept mowed.

No trash, litter, garbage, grass, shrub or tree trimmings, scrap refuse, or debris of any kind shall be permitted to remain exposed on any Lot so it is visible from any neighboring Lot, Common Areas or from the street except that any container containing such material may be placed outside at proper times for garbage or trash pickup. No trash, garbage or other refuse shall be burned in outside containers, barbecue pits or the like.

The Board of Directors shall have the right and duty, through its agents and employees, after Notice and Hearing, to enter on any Lot and remove trash or other such unsightly objects and materials. The cost of such removal shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.4(b).

7.6 Nuisances. No noxious or offensive activity shall be conducted on the Planned Community or any part thereof, and nothing shall be done or maintained thereon that may be or

become an annoyance or nuisance to the neighborhood or that may cause an unreasonable embarrassment, disturbance, or annoyance to others, or detract from the value of the Planned Community as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

7.7 No Annoying Lights, Sounds, or Odors. No light shall be emitted from any portion of the Planned Community that is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Planned Community that would reasonably be found by others to be noxious or offensive.

7.8 No Hazardous Activities. No activity shall be conducted on any portion of the Planned Community that is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged on any portion of the Planned Community and no open fires shall be lighted or permitted on any portion of the Planned Community except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

7.9 No Unsightliness. All equipment shall be stored within the Dwelling Unit or garage, including all bicycles, tractors, snow removal equipment, and garden or maintenance equipment, except when actually in use.

7.10 Utilities. Except as provided in Paragraph 8.4 hereof, all electric, cable, television, radio and telephone line installations, and connections from the Owner's property line to the Dwelling Unit shall be placed underground and have the prior approval of the Committee. All utility installations shall comply with the Design Review Guidelines and all state laws and County ordinances.

7.11 Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Planned Community except those signs as may be approved in writing by the Committee. Reasonably sized signs indicating protection by Security Systems and Neighborhood Watch Programs are acceptable. One sign advertising a Lot for sale or for lease may be placed on each Lot or Dwelling Unit; provided however, that standards relating to dimensions, color, style, and location of the sign shall be determined from time to time by the Committee and shall comply with the local sign codes and with all other applicable statutes, ordinances, and regulations.

Notwithstanding the foregoing, reasonable signs and advertising used by Declarant in connection with development of or construction on a Lot shall be permissible.

7.12 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on the Planned Community that may result in an increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

7.13 Restoration of a Dwelling Unit in the Event of Damage or Destruction. If due to casualty or for any other reason a structure or Dwelling Unit located on a Lot is destroyed or so



damaged that the structure is no longer habitable, then the Owner shall, within a reasonable time not to exceed one hundred twenty (120) days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the structure or demolish the same, subject to any applicable Project Documents and applicable County codes and regulations governing the repair, reconstruction, or demolition of the Lot.

Demolition of a structure or Dwelling Unit shall include, to the extent applicable, removal of any foundation slab, basement walls and floors, regrading the property to a level condition and the installation of such landscaping as may be required by the Board of Directors.

If an Owner does not either commence repair, reconstruction, or demolition activities within a reasonable time as provided above and diligently pursue the same in conformance with approval by the Board of Directors, then the Association may, in its reasonable discretion, after providing Notice and Hearing, enter upon the Lot for the purpose of demolishing the balance of the structure and landscape the Lot in conformance with approval by the applicable Association. The cost related to such demolition and landscaping shall be levied against the Owner as an Individual Assessment in accordance with Paragraph 5.4(b) hereof. As used in this Paragraph 7.13 the term "Owner" may mean and include the homeowners association that has responsibility for repair, reconstruction, or demolition of a structure pursuant to the applicable Project Documents.

7.14 Compliance with Laws. No unlawful use shall be permitted or conducted of any Lot. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Lots or any portion thereof shall be observed.

7.15 Pets/Other Animals. No more than five (5) customary household pets (such as dogs or cats) shall be kept on any Lot. The offspring of any pets or animals shall not be considered in determining the total number of animals on a Lot until the offspring reach one (1) year of age. No pets or other animals of any kind shall be raised, bred, or maintained for any commercial purpose and shall not kept in a number or manner as to create a nuisance or inconvenience to any resident of the Planned Community.

The Board of Directors shall have the right and authority to determine in its sole discretion that dogs, cats, other household pets, or other animals are being kept for commercial purposes or are being kept in a number or manner so as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Directors shall take action or actions as it deems reasonably necessary to correct the violation to include after Notice and Hearing, directing permanent removal of the pet or pets from the Planned Community.

Household pets and other animals shall not be allowed to run at large within the Planned Community, but shall at all times be under the control of its respective Owner.

The Board of Directors is granted the authority to enforce the provisions of this Paragraph by the levy of Fines against the Owner in accordance with Paragraph 5.4(c) hereof.



Reimbursement for any damages caused by pets and other animals and costs incurred by the Association, including attorneys' fees and costs, in the removal of a pet(s) or other animals from the Planned Community or as incurred by the Association in cleanup after pets or animals may be levied against the respective Owner as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

No dog runs or animal pens of any kind shall be permitted on any Lot except with the prior written approval of the Committee.

7.16 Vehicular Parking, Storage, and Maintenance. Absent approval from the Board of Directors, no house trailer, camping trailer, camper, boat, or boat accessories, truck larger than two (2) ton capacity, or mobile home or commercial vehicle may be parked or stored in the Planned Community so any portion of it is visible from neighboring Units, Common Areas or from the street except if they are being actively loaded or unloaded. This applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles."

Parking of vehicles is not allowed on landscaped lawn areas or in fire lanes. Parking of vehicles is only permitted in designated parking spaces or garages.

No abandoned, unlicensed, wrecked, or inoperable vehicles of any kind shall be stored or parked within the Planned Community except in garages or except in emergencies. The Board of Directors in its sole discretion shall determine whether a vehicle is a "wrecked vehicle." Any "abandoned or inoperable vehicle" shall be defined as any of the vehicles listed above in the first sentence of this paragraph or any other kind of passenger vehicle which has not been driven under its own propulsion for a period of one week or longer, or which does not have installed within it an operable propulsion system; provided however, that any vehicle belonging to any Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town so long as the Board has been notified and so long as the vehicle remains stored or parked only for a reasonable time as determined by the Board of Directors in its sole discretion.

The Board of Directors shall have the right to remove and store a vehicle stored or parked in violation of this Paragraph after Notice and Hearing, the expenses of which shall be levied against the Owner of the vehicle as an Individual Assessment in accordance with Paragraph 5.4(b) hereof. The Board of Directors is granted the authority to enforce the provisions of this Paragraph by the levy of Fines against the Owner in accordance with Paragraph 5.4(c) hereof.

7.17 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property within the Common Areas, the Owner shall be liable and responsible for the payment of same.

The amount of loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board of Directors, from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 5.4(b) hereof.



Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 7.16 shall be made by the Committee and shall be final.

7.18 Exterior Equipment Prohibition. No exterior equipment or fixtures, including, but not limited to, the following shall be permitted without the written consent of the Committee: air conditioning units, swamp coolers, or other ventilating equipment; and any type or kind of wiring, ducts, or pipes, excluding holiday wiring.

7.19 Antennas and Satellite Dishes. The Association shall have the right to regulate installation of satellite dishes, antennas, and similar devices for the transmission or reception of television, radio, satellite, or other signals provided such regulations shall comply with the Telecommunications Act of 1996 ("Telecommunications Act") and the rules and regulations promulgated by the Federal Communications Commission ("FCC"). The installation of any antenna or satellite dish shall be subject to review by the Association, in accordance with the Rules, provided however that at all times the Rules governing such installation shall comply with the Telecommunications Act and the FCC rules and regulations.

