

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR THE PRESERVE AT DEERFIELD**

THIS DECLARATION (the "Declaration") is made as of August 20, 2005, by SANDY HOLLOW DEVELOPMENT COMPANY, LLC., a Colorado limited liability company (the "Declarant")

**RECITALS**

A. Declarant is owner of that certain real property located in Douglas County, Colorado, more particularly described on the attached *Exhibit A* (the "Property").

B. Declarant desires to create a Planned Community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes §38-33.3-101 *et. seq.* on the Property (the "Community").

1. *Declarations and Submission.* Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

2. *Definitions.*

The following words when used in this Declaration and in any Supplemental Declaration shall have the following meanings:

2.1 "Act" means the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes § 38-33.3-101, *et. seq.*, as amended.

2.2 "Agency" means any agency or corporation such as Housing and Urban Development, Veteran's Administration ("VA"), Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") that purchases or insures residential mortgages.

2.3 "Allocated Interests" means the undivided interest in the Assessments and votes in the Association allocated to each Lot. The formulae for the Allocated Interests are as follows:

2.3.1 *Percentage Share of Common Expenses and Percentage Ownership of Common Elements.* The figure is determined by the percentage equivalent to a fraction, the numerator of which shall be one for each Lot and the denominator which shall be the total number of Lots in the Community.

2.3.2 *Voting.* One vote per Lot.

2.4 "Articles" mean the Articles of Incorporation for *The Preserve at Deerfield Homeowners Association, Inc.*, a Colorado nonprofit corporation, currently registered with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.5 "Annual Assessment" means the Assessment levied pursuant to an annual budget.

2.6 "Assessments" means the Periodic, Special and Default Assessments levied pursuant to Article 11 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

2.7 "Association" means The Preserve at Deerfield Homeowners Association, Inc., a Colorado nonprofit corporation and its successors and assigns.

2.8 “Association Documents” means this Declaration, the Articles of Incorporation, the Bylaws, the Map, the Design Guidelines, and any procedures, rules, regulations or policies adopted under such documents by the Association.

2.9 “Bylaws” means the Bylaws adopted by the Association, as amended from time to time.

2.10 “Clerk and Recorder” means the office of the Clerk and Recorder of Douglas County, Colorado.

2.11 “Common Elements” means all portions of the Community except the Lots and improvements thereon, but to include any facilities constructed by the Association pursuant to easements on or over the Lots. The Common Elements are owned by the Association. The term “Common Elements” includes the term “Common Area” as may be used in the Association Documents.

2.11.1 “General Common Elements” means all tangible physical properties of this Community except Limited Common Elements, the Lots and any improvements on the Lots.

2.11.2 “Limited Common Elements” means any part of the Common Elements that may be either limited to or reserved in this Declaration, on a Map, in a recorded certificate executed by Declarant pursuant to Article 15, or by action of the Association, for the exclusive use of an Owner of a Lot or limited to and reserved for the common use of one or more than one but fewer than all Owners.

2.12 “Common Expenses” means (i) all expenses expressly declared to be common expenses by the Association Documents; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article 10; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

2.13 “County” means Douglas County, Colorado.

2.14 “Declaration” means this Declaration and the Map, and amendments and supplements to the foregoing.

2.15 “Executive Board” means the governing body of the Association.

2.16 “First Mortgage” means any Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

2.17 “First Mortgagee” means any person named as a Mortgagee in any First Mortgage.

2.18 “Lot” means those portions of the Property intended for residential occupation by an Owner, as depicted on the Map, together with the appurtenant rights of usage in the Common Elements.

2.19 “Manager” means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

2.20 “Map” means the Condominium Map of the Project recorded with the Clerk and Recorder, depicting a plan and elevation schedule of all or a part of the Property subject to this Declaration and any supplements and amendments thereto. The Map, as defined in this Declaration, includes the term “Plat” as set forth in the Articles.

2.21 “Member” means every person or entity that holds membership in the Association.

2.22 “Mortgage” means any mortgage, deed of trust or other document pledging any Lot, improvement thereon or interest therein as security for payment of a debt or obligation.

2.23 “Mortgagee” means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

2.24 "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Lot, and "Owner" also includes the equitable owner, i.e., the purchaser of a Lot (with or without improvements thereon) under a real estate contract, with a current right of possession and interest in the Lot.