7.20 Lease of a Dwelling Unit. With the exception of a First Mortgagee who has acquired title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure, an Owner shall have the right to lease his or her Dwelling Unit on the terms and conditions as the Owner may deem advisable, subject to the following:

(a) any such lease or rental agreement must be in compliance with applicable local, state and federal laws;

(b) no Owner may lease or rent (i) less than his or her entire Dwelling Unit; (ii) for transient or hotel purposes; or (iii) for a term of less than six (6) months in duration unless it is a lease extension;

(c) any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, and the Articles and Bylaws, and the Rules of the Association;

(d) the lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of this Declaration, or the Articles or Bylaws or the Rules shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them to include, but not be limited to, eviction of the lessee from the Dwelling Unit; and

(e) the Board of Directors shall be furnished with a copy of the lease or rental agreement upon its request.

7.21 Fences and Other Exterior Improvements. Fences shall not be allowed to be constructed between or anywhere on Lots without the written approval of the Committee. No basketball hoops, poles or backboards, other playground equipment, clotheslines, wood piles, or storage areas or containers may be installed on any Lot or in the Common Areas unless approved by the



Committee and except as were installed or permitted to be installed by Declarant in its construction of Dwelling Units on the Lots. No mailboxes, porch and area lighting, property identification, landscaping, or other exterior improvements shall be constructed, installed, erected or maintained on any Lot unless approved by the Committee and except as were installed or permitted to be installed by Declarant in its construction of Dwelling Units on the Lots.

7.22 Initial Landscaping. All initial landscaping and other initial exterior Improvements shall be completed in accordance with the Design Review Guidelines. All Owners and Participating Builders must complete all initial landscaping of a Lot within the time limits set forth in the Design Review Guidelines or any applicable Final Decision under ARTICLE SIX. Declarant may require that any Participating Builder or Owner other than Declarant complete or install street trees or other landscaping required by the County on Lot(s) held by such Participating Builder or Owner or on areas adjacent to or in close proximity to such Lot(s).

7.23 Rules. Every Owner and his or her Guests shall adhere strictly to the Rules as promulgated by the Board of Directors, as amended from time to time.

7.24 Waiver of Summary Abatement. Declarant and the Association each waive the right to use summary abatement or similar means to enforce the restrictions herein contained. Judicial proceedings must be instituted before any items of construction can be altered or demolished.

7.25 Exemptions for Declarant and Participating Builders. So long as Declarant owns a Lot within the Planned Community, Declarant shall be exempt from the provisions of this ARTICLE SEVEN to the extent that Declarant determines, in its sole discretion, that such provisions impede or affect Declarant's development, construction, marketing, sales, or leasing activities. The Declarant may exempt any or all Participating Builders from all or portions of the provisions of this ARTICLE SEVEN, to the extent that Declarant determines, in its sole discretion, that such provisions impede or affect the Participating Builder's development, construction, marketing, sales, or leasing activities. All Participating Builders shall be bound by the terms, requirements and conditions set forth in ARTICLE SIX and the Design Review Guidelines.

7.26 Enforcement. The Association, acting through its Board of Directors, shall have the standing and power to enforce all of the above land use and other restrictions.

7.27 Construction Ongoing. All Owners acknowledge they may be purchasing Lots in the Planned Community during a period of construction and the Dwelling Units may be completed prior to the completion of other Dwelling Units, streets, sidewalks, landscaping and amenities, if any. There may be certain inconveniences until the construction is completed. Additionally, there are certain impacts normally associated with construction projects of this nature including, without limitation, ongoing and continuous construction activity involving trucks and other construction vehicles and equipment coming and going on or about the Planned Community in order to complete the construction; temporary closing of roads, driveways, and other access in order to accommodate the construction process, noise, dirt and dust, temporary interruption of utilities and storage of materials and debris that may be considered unsightly. The Owners waive any and all claims against Declarant for any of these impacts or inconveniences caused during the construction process and the Owners shall at all times endeavor to make reasonable good



faith efforts to minimize such construction impacts and inconveniences. Declarant agrees at all times to provide reasonable access to such home.

ARTICLE EIGHT: EASEMENTS

8.1 Easements for the Board of Directors. Each Lot and exterior portion of any Dwelling Unit shall be subject to an easement in favor of the Board of Directors (including its agents, employees, and contractors) to perform its obligations pursuant to this Declaration, including but not limited to the maintenance, repair, construction and restoration of the Common Areas and all other portions of the Planned Community for which the Association has maintenance responsibilities.

8.2 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Planned Community, to enter upon any part of the Planned Community in the performance of their duties.

8.3 Recording Data Regarding Easements. Pursuant to § 38-33.3-205(m) of the Act, the recording data for recorded easements and licenses appurtenant thereto, or included in the Planned Community or to which any portion of the Planned Community is or may become subject to are identified on the attached Exhibit D.

8.4 Utility Easements. There is hereby created and granted a blanket easement on, over, in, under and through the Planned Community for the installation, replacement, repair, operation and maintenance of utilities, including but, not limited to, water, sewer, gas, telephone, electricity, data transmission, fiber optic and satellite and cable systems serving the Planned Community. The blanket easement includes future utility services not presently available to the Planned Community that may reasonably be required in the future.

By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment, and appurtenances within, in, on, over, under or across the Dwelling Unit, and to affix, repair and maintain wires, cables, circuits, conduits, pipes, equipment, and apparatus within, on, over, across, and under the roofs and exterior walls and of a Dwelling Unit.

Should any utility company furnishing a service covered by the easement herein created request a specific easement by separate recordable document, Declarant shall have, and hereby reserves, the right and authority to grant such easement upon, across, over or under any part or all of the Planned Community without conflicting with the terms hereof; provided, however, that such power shall cease upon termination of the Declarant Rights as provided in Paragraph 13.3, at which time such reserved right shall vest in the Association.

The easement granted in this Paragraph shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on, over, in, under and through the Planned Community.



8.5 Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Areas, or upon another Dwelling Unit, the Owner of that Dwelling Unit shall and does have an easement for the existence of such encroachment and for the maintenance of same. The easement shall extend for whatever period of time the encroachment exists.

Such easements for encroachments shall not be considered to be encumbrances either on the Common Areas or on a Lot or Dwelling Unit. Encroachments referred to herein include, but are not limited to, unintentional encroachments caused by error in the original construction of the Buildings, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Planned Community or any part thereof or by any other movement of any portion of the improvements located upon the Planned Community.

8.6 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Unit owned by the Owner. All conveyances and instruments affecting title to a Unit shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

ARTICLE NINE: INSURANCE

9.1 Authority to Purchase/General Requirements. All insurance policies relating to the Association and Common Areas within the Planned Community shall be purchased by the Board of Directors on behalf of the Association. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

The Board of Directors shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the Association, or an Owner or a First Mortgagee, or (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

Each insurance policy shall provide that:

(a) The insurer to the extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households;



(b) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner or his or her Guests or of any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent abate or cure the conduct complained of and neither shall have so abated or cured such conduct within forty-five (45) days after such demand;

(c) Such policy, including any fidelity insurance of the Association referred to in Paragraph 9.4 hereof may not be canceled, or substantially modified by any party (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Board of Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy;

(d) Such policy must provide that no assessment may be made against a First Mortgagee, its successors or assigns and that any assessment made against others shall not become a lien on a Lot or Dwelling Unit superior to the lien of a First Mortgagee; and

(e) Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as an Owner, if such coverage is available.

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "B+" or better if reasonably available, or, if not reasonably available, the most nearly equivalent rating.

All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) in which it appropriately names a First Mortgagee in the policy, its successors and assigns, beneficiary (but only to the extent a First Mortgagee has a Security Interest in any of the Common Areas insured by the Association).

9.2 Hazard Insurance. The Board of Directors shall obtain and maintain a comprehensive, "all-risk" form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, and cost of demolition insuring any of the insurable improvements located on the Common Areas.