2.25 "Owner's Agent" means members of the Owner's family, or the Owner's agent, employee, invitee, licensee or tenant.

2.26 "Project" means the common interest community created by this Declaration and as shown on the Map consisting of the Property, the Lots (with or without improvements thereon) and the Common Elements. "Project" is used interchangeably with "Community" herein.

2.27 "Reserved Property" means that portion of the Property which Declarant may submit to the terms of this Declaration by one or more Supplemental Declarations or may withdraw from the terms of this Declaration and convey as determined within the sole discretion of the Declarant.

2.28 "Successor Declarant" means any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

2.29 "Supplemental Declaration" means an instrument which amends this Declaration.

2.30 "Supplemental Map" means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

3. *Name, Division into Lots.*

3.1 *Name.* The name of the Community is *The Preserve at Deerfield*. The Community is a Planned Community pursuant the Act.

3.2 *Association.* The name of the Association is The Preserve at Deerfield Homeowners Association, Inc. Declarant has caused the Association to be incorporated as a nonprofit corporation under the laws of the State of Colorado.

3.3 *Number of Lots.* The number of Lots in the Project is twenty-six (26).

3.4 *Identification of Lots.* The identification number and street address of each Lot is or will be shown on the Final Map of *The Preserve at Deerfield*, depicting the Property recorded with the Clerk and Recorder and such amended, additional or supplemental Maps as may be filed for the Property.

3.5 *Description of Lots.*

3.5.1 Each Lot and its appurtenant rights of use in the Common Elements, shall comprise one site for the building of a single family residence. Each lot shall be inseparable, not subject to further subdivision, and may be transferred, leased, devised or encumbered only as one Lot. Any attempted transfer of an improvement on a Lot separate from other improvements on the Lot or the Lot itself, or any attempted transfer of any appurtenant interest or right of use in the Common Elements shall be void.

3.5.2 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Lot (and the improvements thereon, if any) may describe it by its Lot number, The Preserve at Deerfield, Douglas County, Colorado, according to this Declaration and the Condominium Map thereof recorded contemporaneously with this Declaration in the records of the Clerk and Recorder of Douglas County, Colorado, as may be amended from time to time.

4. *General Restrictions Applicable to Property.*

All real property within the Property shall be held, used, and enjoyed subject to the following limitations and restrictions.

4.1 *Maintenance of Property.* No improvement shall be permitted to fall into disrepair and all improvements and landscaping thereon, shall be kept and maintained in a clean, attractive, and slightly condition and in good repair. Every Owner shall maintain the exterior lighting of any improvement in clean, attractive and good repair. Maintenance, repair, and upkeep of each improvement shall be the responsibility of the Owner. Any maintenance project requiring the issuance of a permit (excavation, construction, electrical, etc.) shall first be approved by the Architectural Review Committee. Other maintenance projects do not require prior approval of the Architectural Review Committee, but shall be in strict compliance with the Design Guidelines then in effect, as they are promulgated from time to time by the Architectural Review Committee. The provisions of Article 9 hereof shall pertain to the power of the Association with respect to an Owner's maintenance responsibilities.

4.2 *Property Uses.* Each Lot may contain only one single family residence. All residences and separate improvements located within the Property shall be used for private residential purposes. Each dwelling unit erected or maintained within the Property shall be used or occupied as a single-family dwelling unit, except for sales and or/construction trailers and model homes used by Declarant and assigns, subject in all events to applicable zoning, building department and other land use regulations. This provision is not intended to prohibit authorized accessory units of fewer than 1500 total square feet of interior floor space (including closets). Accessory units shall not be any greater than 1500 total square feet of interior floor space (including closets). . In-home businesses not involving visits to the home by customers or employees shall be allowed, provided such activities are conducted solely within the residence and do not create or result in any unreasonable, unwarranted, or unlawful use or interference with public rights, including, but not limited to, unreasonable or unwarranted use or interference with public streets, rights-of-way, or sidewalks, or in any other offensive or obnoxious activities. No improvement shall be made to any Lot unless it complies with this paragraph 4.2 of this Declaration and unless it shall have received a certification as acceptable under Article 16 hereof. It shall be an Owner's sole responsibility to determine compliance of any such proposed use with applicable Design Guidelines of the Architectural Review Committee, zoning regulations, land use and other applicable restrictions.

4.3 *Rental.* A residence constructed on a Lot may be rented for residential purposes. It may be used for permanent or short-term occupancy by its Owner, family, servants, agents, guests, invitees, and tenants and such Owner shall be allowed to rent or arrange the rental of its improvements for any length of time, subject to reasonable lease restrictions approved by the Executive Board.

4.4 *No Obnoxious or Offensive Activity.* No obnoxious or offensive activity shall be carried on upon within any residence on any Lot, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others.

4.5 *Annoying Sounds or Odors.* No sound or odor shall be emitted from any residence on any Lot that is obnoxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any residence.

4.6 *No Hazardous Activities.* No activity shall be conducted on and no improvement shall be constructed on any Lot 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 upon any Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersion of burning embers.

4.7 *No Unsightliness.* All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within a structure, including garbage containers, clotheslines, snow removal equipment and garden or maintenance equipment, recreational vessels and vehicles, except when in actual use.

4.8 *Restrictions on Garbage and Trash.* No refuse, garbage, trash, lumber, grass, shrub, tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot except within an enclosed structure, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up. The Executive Board of the Association shall arrange for regular trash pickup from each lot and defray the costs of the same through regular assessments. Supplemental pickup of trash, etc. shall be accomplished by individual lot owners, but only with the prior, written authorization of the Executive Board. Disposal of construction debris shall be the responsibility of the lot owner on which the construction is being conducted, in accordance with rules and guidelines adopted by the Association and/or the Architectural Review Committee. Notwithstanding the foregoing, each lot may have and maintain a compost bed or mound not larger than 25 square feet in length and width, and not more than 5 feet tall; provided, that such compost facility be comprised entirely of organic materials.

4.9 *Animals.* No animals, live stock or poultry of any kind shall be raised, bred or kept on any Lot within the Property except as hereinafter provided. No lot may be used for a business of breeding, training or boarding animals. A reasonable number of dogs, cats or other household pets may be kept, provided that (a) they are not kept, bred or maintained for any commercial purposes, (b) they do not make objectionable noises or otherwise constitute an unreasonable nuisance to other owners, and (c) are not kept outside a residence unless leashed and under direct supervision and control of the Owner. A "reasonable number" as used in this section shall ordinarily mean no more than an aggregate of three (3) domesticated animals (but a total of 4 cats shall be allowed) per Lot. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet. The Executive Board may adopt rules restricting pets that create noise or nuisances. This provision is not intended to apply to a reasonable number of fish, small birds, reptiles or mammals kept exclusively indoors.

4.10 *No Temporary Structures.* No tent, shack, temporary structure, mobile home, house trailer, or temporary building shall be constructed, placed or used on the Property, either temporarily or permanently; *provided, however* that items necessary for construction may be used on a given Lot during the period extending no later (i) thirty (30) days after the issuance of a Certificate of Occupancy (temporary or permanent) for the improvement being constructed on the Lot. The placement, appearance and maintenance of such temporary structures may be subject to reasonable rules of the Executive Board.

4.11 *Restriction on Antennae, Pipes, Utility Lines and Transmitters.* Pipes for water, gas, sewer, drainage or other purposes, all wires, poles, aerials, antennae, satellite dishes and other facilities for the transmission or reception of audio or visual signals or electricity, and all utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antenna of any type shall be erected or maintained within the Property except as allowed by the Executive Board. No electronic or radio transmitters of any kind other than commonly-used wireless networks and electronic devices (including garage door openers and cordless telephones) shall be operated on a Lot so as to interfere with electronic reception on any other Lot. An Owner may install and maintain up to two (2) small satellite dish antennas on the Lot, subject to proper installation and provided such satellite dish antenna is one meter in diameter or smaller and must resemble or be disguised to resemble other similar devices in use within the Property.

4.12 *Restrictions on Signs and Advertising.* No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Property so as to be evident to public view, except signs, posters, billboards or any other type of advertising device or display erected by Declarant incidental to the development, construction, promotion, marketing, or sales of the Lots. Notwithstanding the foregoing, a sign advertising a house for sale or for lease may be placed within the Property provided that such sign is not larger than three feet by three feet in size. The Executive Board may by resolution specify how any such signs shall be prepared and displayed and may require a uniform sign for any and all real estate sales within the Property.