Such insurance shall at all times represent one hundred percent (100%) of the current replacement cost based on the most recent appraisal of all insurable improvements in the Common Areas. The current replacement cost shall not include values for land, foundation, excavation and other items normally excluded there from and shall be without deduction for depreciation and with no provision for co-insurance. If available, the policy shall be endorsed with a "Guaranteed Replacement Cost Endorsement."

The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board of Directors shall consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes, showing that the insurance represents one hundred percent (100%) of the current replacement cost as defined above for all insurable improvements located on the Common Areas, together with any personal property owned by the Association.



Such policies shall also provide:

(a) The following endorsements or their equivalent if applicable and if available: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Cost of Demolition Endorsement, Increased Cost of Construction Endorsement) Agreed Amount Endorsement, and Inflation Guard Endorsement

(b) That any "no other insurance" clause expressly exclude Sub-Association's or individual Owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any Sub-Association's or individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by a Sub-Association or individual Owners or their First Mortgagees, unless otherwise required by law.

The insurer shall deliver a certificate, together with proof of payment of premiums, to any Owner and First Mortgagee requesting the same, at least thirty (30) days prior to expiration of then current policy.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the Association. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors and provide that all claims are to be settled on a replacement cost basis.

The Association shall hold and apply any insurance proceeds to fulfill its obligations and responsibilities to maintain, repair, and reconstruct the Common Areas in accordance with this Declaration. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Areas.

The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's Reserve Funds and be so designated.

The Board shall have the authority to levy, after Notice and Hearing, against Owners causing such loss for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

9.3 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including eviction, libel, slander, false arrest and invasion of privacy) and property damage insurance covering all of the Common Areas within the Planned Community insuring each officer, director, the Managing Agent and the Association.



Such coverage under this policy shall include, without limitation, the legal liability of the insureds for property damage, bodily injuries and deaths of persons that result from the operation, maintenance or use of the Common Areas and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to the Planned Community similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Comprehensive Automobile Liability Insurance, Severability of Interest Endorsement.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars (\$1,000,000) covering all claims for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

9.4 Fidelity Insurance. The Association shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its management agent at any time while the policy is in force; provided however, in any event the aggregate amount of such insurance shall be not less than a sum equal to three (3) months' aggregate Assessments on all Units, plus Reserve Funds.

The policy must include a provision that calls for ten (10) days written notice to the Association before the policy can be canceled or substantially modified for any reason. The same notice must also be given to each servicer of a securitized mortgage in the Planned Community, to the extent that any such mortgagee constitutes a security interest in the Common Areas.

A management agent that handles funds for the Association shall be covered by its own fidelity insurance policy that must provide the same coverage as that required to be held by the Association.

9.5 Additional Insurance. If the area where the Planned Community is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance that covers the Common Areas shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent (100%) of the current replacement cost of the Improvements on the Common Areas.



If the Planned Community at the time of the recording of this Declaration is not identified as a Special Flood Hazard Area but becomes reclassified at a later date as such, the Board of Directors shall obtain flood insurance that covers the Common Areas in accordance with the above. Conversely, flood insurance may be discontinued if the Planned Community is reclassified out of the Special Flood Hazard Area.

The Association may also maintain coverages for:

(a) Adequate Directors and Officers liability insurance, if reasonably available, and if deemed consistent with good business practices, for errors and omissions on all Directors and Officers in an amount which the Board of Directors deems adequate;

(b) Worker's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter acquired by law; and

(c) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to the Common Areas.

9.6 Payment of Insurance Premiums. The cost of the insurance obtained by the Association in accordance with this Article shall be paid from Association funds and shall be collected from the Owners as part of the Common Expense Assessment as provided for in Paragraph 5.4(a) hereof. If sufficient funds are not generated from the Common Expense Assessment to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Paragraph 5.4(b) hereof and such assessment shall be exempt from any special voting requirements of the Membership. Such assessment shall be prorated among Owners in the same proportion as the Common Expense Assessment Liability.

ARTICLE TEN: RESTORATION UPON DAMAGE OR DESTRUCTION AND CONDEMNATION

10.1 Damage or Destruction. Any portion of the Common Areas (or other portion, if any, of the Planned Community) that is covered by a policy of insurance that is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (i) The Planned Community is terminated;
- (ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (iii) Sixty-seven percent (67%) or more of the Owners vote not to rebuild; or



- (iv) Prior to the conveyance of any Lot to a Person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Planned Community rightfully demands all or a substantial part of the insurance proceeds.

The Common Areas must be repaired and restored in accordance with either (a) the original plans and specifications, or (b) other plans and specifications which have been approved by the Board of Directors.

10.2 Use of Insurance Proceeds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage, the Board of Directors shall levy an Individual Assessment in the aggregate amount of such insufficiency pursuant to Paragraph 5.4(b) hereof, and shall proceed to make such repairs or reconstruction. The amount of each Owner's Individual Assessment shall be such Owner's Common Expense Assessment Liability as determined in accordance with Paragraph 1.2 hereof.

If all of the damage to the Common Areas covered by the Association's insurance is not repaired or reconstructed, the insurance proceeds attributable to the damage shall be used to restore the damaged portion of the Common Areas to a condition compatible with the remainder of the Planned Community and the remainder of the proceeds shall be distributed to the Association.

10.3 Condemnation. If a part of the Common Areas are acquired by condemnation, that portion of any award attributable to the Common Areas taken must be paid to the Association as attorney-in-fact to be held in trust for the use and benefit of the Association, the Owners and the holders of the Security Interests as their interests may appear. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the Condemnation Award.

ARTICLE ELEVEN: MAINTENANCE

11.1 Maintenance of the Common Areas and Common Area Improvements. The Association shall provide for the repair, maintenance, and reconstruction of the Common Areas and Common Area Improvements. The maintenance obligations of the Association shall be subject to any undertaking or responsibility of the County or other entity with respect to easements, rights of way and any trails. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Areas and its Improvements attractive, clean, functional and in good repair and may make necessary or desirable alterations or improvements thereon or thereto or replacements thereof. The Association shall perform all of its required obligations set forth in the recorded Conservation Easement and Outlot Management Plan.

11.2 Maintenance of the Dwelling Units and Lots. All Dwelling Unit and Lot maintenance, repair and reconstruction shall be the sole responsibility and at the sole expense of the Owner together with the maintenance of the landscaping thereon and any other structures, buildings, or other improvements thereon.



No landscaping shall be installed, and no fences, hedges or walls shall be erected on any Lot, except in accordance with the initial construction of the Dwelling Unit or as approved by the Committee. If Improvements are approved for a Lot, then the Improvements must be maintained, repaired and reconstructed by the Owner of the Lot in a manner acceptable to the Board of Directors.

11.3 Owners Failure to Maintain, Repair, and/or Reconstruct. In the event that a Lot or Dwelling Unit is not properly maintained and repaired by the Owner, the Board of Directors, after Notice and Hearing to the Owner (and after a determination by the Board that the condition of the Lot and/or Dwelling Unit negatively impacts other Owners or the value of other Lots and Dwelling Units within the Planned Community) shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and/or Dwelling Unit to a condition of good order and repair and charge the cost thereof to such Owner as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

11.4 Maintenance of Drainage Pattern. There shall be no interference with the established drainage pattern initially established by Declarant over any portion of the Planned Community, except as approved in writing by the Committee. Approval shall not be granted unless provision is made for adequate alternate drainage.

The "established drainage pattern" shall mean the drainage pattern that exists at the time the overall grading of any property is completed by Declarant and shall include any established drainage pattern shown on the plans approved by the Committee. The established drainage pattern may include the drainage pattern from the Common Areas over any Lots within the Planned Community, from any Lot within the Planned Community over the Common Areas and from any Lot over another Lot.

Any proposed alteration to the drainage pattern must be prepared, signed and stamped by a qualified Professional Engineer registered in the state of Colorado.