4.13 *Restrictions on Mining or Drilling.* None of the surface portion within the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth. Notwithstanding the foregoing, it is understood that this limitation shall be subject to all mining rights of record.

4.14 *Maintenance of Drainage and Landscaping.* There shall be no interference with the established drainage pattern and landscaping within the Property. The “established drainage pattern” shall mean the drainage pattern which exists at the time the overall grading and landscaping is completed and shall include any established drainage pattern shown on any plans developed by Declarant. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of the adjacent Lots. Each Owner is responsible for maintaining such grades, swales and easements once they have been established by Declarant, or governmental or municipal agencies.

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

4.16 *Restrictions on Sewage Disposal Systems.* No cesspool, septic tank, or other sewage disposal system shall be installed within the Property, except as in accordance with applicable County standards and specifications, and except as certified to be acceptable by the Architectural Review Committee and the Executive Board under Article 16 hereof.

4.17 *Storage.* No building materials shall be stored within the Property except temporarily during continuous construction of an improvement.

4.18 *Vehicle Operation and Maintenances.* No maintenance, servicing, repair, dismantling, or repainting of any type of vehicle, boat, machine, or device may be conducted, except within a completely enclosed structure which screens the sight and sound of the activity from the street and from other Lots within the Property. No motor vehicles may be operated in the Common Areas or roadways, or on the property of other owners if they are not licensed and legal under Colorado’s motor vehicle laws to operate on roadways in Colorado.

4.19 *Vehicle and Equipment Parking and Storage.* Vehicles, motorcycles, boats, snowmobiles, trailers, equipment, campers and motor homes may not be parked on the Common Elements, except as determined by written rules of the Executive Board. No disabled vehicle, construction equipment, boat, snowmobile, trailer, equipment, camper or motor homes may be left on a Lot or in a driveway in such a manner as it is visible from the access road to such Lot, for more than 24 hours without a special temporary permit issued by the Executive Board or its delegee. Long-term storage for any such vehicles and equipment shall be in enclosed structures, the design and construction of which shall have been approved in accordance with Article 16 hereof.

4.20 *Fences/Encroachment of Fences.* No fences or other barriers shall be permitted between Lots except as approved in advance and in writing under the process established in Article 16 hereof. Any such fences or barriers shall be constructed in conformity with governmental regulations and the Design Guidelines of the Architectural Review Committee.

4.21 *Restriction on Timesharing.* No Owner of any Lot shall offer or sell any interest in such Lot or an improvement thereon under a regime of “timesharing,” “fractional ownership,” “interval ownership,” or any similar plan.

4.22 *Barbecue Grills.* Only natural gas or propane grills are permitted, except as approved by the Executive Board.

4.23 *Cutting of Trees.* The clearing of trees from a Lot is forbidden except as may be certified to be acceptable by the Architectural Review Committee as part of the approval process or as may be required by the local fire authorities as a matter of fire mitigation. Dead trees and trees damaged by natural agents, such as beetles and mistletoe may be cleared, but only after prior written approval from the Architectural Review Committee. The Executive Board shall establish fines and procedures for punishing infractions of this provision; provided that the minimum fine for the unauthorized removal of trees from the Lots shall be \$1000.

4.24 *Building Setbacks.* As may be more particularly set forth in the Design Guidelines of the Architectural Review Committee, and except as may be noted on the Map to the contrary, the single family residence constructed on any given lot, including garages, storage facilities and other outbuildings, shall be set back from the lot

line a minimum of 50 feet for those portions of the Lot that abut an access road. Such structure or structures shall be set back from all lot lines that do not abut an access road a minimum of 25 feet.

4.25 *Construction Regulations.* The Design Guidelines of the Architectural Review Committee shall govern the approval process for the planning and execution of improvements on the Lots. The Executive Board shall by resolution establish the fee for plan review by the Architectural Review Committee and the deposit required of Lot owners prior to construction to ensure the correction or repair of any damage to Common Areas and roadways as a result of the construction.

4.26 *Special Provisions with Respect to Certain Lots.* Lot 6 shall be, in every respect, treated as the other Lots in the Project, except that no Assessments, whether Annual, Special or Default, shall be assessed against Lot 6 for so long as a member of the immediate family of Bud and Melanie Brasier (children and their spouses or grandchildren and their spouses) is in title to Lot 6 with an interest of 50% or more. This provision shall lapse, if it does not sooner become inapplicable, on the 79<sup>th</sup> anniversary of the recording of this Declaration. The following Lot, while part of the Project, is exempt *in toto* from any and all provisions of this Declaration: Lot 1.

5. *Membership and Voting Rights, Association Operations.*

5.1 *The Association.* Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

5.2 *Transfer of Membership.* An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and the improvements thereon, and then only to the purchaser or Mortgagee of his Lot. The Association shall not create a right of first refusal on any Lot or improvements thereon, and Owners may transfer ownership of their Lots free from any such right.

5.3 *Membership.* The Association shall have one (1) class of membership consisting of all Owners, including the Declarant, so long as Declarant continues to own an interest in a Lot. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Section 2.3.2 above. Each Owner, including Declarant while Declarant owns any Lot, is subject to all the rights and duties assigned to Owners under the Association Documents.

5.4 *Declarant Control.* No longer applicable.

5.5 *Books and Records.* The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act.

5.6 *Manager.* The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except as directed by the Executive Board.

5.7 *Rights of Action.* The Association, on behalf of itself and any aggrieved Owner, has a right of action against any and all Owners for failure to comply with the provisions of the Association Documents and with

decisions of the Executive Board made pursuant to authority granted in the Association Documents. Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted in the Association Documents. In any action covered by this section, the Association and any Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as provided in the Association Documents, or by mediation or binding arbitration, if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorney fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

5.8 *Implied Rights and Obligations.* The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Revised Colorado Nonprofit Corporation Act.

5.9 *Notice.* Any notice to an owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, on the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Lot.

5.10 *Owner Use and Occupancy Regulations.* The Association shall have and may exercise the right to control Owner's use of their respective Lots in order to make sure that the Community shall be eligible for any concessions, ratings, approvals or legal benefits as determined by any Agency, as the Executive Board shall deem desirable or appropriate.

6. *Powers of the Executive Board of the Association.*

6.1 *General.* The Executive Board will have the powers and duties necessary for the administration of the affairs of the Association. Except as provided by the Association Documents and the Act, the Executive Board may do all those acts and things that are not specifically required to be done by the Members and may otherwise act in all instances on behalf of the Association. The Executive Board shall have the power to make reasonable rules and regulations, consistent with and in furtherance of the provisions of this Declaration, for the governance of the Association, the use and maintenance of the respective Lots, and the Common Areas. Such rules may be recorded with the Clerk and Recorder of Douglas County, Colorado, in the discretion of the Executive Board. If such rules are ratified by the full membership of the Association, then they can be abrogated or modified only upon approval of the full membership of the Association.

7. *Mechanic's Liens.*

7.1 *No Liability.* If any Owner shall cause any material to be furnished to his Lot or any improvement thereon or any labor to be performed therein or thereon, no Owner of any other Lot, nor the Association, shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Lot and the improvements thereon.

7.2 *Indemnification.* If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Lot or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorney fees.



7.3 *Association Action.* Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien shall be effective against an individual Lot or Lots.

8. *Easements.*

8.1 *Recorded Easements.* The Property shall be subject to all easements as shown on any Map or plat, those of record, or provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.

8.2 *Declarant's Rights Incident to Construction.* No longer applicable.

8.3 *Utility Easements.* There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Lots and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television, electricity and wiring for gate control to the individual residences. Said blanket easement includes future utility services not presently available to the Lots, but which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the improvements on the Property and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations.

8.4 *Reservation of Easements, Exceptions and Exclusions.* The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Lot over and across the General Common Elements and Limited Common Elements appurtenant to that Owner's Lot, which right shall be appurtenant to the Owner's Lot, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance.

8.5 *Emergency Access Easement.* A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

9. *Maintenance.*

9.1 *Maintenance by Owners.* Each Owner shall maintain and keep in repair the exterior and interior of all improvements on his Lot, including the fixtures thereof to the extent current repair shall be necessary in order to avoid dangerous, damaging or threatening conditions to the Lots (and any improvements thereon) of other Owners. An Owner shall do no act or any work that would impair the structural soundness or integrity of any Common Element or impair any easement. The Association reserves the right to grant the maintenance responsibility to the Owner of Limited Common Elements (if any), and the Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner.