11.5 Association Responsibility. The maintenance obligation on the part of the Association shall apply to the maintenance required by ordinary wear and tear and shall not apply to maintenance, repair and/or reconstruction resulting from willful neglect or destruction by an Owner or an Owner's Guests. In the event the repair, maintenance and/or reconstruction results from the willful neglect or destruction by an Owner or an Owner's Guests, the Board of Directors shall have the right, to charge the costs of the repair, maintenance and/or replacement, to that Owner by an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

Determination of whether the repair, maintenance and/or reconstruction is the obligation of the Association or an Owner shall rest solely with the Board of Directors and shall be final. The Board of Directors will also have the sole responsibility for determining the timing and manner of the repair, maintenance and/or reconstruction including the kind and type of materials to be used.

11.6 Board of Directors Access. Access to all of the Lots within the Planned Community to perform repairs, maintenance and/or reconstruction by the Board of Directors, its agents and



employees shall be made pursuant to the maintenance easement granted in accordance with Paragraph 8.1 hereof.

ARTICLE TWELVE: DEVELOPMENT RIGHTS

12.1 Reservation of Right to Expand the Number of Lots in the Planned Community. Declarant reserves the right (without in any way being bound) to incorporate Lots into the Planned Community and to submit additional Lots to and enlarge the Planned Community in phases, without the necessity of the consent thereto or the joinder therein by the Owners or First Mortgagees, by preparing, executing and recording a Supplemental Declaration submitting Lots to the Planned Community located on the real property described on the attached Exhibit C. The Supplemental Declaration shall specify the Allocated Interests computed and determined in accordance with Paragraph 1.2 hereof that are associated with the Lots incorporated into the Planned Community.

12.2 Supplemental Declarations. The incorporation of Lots and expansion will be accomplished by the filing of record by the Declarant in the office of the Office of the Boulder County Clerk and Recorder, a supplement to this Declaration containing a legal description of the new real property on which the incorporated and/or additional Lots are located. The expansion may be accomplished in stages or phases by multiple, successive supplements or in one supplemental expansion.

All future improvements will be consistent with the Development Plan and with the initial improvements in quality of construction.

12.3 Expansion of Definitions. In the event of expansion, the definitions used in this Declaration shall be expanded. For example, "Lot" and "Common Areas" shall mean the Lots and Common Areas described and defined herein plus any additional Lots and Common Areas added by any Supplemental Declaration and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Planned Community as expanded without additional references to any Supplemental Declaration.

12.4 Declaration Operative on New Properties. The Lots and real property submitted and added to the Planned Community shall be subject to all the terms and conditions of this Declaration as amended or supplemented, by the recording by Declarant of a Supplemental Declaration in the Office of the Boulder County Clerk and Recorder, describing such Lots and real property.

12.5 Interests on Enlargement. An Owner at the time of his or her purchase of a Lot that is submitted to and incorporated into the Planned Community by a Supplemental Declaration shall be a Member of the Association. The Owner shall be entitled to the same non-exclusive use of the Common Areas and the same voting privileges as the Owners of Lots previously submitted to and incorporated into the Planned Community through the Declaration or any prior Supplemental Declarations and shall be subject to Assessments as provided herein. The Assessments for each Phase submitted to and incorporated into the Planned Community shall commence for all



Owners within that Phase including the Declarant upon the recording of the Supplemental Declaration for that Phase.

Whenever any additional property is brought into the Planned Community, the Common Expense Assessment Liability of each Owner in the Planned Community after such addition will change and will be reallocated by the Declarant in accordance with Paragraph 1.2 hereof.

12.6 Taxes, Assessments and Other Liens. All taxes and other assessments relating to the real property described in Exhibit A and Exhibit B covering any period of time prior to the addition of any Lots, Lots or Outlots or other Common Areas on such property or any portion thereof to the Planned Community will be paid or otherwise provided for by the Declarant to the satisfaction of all First Mortgagees.

Liens arising out of the construction of improvements in later phases shall not extend into prior phases and shall not adversely affect the rights of Owners or the priority of first mortgages and deeds of trust on any Lot constructed in a prior phase.

12.7 Project Treated as a Whole. For all purposes hereof, each of the Phases of the Planned Community after the recording of the Supplemental Declaration submitting each Phase to the Planned Community, shall be treated as a part of the Planned Community developed as a whole from the beginning, except to the extent expressly otherwise provided for herein. It is the express purpose hereof to provide that from and after the date of the submission of a Phase of the Planned Community in accordance with the above, that such Phase shall be treated as though such Phase had been developed, owned, occupied and used by the Owners thereof as a single undivided Project.

12.8 Termination of the Right of Expansion. The right of expansion shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such right of expansion shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 13.3 hereof.

ARTICLE THIRTEEN: DECLARANT RIGHTS

13.1 Reservation. The Declarant reserves the following Declarant Rights (“Declarant Rights”) that may be exercised, where applicable, anywhere within the Planned Community:

(a) To complete the improvements contemplated by and in the locations indicated on the Plat and to complete the creation and construction of all forty-six (46) Lots, or such greater number of Lots as may be approved by the County pursuant to the Plat for the Planned Community, and all associated improvements in the Project;

(b) To exercise any Declarant Rights reserved herein;



(c) To use, and to permit others to use, easements through the Common Areas as may be reasonably necessary for construction within the Planned Community and for the purpose of discharging the Declarant’s obligations under the Act and this Declaration;

(d) To submit to and incorporate Lots into the Planned Community and to enlarge the Planned Community in phases from time to time, without the prior approval of any Owner or Eligible Mortgagee, by adding Lots, or other Common Areas to the Planned Community located on any portion of the real property described in Exhibit A and Exhibit B;

(e) To amend (and supplement) the Declaration and/or the Plat and/or to file additional Filings to the Plat and to file additional plats in connection with the exercise of any Declarant Rights and/or as set forth in this Declaration;

(f) To conduct marketing and sales activities for the sales of Lots in the Community;

(g) To appoint or remove any officer of the Association or a member of the Board of Directors during the Period of Declarant Control subject to the provisions of Paragraphs 4.7 and 4.8 of this Declaration; and

(h) To exercise any other Declarant Right created by any other provisions of this Declaration.

13.2 Rights Transferable. Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the Declarant Rights transferred and recorded in the records of the Office of the Boulder County Clerk and Recorder. The instrument shall be executed by Declarant, as the transferor, and by the transferee.

13.3 Limitations. The Declarant Rights shall terminate at the option of Declarant by its written notice to the Secretary of the Association, but in any event the Declarant Rights shall terminate without further act or deed twenty (20) years after the date of the recording of this Declaration. The Declarant Rights shall be exercised in phases and on the real property described on Exhibit A, Exhibit B, Exhibit C and the Plat. In the event that the process of entitlement for Declarant to apply for and obtain building permits is placed on “hold” or delayed for reasons beyond the control of Declarant (e.g., moratorium, anti-growth legislation, etc.), the time limitations set forth herein shall be extended until the impediment to entitlement is removed.

13.4 Interference with the Declarant Rights. The Association, the Board of Directors or any Owner may not take any action or adopt any Rule that will interfere with or diminish any Declarant Rights without the prior written consent of Declarant.

13.5 Use by Declarant. The exercise of the Declarant Rights by Declarant shall not unreasonably interfere with the access to or use of any Lot by any Owner or the access to or use of the Common Areas.



13.6 Models, Sales Offices, and Management Offices. Subject to the limitations set forth in Paragraph 13.3 hereof, Declarant, its duly authorized agents, representatives and employees may maintain any Lots owned by Declarant as a "Model," together with storage areas, nursery and construction yards, and parking spaces, sales, leasing or management offices, to include but not be limited to sales trailers.

13.7 Declarant's Easements. Declarant reserves an easement for ingress and egress in, on, under, and across the Planned Community (including all Lots and Common Areas therein) to perform warranty work, and repairs, construction work, utility, and drainage work and to store materials in secure areas, to build temporary walls and other facilities and structures and to make such use of the Common Areas as may be reasonably necessary or incident to any construction and to control and have the right of access to all of Declarant's work and repairs until completion. All construction, warranty and any related work may be performed by Declarant without the consent or approval of the Board of Directors.

Declarant has an easement through the Planned Community (including all Lots and Common Areas therein) as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising the Declarant Rights, whether arising under the Act or reserved in this Article or elsewhere in this Declaration.

13.8 Signs and Advertising. Declarant reserves the right for Declarant to post signs and displays on the Common Areas in order to promote sales of Lots. Declarant also reserves the right for Declarant to conduct marketing and sales activities to sell Lots in the Community.

13.9 Other Reserved Rights. The rights reserved in this ARTICLE THIRTEEN are in addition to all other rights reserved by or granted to Declarant in this Declaration or by the Act.

13.10 Exercise of Declarant Rights. The exercise of any or all of the Declarant Rights shall be at the sole option and discretion of Declarant. Except as set forth herein, no other assurances are made with regard to the reserved development rights. If any Declarant Rights are exercised in any portion of the real estate subject to development rights, Declarant shall have no obligation to exercise any Declarant Rights in all or any portion of the remainder of that real estate.

Upon the exercise of any of the Declarant Rights reserved herein, Declarant, if required by the Act, shall comply with § 38-33.3-209 and § 38-33.3-210(1) of the Act pertaining to the preparation, execution, and recordation of the amendments (supplements) to the Declaration and the Plat. Accordingly, Declarant shall have the unrestricted right to amend and supplement the Declaration and the Plat and file additional or supplemental declarations or plats in order to exercise the Declarant Rights. Notwithstanding anything in this Declaration to the contrary, no consent or agreement of, or notice to Owners, or any Eligible Mortgagee shall be required in order to allow Declarant to exercise any of the Declarant Rights, provided such exercise otherwise complies with the applicable provisions of this Declaration.

13.11 Declarant's Personal Property. Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Common Areas that have not been represented as property of the Association. Declarant reserves the right



to remove from the Planned Community any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures, upon completion of the development and sales of all Lots.

ARTICLE FOURTEEN: FIRST MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first mortgages recorded against Lots within the Planned Community who qualify as an Eligible Mortgagee as defined by Paragraph 1.23 hereof. To the extent applicable, necessary, or proper, the provisions of this ARTICLE FOURTEEN apply to both this Declaration and to the Articles and Bylaws.

14.1 Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

(a) any material condemnation loss or any casualty loss which affects a material portion of the Planned Community or any Lot in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;

(b) any sixty (60) day delinquency in the payment of Assessments or charges owed by an Owner of any Lot on which an Eligible Mortgagee holds a Security Interest;

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

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees; and

(e) any material judgment rendered against the Association.

14.2 Amendment to Documents/Special Approvals:

(a) The consent of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the consent of fifty-one percent (51%) of the Eligible Mortgagees shall be required to add to or amend any material provisions of this Declaration or the Articles or Bylaws of the Association. A change to any of the following would be considered material.

(i) voting rights;

(ii) increase the Common Expense Assessment annually by more than twenty-five percent (25%) over the previously levied Common Expense Assessment, change the manner of the Assessment Liens, or the priority of the Assessment Liens;

(iii) reduction in the reserves for maintenance, repair and replacement of the Common Areas;



- (iv) responsibility for maintenance and repairs;
 - (v) right to use the Common Areas;
 - (vi) convertibility of Lots into Common Areas or vice versa;
 - (vii) hazard or fidelity insurance requirements;
 - (viii) imposition of any restrictions on the leasing of Lots;
 - (ix) imposition of any restrictions on a Lot Owner's right to sell or transfer his or her Lot;
 - (x) restoration or repair of the Planned Community (after damage or partial condemnation) in a manner other than that specified in the Project Documents;
 - (xi) any provision that expressly benefits mortgage holders, insurers or guarantors; and
 - (xii) a decision by the Board of Directors to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgagee.
- (b) The Association may not take any of the following actions without the consent of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of at least fifty-one percent (51%) of the Eligible Mortgagees.
- (i) Reconstruct or repair the Planned Community after damage due to an insurable hazard or a partial condemnation in a manner other than specified in the Project Documents;
 - (ii) Merge or consolidate the Planned Community with any other Planned Community or subject it to a master association; and
 - (iii) Not repair or reconstruct, in the event of substantial destruction, any part of the Common Areas.
- (c) Any action to terminate the legal status of the Planned Community after substantial destruction or condemnation occurs must be agreed to by Owners to which at least eighty percent (80%) of the votes in the Association are allocated, and by sixty-seven percent (67%) of the Eligible Mortgagees.
- (d) Any action to terminate the legal status of the Planned Community for reasons other than substantial destruction or condemnation occurs must be agreed to by Owners to which at least eighty percent (80%) of the votes in the Association are allocated, and by sixty-seven percent (67%) of the Eligible Mortgagees.



14.3 Special FHLMC Provisions. Except as provided by statute in the case of a condemnation or a substantial loss to the Lots and/or Common Areas, unless at least sixty-seven percent (67%) of the Eligible Mortgagees or five of the Owners (other than Declarant) have given their prior written approval, the Association may not:

- (a) by act or omission seek to abandon or terminate the Planned Community;
- (b) change the pro rata interest or obligations of any Lot in order to levy assessments, allocate distribution of hazard insurance proceeds or condemnation awards;
- (c) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas by act or omission;
- (d) the granting of easements for public utilities or other purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this Paragraph 14.3(c); and
- (e) use hazard insurance proceeds for losses to any planned community property for other than the repair, replacement or reconstruction of the planned community property).

14.4 Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgagee receives proper notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested.

14.5 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Association’s Bylaws.

ARTICLE FIFTEEN: MANDATORY DISPUTE RESOLUTION

The provisions of ARTICLE FIFTEEN are not intended to waive or alter the applicability of C.R.S. § 13-20-801 *et seq.*, to any action brought by Owners or by the Association, as the term “action” is defined by C.R.S. § 13-20-802.5(1). It is intended that Owners and the Association fully comply with all applicable provisions of both (1) ARTICLE FIFTEEN and (2) C.R.S. § 13-20-801 *et seq.*

15.1 Statement of Clarification. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a “Claim” as defined herein, that the Mandatory Dispute Resolution provisions contained in this Article are activated.



15.2 Alternative Method for Resolving Disputes. Declarant, the Association, its officers and directors; all Owners; design professionals; builders, including any of their subcontractors and suppliers; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each of the foregoing entities being referred to as a "Party"), agree to encourage the amicable resolution of disputes involving the Planned Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims each may have to the procedures set forth in this ARTICLE FIFTEEN and not to a court of law.

15.3 Claims. Except as specifically excluded in Paragraph 15.4, all claims, disputes and other controversies arising out of or relating to the:

- (a) any Agreement for Sale and Purchase between Declarant and any Owner (except as may be expressly provided otherwise therein);
- (b) Property (as defined in any such Agreement) or the Dwelling Unit;
- (c) purchase of the Property or the Dwelling Unit;
- (d) interpretation, application or enforcement of this Declaration;
- (e) the soils of any property that lies within the Planned Community;
- (f) land development, design, construction, and/or alteration of the Improvements within the Planned Community and/or any alleged defect therein;
- (g) any rights, obligations and duties of any Party under this Declaration;
- (h) any Limited Warranty Agreement between Declarant and any Owner and/or the Association; or
- (i) any breach of any of the foregoing;

all of which are hereinafter referred to as a "Claim," shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by Mandatory Binding Arbitration all in accordance with this ARTICLE FIFTEEN and not in a court of law. Notwithstanding the foregoing, no Claim may be asserted or brought unless there is either (i) actual physical damage to or actual loss of use of tangible real or personal property or (ii) bodily injury or wrongful death.