9.2 *Owner's Failure to Maintain or Repair.* If a Lot (including improvements and any allocated Limited Common Elements) is not properly maintained and repaired, and if the maintenance responsibility for the un-

maintained portion of the Lot lies with its Owner, or if the improvements on a Lot are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed improvement for which the Owner is responsible, then the Association shall inform the Owner of its intention to remedy the situation at Owner's expense. If, after 30 days (or less time, if in the discretion of the Executive Board the condition represents a hazard or health risk), the Owner has not remedied the situation described in the notice, the Executive Board shall make a determination that the condition of such Lot negatively impacts other Owners or the value of other Lots and improvements within the Community, and shall then have the right to enter upon the Lot to perform such work as is reasonably required to restore it to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the affected Lot, upon demand. All unreimbursed costs shall be a lien upon the Lot and its improvements until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 11 of this Declaration.

9.3 *Maintenance by Association.* The Association shall be responsible for the maintenance and repair of the Common Elements (except as set forth in Section 9.1 above and unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Owner's Agent as set forth in Section 9.4 below), which shall be the Common Expense of all Owners. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all open space, roads and shoulders, landscaping, walls, drives and paths, gates, signage, irrigation systems, drainage facilities, sidewalks, and improvements, if any (which shall include without limitation snow removal services unless performed by another private or public organization formed for such purposes), located in the Common Elements.

9.4 *Association Maintenance as Common Expense.* The cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Owner according to the Allocated Interests. Damage to the interior or any part of an improvement on a Lot, resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within an improvement on another Lot at the instance of the Association, shall also be Common Expense of all of the Owners; *provided however*, that if such damage is caused by negligent or tortious acts of an Owner or Owner's Agent, then such Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that Owner or Owner's Agent's negligence caused such damage, and must be timely paid.

9.5 *Easement for Maintenance.* Each Owner and the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to each Lot from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements on such Lot (if any) or accessible from such Lot, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or improvements on another Lot. If insurance proceeds under Article 10 are payable to an Owner, but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

9.6 *Limited Common Element Damage.* If damage or destruction of a Limited Common Element results from any cause other than the negligence or tortious acts of an Owner or Owner's Agent, the then Owners to which the Limited Common Element is attributable shall bear equally the expense to repair or rebuild the Limited Common Element to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Owner's Agent's negligence.

9.7 *Association Power.* The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Lot or the Common Elements. No Owner shall make any addition or other alteration to any portion of the Common Elements, no matter how minor, without the express written consent of the Executive Board.

10. *Insurance.*

10.1 *General Insurance Provisions.* The Association shall acquire and pay for, out of the assessments levied under Article 11 below, the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

10.1.1 *Hazard Insurance Coverage.* Insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes coinsurance), special building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the buildings located in the Common Elements on the Property and excluding any and all improvements on any of the Lots. Maximum deductible amounts for such policy shall be determined by the Executive Board, provided, however, that if an Agency requires specific deductibles, the Executive Board shall follow such Agency's requirements. Each Owner shall be responsible for obtaining insurance covering all improvements on his Lot. Such hazard insurance policy must be written by an insurance carrier that has (a) a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, or (b) an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports International Edition.

10.1.2 *Comprehensive Liability.* Comprehensive general public liability and property damage insurance for the Project in such amounts as the Executive Board deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including deaths and property damage arising out of a single occurrence insuring the Association, the Executive Board, the Manager or managing agent, or both, if any, and their respective agents and employees, and the Owners from liability in connection with the operation, maintenance and use of Common Elements and must include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to communities similar to the Project in the Douglas County area, including automobile liability insurance if appropriate. The Executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance on all vehicles. In every case, the Association shall be named as an additional insured.

The insurance policies may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Owners. Each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Lot which the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Owner or member of the Owner's household. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy.

10.2 *Certificates of Insurance; Cancellation.* Certificates of insurance shall be issued to each Owner and Mortgagee upon request. All policies required to be carried under this Article 10 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of an improvement on a Lot and shall provide that such policy cannot be cancelled by the insurance company without at least thirty (30) days prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the insurance described in Article 10 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Mortgagees.