15.4 Claims Subject to Approval. Unless Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this ARTICLE FIFTEEN:

- (a) any suit by the Association against any Party to enforce the provisions of ARTICLE FIVE (Assessments);



(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of ARTICLE SIX (Architectural Approval/Design Review), or ARTICLE SEVEN (Land Use and Other Restrictions);

(c) any suit by an Owner to challenge the actions of Declarant, the Association, Declarant acting as the Design Review Committee, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of ARTICLE SIX; and

(d) any suit between or among Owners that does not include Declarant or the Association.

15.5 Notice of Claim. Any Party alleging a Claim (“Claimant”) against any other Party (“Respondent”) shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

(a) the nature of the Claim, including a list of any alleged construction defects, the Persons involved and Respondent’s role in the Claim;

(b) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises);

(c) the date on which the Claim first arose;

(d) the name and address of every Person, including without limitation any current or former employees of Respondent, whom Claimant believes does or may have information relating to the Claim; and

(e) the specific relief and/or proposed remedy sought.

15.6 Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in any event, regardless of the nature of the Claim, within the time specified in the applicable Limited Warranty Agreement described in Paragraph 15.3(h) above for warranty Claims and no later than two (2) years after the Claim arises for all other Claims.

15.7 Right to be Heard. Upon receipt of a Claim and prior to the Association or any Owner asserting the Claim commencing any mediation or arbitration Respondent shall have the right to make a written response and be heard by Claimant, affected Owners, and Association in an effort to resolve the Claim.

15.8 Right to Inspect and Repair. If the Claim is based on the land development, design, construction and/or alteration of any Improvements within the Planned Community then, upon reasonable notice to any affected Owners (or the Association if the affected area is owned by the Association), Respondent shall have the right to access the affected area at a reasonable time(s)



for purposes of inspecting the condition complained of including but not be limited to, any investigative or destructive testing.

The Association shall have the same right to inspect for any Claims by Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the Party causing the inspection to be made ("Inspecting Party") shall:

(a) be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected ("Affected Property");

(b) minimize any disruption or inconvenience to any person who occupies the Affected Property;

(c) remove daily all debris caused by the inspection and located on the Affected Property; and

(d) in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and materials from the Affected Property and repair and replace all damage, and restore the Affected Property to the condition of the Affected Property as of the date of the inspection, unless the Affected Property is to be immediately repaired.

The repair, replacement, and restoration work shall include, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Affected Property that were damaged, removed, or destroyed by Inspecting Party.

In the event the Inspecting Party wishes to make repairs to resolve the subject matter of the Claim, the Inspecting party shall have the right, at its option, to do so and to enter the Affected Property at a reasonable time(s) and upon reasonable notice for such purpose.

The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect and/or repair to accrue against or attach to the Affected Property. The Inspecting Party shall indemnify, defend and hold harmless the Affected Owners, or the Association if the Affected Property is owned by the Association, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and reasonable attorney's fees, resulting from any breach of this Article by the Inspecting Party.

15.9 Good Faith Negotiations. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may be represented by attorneys and independent consultants (at such Party's cost) to assist such party in negotiations and to attend meetings.



15.10 Mediation:

(a) If the Parties do not resolve the Claim through negotiations within thirty (30) days after the date of submission of the Claim to Respondent(s), as may be extended upon agreement of all affected Parties, Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent mediation service reasonably acceptable to all Parties. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and all Respondent(s) shall be released and discharged from any and all liability to Claimant on account of such Claim.

(b) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties.

(c) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(d) Within ten (10) days after issuance of a Termination of Mediation, Claimant shall make a final written Settlement Demand to the Respondent(s), and the Respondent(s) shall make a final written Settlement Offer to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Claim shall constitute the Settlement Demand. If the Respondent(s) fail to make a Settlement Offer, Respondent(s) shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(e) Each Party shall bear its own costs, including attorney's fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.

(f) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this ARTICLE FIFTEEN and any Party thereafter fails to abide by the terms of such agreement, then any other affected Party may file suit to enforce such agreement without the need to again comply with the procedures set forth in this ARTICLE FIFTEEN. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including, without limitation, reasonable attorney's fees and court costs.

15.11 Arbitration:

(a) If the Parties do not reach a settlement of the Claim within fifteen (15) days after issuance of any Termination of Mediation and reduce the same to writing, the Claimant shall have fifteen (15) additional days to submit the Claim to binding arbitration in accordance with the Arbitration Procedures contained in Exhibit E hereof and deliver an Arbitration Notice to all Respondent(s).



(b) The Parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Party may have liability with respect thereto, all Parties including any third Parties agree that the third Parties may be joined as additional Parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all arbitrations. It is the intent of the Parties to resolve all rights and obligations of all interested Parties at one time in one forum rather than in multiple proceedings.

(c) Within sixty (60) days after submission of the Claim, Claimant shall file with the arbitrator and deliver to Respondent(s) a certified list of construction defects that are the subject of the Claim, which list shall be signed by the attorney for Claimant, or if Claimant does not have an attorney, by Claimant, and shall include:

- (i) a statement that (a) the attorney for Claimant, or Claimant if Claimant does not have an attorney, has consulted with a Person not a Party to the Claim with expertise in the area of each construction defect that is the subject of the Claim (the "Construction Consultant") and (b) the Construction Consultant has inspected the improvements for which the construction defects are claimed, has reviewed the known facts, including such records, documents and other materials the Construction Consultant has found to be relevant to the construction defects, and has concluded that the Claim has substantial justification based on the Construction Consultant's inspection and review of the known facts;
- (ii) a certification that the Construction Consultant can demonstrate by competent evidence that, as a result of training, education, knowledge and experience, the Construction Consultant is competent to testify as an expert and render an opinion as to the alleged construction defects;
- (iii) a certification signed by the Construction Consultant stating (A) such Person's name, address, qualifications and credentials that render him or her competent to express an expert opinion as to the alleged construction defect, (B) that he or she has inspected each improvement and reviewed the known facts, including such records, documents and other materials which he or she has found to be relevant to the construction defects at issue, and (C) as to each improvement for which a construction defect Claim is asserted, an identification of the owner of the improvement, the location and date of construction of the improvement, and an identification of each claimed construction defect and its specific location;
- (iv) a computation of the damages alleged for each construction defect;
- (v) an identification, with respect to each improvement and construction defect, of each Party alleged to be responsible for such defect;
- (vi) a certification that each Party alleged to be responsible for the alleged construction defect has been given written notice of the defect and an



opportunity to remedy the defect under the foregoing provisions of this Article and that the defect has not been remedied; and

(vii) a copy of the notice of Claim served by Claimant on each Person that is named as a Party to the Claim.

(d) If the Claim is not timely submitted to arbitration, if Claimant fails to appear for the arbitration proceeding, or if Claimant fails to file and deliver the certified list of construction defects as provided in subparagraph (c) above, the Claim shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims.

(e) The award rendered by the Arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in the County in accordance with applicable law and judgment obtained thereon, and execution may issue. The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.

(f) Claimant shall notify Respondent(s) prior to retaining any Person or entity as an expert witness for purposes of any arbitration or authorized litigation.

15.12 Consensus for Association Action. Except as provided for in Paragraph 15.4 hereof, the Association shall not commence any action, mediation or arbitration against Declarant or other Party for a Claim unless the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated agree to such proceedings. However, such Owner consent must be obtained by the Association only after the Board of Directors delivers written notice to all Members of the Association in accordance with the procedures set forth in the Bylaws with respect to meetings of Members. Such delivery shall include:

- (a) a description of the nature of the Claim and the relief sought;
- (b) a copy of any written response thereto, including any settlement proposal;
- (c) a statement advising Owners of their duties to disclose to prospective purchasers and lenders the Claim that the Association proposes to assert;
- (d) a statement that any recovery from the action may not result in receipt of funds to pay all costs of remedying the Claim as estimated by experts retained by the Association;
- (e) an estimate of the expenses and fees to the Association that the Board anticipates will be incurred in prosecuting the claim; and
- (f) a description of the agreement with the attorneys whom the Board of Directors proposes to retain to prosecute the cause of action.