10.3 *Insurance Proceeds.* Any loss covered by the property insurance policy described in Section 10.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 10.5 below, the proceeds must be disbursed first for

the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

10.4 *Insurer Obligations.* An insurer that has issued an insurance policy for the insurance described in Section 10.1 and 10.7 or its agent shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses, and to any company that services a Mortgage for a Federal National Mortgage Association.

10.5 *Repair and Replacement.* Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless: (a) The common interest community created by this Declaration is terminated in which case the approval must first be obtained of sixty-seven percent (67% ) of all Owners; (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (c) There is a vote not to rebuild by (i) eighty percent (80%) of the Owners entitled to vote and (ii) every Owner of damaged or destroyed improvements on a Lot and assigned Limited Common Element that will not be rebuilt; or (d) Before the conveyance of any Lot to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If all the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to each Owner's Allocated Interests.

10.6 *Common Expenses.* Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if the Association's fire and extended coverage insurance covers fixtures, equipment or other property on some but not all of the Lots (as required by any Agency including FNMA or FHLMC), or other insurance attributable to some but not all of the Lots, the Association reserves the right to charge the Owners of such Lots for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage.

10.7 *Fidelity Insurance.* Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of (a) twenty-five thousand dollars (\$25,000) or (b) the estimated maximum of funds, including reserve funds, in the custody of the Association or management agent as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to three (3) months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a Manager, such insurance or bonds must be obtained by or for the Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

10.8 *Workers' Compensation Insurance.* The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

10.9 *Other Insurance.* The Association shall maintain flood insurance if any part of the Project is located within a Special Flood Area on a Flood Insurance Rate Map, equal to the lesser of 100% of the insurable value of the Project or the maximum coverage available under the appropriate National Flood Insurance Program. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive

Board may deem appropriate on behalf of the Executive Board against any liability asserted against a Member of the Executive Board or incurred by him in his capacity of or arising out of his status as a Member of the Executive Board. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by any Agency.

11. *Assessments.*

11.1 *Obligation.* Each Owner, including Declarant while an Owner of any Lot, is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments.

11.2 *Budget.* Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget for the Project and shall submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

11.3 *Annual Assessments.* Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 11.2 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the General Common Elements, care of grounds within the General Common Elements, routine repairs and renovations within the Common Elements, wages, common water and utility charges for the Common Elements, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed.

Annual Assessments shall be payable in monthly installments on a prorated basis in advance and shall be due on the first day of each month. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

11.4 *Apportionment of Annual Assessments.* The Common Expenses shall be allocated among the Lots on the basis of the Allocated Interests for Common Expenses in effect on the date of assessment, provided, however, that the Association reserves the right to allocate all expenses relating to fewer than all of the Lots (such as those expenses attributable to Limited Common Elements and insurance premiums described in Section 10.6) to the Owners of those affected Lots only.

11.5 *Special Assessments.* In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 11.5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Lots any extraordinary maintenance, repair or restoration work on fewer than all of the Lots shall be borne by the Owners of those affected Lots only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Lot or the actions of a particular Owner or Owner's Agents shall be

borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

11.6 *Default Assessments.* All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot and improvements, which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

11.7 *Effect of Nonpayment, Assessment Lien.* Any Assessment installment whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before five (5) days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- a. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- b. Assess an interest charge from the due date at the yearly rate of six (6) points above the prime rate charged by the Association's bank, or such other lawful rate as the Executive Board may establish, not exceeding twenty-one percent (21%) per year;
- c. Suspend the voting rights of the Owner during any period of delinquency;
- d. Suspend the rights of the Owner during any period of delinquency to have access to Common Area facilities or open space;
- e. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- f. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- g. Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Lot shall constitute a lien on such Lot and improvements. The Association may institute foreclosure proceedings against the defaulting Owner's Lot and improvements as provided by Colorado law. If any such foreclosure takes place, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Lot during the period of any foreclosure. The Association shall have the power to bid on a Lot and improvements at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

11.8 *Personal Obligation.* Each Assessment against a Lot is not only an *in rem* right to recover against the lot, but also a personal obligation of the person who owned the Lot at the time the Assessment became due. No Owner may exempt himself from liability for the Assessment by abandonment of his Lot or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

11.9 *Payment by Mortgagee.* Any Mortgagee holding a lien on an improvement on the Property may pay any unpaid Assessment payable with respect to such improvement, together with any and all costs and expenses

incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the improvement on the Property for the amounts paid with the same priority as the lien of the Mortgage.