15.13 Liability for Failure to Maintain an Action Against Declarant. No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was acting in good faith; and (c) the act or omission was not willful, wanton, or grossly negligent.

15.14 Utilization of Funds Resulting from the Cause of Action. In the event the Association receives funds as a result of any settlement, mediation, arbitration or judgment based upon a cause of action, after payment of fees and costs incurred in connection with prosecution of such action, the Association shall: (a) deposit the proceeds in a special, interest-bearing account; and (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the Claim or otherwise for purposes of remedying the Claim.

15.15 Exclusive Remedy. The provisions contained in this Article shall be the sole and exclusive remedy that the Association and other Parties shall have against Declarant for any Claim, and Declarant, the Association and each Owner expressly waives any right it may have to seek resolution of any Claim contemplated by this Article in any court of law or equity and any right to trial by jury.

Should any Party commence litigation or any other action against any other Party, in violation of the terms of this Article, such Party shall reimburse the costs and expenses, including attorneys' fees, incurred by the other Party seeking dismissal of such litigation or action. If Claim involves Declarant or the Association, no Party shall record a memorandum or notice of *lis pendens* or similar instrument that would encumber or create a lien on real property owned by either Declarant or the Association, and any recording of the same shall be null and void and of no force or effect.

15.16 Binding Effect. This ARTICLE FIFTEEN and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction in the County to the fullest extent permitted under the laws of the State of Colorado.

15.17 Amendment. This ARTICLE FIFTEEN and Exhibit E may not be amended unless the amendment is approved by a majority of the Board of Directors and Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated. Any amendment made without the requisite Board and Owners' vote shall be null and void and shall have no effect, and the last paragraph of Paragraph 15.2 hereof shall not apply.



ARTICLE SIXTEEN: DURATION, AMENDMENT, AND TERMINATION OF THE DECLARATION

16.1 Duration. The covenants, restrictions, and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Paragraph 16.7 herein.

16.2 Amendments by Owners. Except in cases of amendments that may be executed by the Declarant pursuant to Paragraph 16.3 hereof and except as restricted by Paragraphs 14.2, 14.3, and 16.5 hereof, this Declaration may be amended by the written agreement by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided however, an amendment may not: (a) create or increase Declarant Rights; (b) increase the number of Lots; or (c) change the Allocated Interests of a Lot without the written agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant.

An amendment shall be effective on the recording of the amendment together with a notarized Certificate of an officer of the Association certifying that the requisite number of Owners and First Mortgagees or Eligible Mortgagees, if required, have given their written consent to the amendment. The officer shall further certify that originals of the written consents by Owners and Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in the Office of the Boulder County Clerk and Recorder. Signatures of Owners on an amendment need not be notarized.

All signatures shall be irrevocable even upon the death of an Owner or the conveyance of the Lot, except that if an amendment is not recorded within three (3) years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association. Amendments can be executed in counterparts, provided that the recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of this Declaration, or the Articles or the Bylaws unless it is commenced within one (1) year from the recording date of the amendment, unless fraud or willful negligence is asserted and proven and except as otherwise provided in Paragraph 15.17 hereof.

16.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners or Eligible Mortgagees, this Declaration, the Articles and the Bylaws, at any time within the limitations set forth in Paragraph 13.3 hereof, as follows:

- (a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement;



(b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages; and

(c) To comply with any requirements of the Act or governmental agencies.

16.4 Amendment Terminology. As used in this Declaration or any of the Project Documents, the word “amend” or “amendment” shall be deemed also to mean and include to alter, vary, change, waive, delete, abandon, terminate, supplement, add to, or otherwise modify in any manner the language of this Declaration or the Project Documents.

16.5 Consent of Declarant Required. As long as Declarant has any rights or obligations under or pursuant to this Declaration or any of the other Project Documents, any proposed amendment of any provision of this Declaration shall require Declarant’s written consent to such amendment. Any amendment made without Declarant’s written consent as required herein shall be null and void and shall have no effect and the last paragraph of Paragraph 16.2 hereof shall not apply.

The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 13.3 hereof.

16.6 Consent of Eligible Mortgagees Required. Amendments may be subject to the consent requirements of Eligible Mortgagees as more fully set forth in ARTICLE FOURTEEN hereof.

16.7 Termination. The Planned Community may be terminated only in accordance with Paragraph 14.2(c) and (d) hereof.

The proceeds of any sale of real estate together with the assets of the Association shall be held by the Association as trustee for Owners and holders of liens upon the Lots as their interests may appear, as more fully set forth in § 38-33.3-218 of the Act.

ARTICLE SEVENTEEN: GENERAL PROVISIONS

17.1 Right of Action. Subject to the provisions of ARTICLE FIFTEEN, the Association and any aggrieved Owner shall have an appropriate right of action against an Owner for such Owner’s failure to comply with this Declaration or the Articles, Bylaws or the Rules of the Association or with decisions of the Board of Directors that are made pursuant thereto. Owners shall have a similar right of action against the Association.

17.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association and each Owner and their heirs, personal representatives, successors and assigns.

17.3 Severability. If any part of any provision of this Declaration shall be invalid or unenforceable under applicable law, that part shall be ineffective to the extent of such invalidity



or unenforceability only, without in any way affecting the remaining parts of the provision or the remaining provisions of this Declaration.

17.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

17.5 Registration by Owner of Mailing Address/Notices. Each Owner shall register their mailing address with the Association. Except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all notices intended to be served upon an Owner pursuant to this Declaration, shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or at the address of such Owner's Lot if there is no registered mailing address for such Owner on file at the Association.

All notices, demands or other notices intended to be served upon the Board of Directors or the Association shall be sent by certified mail, postage prepaid, to the Registered Agent for the Association on file in the Office of the Secretary of State, State of Colorado.

17.6 Conflicting Provisions. The Project Documents are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act (collectively, the "Governing Acts"). If there is any conflict between any provision of the Project Documents and any mandatory provision of either of the Governing Acts, the mandatory provision of the applicable Governing Act shall control and neither Declarant nor the Association shall have any liability for actions taken in conformity with such Governing Act. If there is any conflict between any provision of the Project Documents and any permissive or non-mandatory provision of either of the Governing Acts, the provision of the Project Documents shall control. In the event of any conflict between this Declaration and any other Project Documents, this Declaration shall control. In the event either the Articles or Bylaws conflict with this Declaration, this Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

17.7 Captions. The captions and headings in this Declaration are for Convenience only, and shall not be considered in construing any provision of this Declaration.

17.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

17.9 Mergers. The Planned Community maybe merged or consolidated with another Planned Community of the same form of ownership by complying with § 38-33.3-221 of the Act.



IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 22 day of Sept., 2004.

NIWOT HILLS, LLC
a Colorado limited liability company

By: [Signature]
Michael Markel, Manager

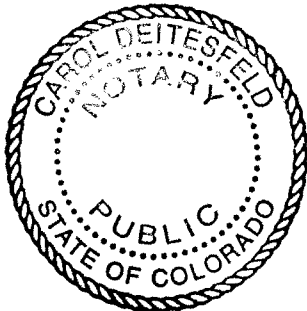
STATE OF COLORADO)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 22 day of September 2004 by Michael Markel as Manager of NIWOT HILLS LLC, a Colorado limited liability company.

My commission expires: 2/24/07

WITNESS my hand and official seal.

Carol Deitesfeld
Notary Public



My Commission Expires 2/24/2007



**EXHIBIT A
TO THE DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF
NIWOT HILLS**

**LEGAL DESCRIPTION OF THE REAL PROPERTY
SUBMITTED TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
NIWOT HILLS**

Lots 1 and 12,
Niwot Hills TDR/PUD Subdivision,
County of Boulder, State of Colorado



**EXHIBIT B
TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
NIWOT HILLS**

**LEGAL DESCRIPTION OF THE COMMON AREAS
SUBMITTED TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
NIWOT HILLS**

Outlots A, B, C, D, E, F, G and H,
Niwot Hills TDR/PUD Subdivision,
County of Boulder, State of Colorado



**EXHIBIT C
TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
NIWOT HILLS**

**LEGAL DESCRIPTION OF THE PROPERTY THAT MAY BE
SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
NIWOT HILLS**

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18 and 46,
Niwort Hills TDR/PUD Subdivision,
County of Boulder, State of Colorado

Future Development Areas known as:

Niwot Hills TDR/PUD Subdivision, Phase No. 2,
County of Boulder, State of Colorado
a/k/a

Lots 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40,
41, 42, 43, 44 and 45, Niwort Hills TDR/PUD Subdivision, Phase No. 2,
County of Boulder, State of Colorado
a/k/a

Tract 1, Niwort Hills TDR/PUD Subdivision, Phase No. 2,
County of Boulder, State of Colorado



**EXHIBIT D
TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
NIWOT HILLS**

**THE RECORDING DATA FOR RECORDED EASEMENTS,
LICENSES, AND OTHER MATTERS OF RECORD
WHICH THE PLANNED COMMUNITY
IS OR MAY BECOME SUBJECT TO:**

1. ALL EASEMENTS REFERRED TO OR CONTAINED IN OR GRANTED OR CREATED BY THIS DECLARATION.
2. ALL EASEMENTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS AS SHOWN ON THE PLAT.
3. RIGHT OF WAY FOR COUNTY ROAD NO. 34 (NIWOT ROAD).
4. RIGHT OF WAY FOR COUNTY ROAD NO. 19 (NORTH 95TH STREET).
6. RIGHT OF WAY FOR BOULDER AND LEFT HAND DITCH.
7. RIGHT OF WAY FOR BOULDER AND WHITE ROCK DITCH.
8. RESERVATION IN U.S. PATENT RECORDED AUGUST 7, 1894 IN BOOK 167 AT PAGE 12.
9. RESERVATIONS IN U. S. PATENT RECORDED JULY 11, 1904 IN BOOK 204 AT PAGE 25.
10. EASEMENT AND RIGHT OF WA.Y FOR COMMUNICATION FACILITIES AS GRANTED TO MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY BY GEORGE M. PETERSEN, JR., IN THE INSTRUMENTS RECORDED SEPTEMBER 22, 1969 ON FILM 679 AS RECEPTION NO. 925124 AND OCTOBER 29, 1969 ON FILM 682 AS RECEPTION NO. 928243.
11. DECLARATION OF COVENANT RECORDED JUNE 16, 1976 ON FILM 927 AS RECEPTION NO. 180402.
12. NOTICE RECORDED OCTOBER 15, 1981 ON FILM 1184 AS RECEPTION NO. 468375, AS AMENDED BY INSTRUMENT RECORDED JANUARY 25, 1991 ON FILM 1659 AS RECEPTION NO. 1084875, STATING THAT UNITED POWER, INC., FORMERLY UNION RURAL ELECTRIC ASSOCIATION MAY HAVE



UNDERGROUND FACILITIES OR MAY PLACE UNDERGROUND FACILITIES IN THE FUTURE ANYWHERE WITHIN ITS GENERAL SERVICE AREA.

13. OIL AND GAS LEASE DATED SEPTEMBER 29, 1982, RECORDED JULY 29, 1982 ON FILM 1215 AS RECEPTION NO. 504709.
14. OIL AND GAS LEASE DATED OCTOBER 12, 1982, RECORDED NOVEMBER 1, 1982 ON FILM 1227 AS RECEPTON NO. 518113
15. PIPELINE EASEMENT AND SURFACE DAMAGE RELEASE RECORDED FEBRUARY 27, 1986 ON FILM 1396 AS RECEPTION NO. 744101.
16. AGREEMENT RECORDED JULY 10, 1986 ON FILM 1418 AS RECEPTION NO. 772559.
17. OIL AND GAS PIPELINE AGREEMENTS RECORDED DECEMBER 5, 1986 ON FILM 1445 AS RECEPTION NO. 810062 AND SEPTEMBER 11, 1989 ON FILM 1594 AS RECEPTION NO. 1002665.
18. STATUTORY LIEN RECORDED NOVEMBER 4, 1988 ON FILM 1553 AS RECEPTION NO. 951494 BY NIWOT SANITATION DISTRICT FOR PROVIDING SANITARY SEWER SERVICES.
19. WATERLINE EASEMENT TO LEFT HAND WATER DISTRICT RECORDED NOVEMBER 6, 1996 ON FILM 2167 AS RECEPTION NO. 1656193.
20. EASEMENT AND RIGHT OF WAY FOR AN UNDERGROUND SEWER LINE AS GRANTED TO NIWOT RIDGE LIMITED PARTNERSHIP IN THE INSTRUMENT RECORDED MAY 28, 1998 AS RECEPTION NO. 1806228
21. NIWOT ROAD U. S. WEST CROSSING AGREEMENT RECORDED JUNE 21, 1999 AS RECEPTION NO. 1951958.
22. DITCH EASEMENT RELOCATION AGREEMENT RECORDED APRIL 5, 2000 AS RECEPTION NO. 2034762.
23. SUBDIVISION/MULTIPLE TAP PURCHASE AGREEMENT RECORDED JULY 11, 2003 AS RECEPTION NO. 2469337.
24. DITCH EASEMENT GRANT AND AGREEMENT RECORDED JANUARY 23, 2004 AS RECEPTION NO. 2551844.
25. ANY DITCH EASEMENT OR AGREEMENT WITH RESPECT TO BOULDER AND WHITE ROCK DITCH.
26. RECORDED PLAT OF THE NIWOT HILL TDR/PUD SUBDIVISION.



2629180

Page: 70 of 72
09/22/2004 03:43P
D 0.00

Boulder County Clerk, CO PROT CVNTS R 361.00

EXHIBIT D, Page 3 of 3

27. RECORDED SUBDIVISION AGREEMENT FOR THE NIWOT HILL TDR/PUD SUBDIVISION.

28. RECORDED CONSERVATION EASEMENT AND OUTLOT MANAGEMENT PLAN NIWOT HILL TDR/PUD SUBDIVISION.

ALL RECORDINGS ARE IN THE RECORDS OF THE OFFICE OF THE BOULDER COUNTY CLERK AND RECORDER, BOULDER, COLORADO.



EXHIBIT E
TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
NIWOT HILLS

ARBITRATION PROCEDURES

1. All Claims subject to arbitration shall be decided by a single private party arbitrator to be appointed by the parties.
2. If the parties are unable to agree upon an Arbitrator within thirty (30) days from the date of the Arbitration Notice, the presiding judge of the District Court in which the Planned Community is located shall appoint a qualified arbitrator upon application of a party.
3. No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator within fourteen (14) days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.
4. The Arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the County in which the Planned Community is located unless otherwise agreed by the Parties.
5. Except as modified herein the arbitration shall be conducted pursuant to the then current Construction Industry Rules of Arbitration of the American Arbitration Association to the extent applicable, but shall not be conducted or administered by the American Arbitration Association.
6. No formal discovery shall be conducted in the absence of an order of the Arbitrator or express written agreement among all the Parties.
7. Unless directed by the Arbitrator, there will be no post-hearing briefs.
8. The Arbitration Award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than fourteen (14) days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing and shall be signed by the Arbitrator.



2629180

Page: 72 of 72
09/22/2004 03:43P
D 0.00

Boulder County Clerk, CO PROT CVNTS R 361.00

9. The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.