11.10 *Statement of Status of Assessment Payment.* Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Lot shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Lot over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

11.11 *Capitalization of the Association.* No longer applicable.

11.12 *Maintenance Accounts; Accounting.* If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Manager, then such other persons or Manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (b) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, (c) provide to the Association no less than once per quarter an accounting for the previous quarter, and (d) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

12. *Damage or Destruction.*

12.1 *The Role of the Executive Board.* Except as provided in Section 10.5, if all or part of any Common Elements are damaged or destroyed, or other property covered by insurance written in the name of the Association under Article 10 is damaged or destroyed, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 10 is sometimes referred to as the "Association-Insured Property").

12.2 *Estimate of Damages or Destruction.* As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

12.3 *Repair and Reconstruction.* As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

12.4 *Funds for Repair and Reconstruction.* The proceeds received by the Association from any insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 11.5, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

12.5 *Disbursement of Funds for Repair and Reconstruction.* The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments.

### 13. *Condemnation.*

13.1 *Rights of Owners.* Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from an authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

13.2 *Partial Condemnation; Distribution of Award; Reconstruction.* The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Owners who represent at least sixty-seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed among the Owners in accordance with each Lot's Allocated Interests of Percentage Share of Common Elements, first to the Mortgagees and then to the Owners, as their interests appear.

13.3 *Complete Condemnation.* If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that approval must first be obtained of fifty-one percent (51%) of First Mortgagees of Lots and improvements subject to



First Mortgages, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 12.5 above.

14. *Association as Attorney-in-Fact.* Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article 8, (b) purchasing and maintaining insurance pursuant to Article 10, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 10 upon their damage or destruction as provided in Article 12, or (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 13, above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

15. *Reserved Development and Special Declarant Rights.*

15.1 *Reserved Development Rights of Expansion.* Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject additional phases of the Reserved Property to the provisions of this Declaration to include an expansion of additional Lots, and to expand the Common Elements.

15.1.1 *Supplemental Declarations and Supplemental Plats.* Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder one or more Supplemental Declarations and Supplemental Plats setting forth the real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Reserved Property in whatever order of development Declarant in its sole discretion, determines. All improvements to be constructed on the Reserved Property shall be substantially completed prior to the recording of the Supplemental Declaration and Map adding additional Units and the improvements shall be consistent with the improvements already subject to the Declaration in structure type and quality of construction, unless the improvement constructed on the Reserved Property is a single family dwelling. Declarant shall not be obligated to expand the Project beyond the number of Lots initially subject to this Declaration.

15.1.2 *Expansion of Definitions.* In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Lot" shall mean the Lots as shown on the Map plus any additional Lots added by any Supplemental Declarations and Supplemental Maps, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Property as expanded.

15.1.3 *Declaration Operative on Expansion Property.* Lots added by Supplemental Declarations and Maps shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declarations, upon recording the Supplemental Map(s) depicting the Reserved Property and Supplemental Declaration(s) with the Clerk and Recorder. If a portion of the Reserved Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Reserved Property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Lots added to this Declaration in accordance with these provisions relating to enlargement thereof.

No rights or obligations of any character of any Owner in the Reserved Property shall attach until a Supplemental Declaration and Supplemental Map are filed with the Clerk and Recorder annexing the Lots constructed in such area to the Project.

15.1.4 *Effect of Expansion.* Upon the development of additional Lots and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and Supplemental Map(s) thereof, the Allocated Interests applicable to a Lot shall be as set forth in Section 2.3 above.

Notwithstanding any inclusion of additional Lots under this Declaration, each Owner (regardless of whether such Owner is the owner of a Lot shown on the original Map or is the owner of a Lot constructed in the Reserved Property and included by a Supplemental Declaration and Map) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Area, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Lot prior to such recording.

15.2 *Reserved Development Rights of Withdrawal.* Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the provisions of this Declaration the Reserved Property so as to apply to the applicable authorities to split or otherwise divide the Reserved Property from the Property and to convey the Reserved Property at the sole discretion of the Declarant.

15.3 *Reservation of Withdrawal Right.* Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the provisions of this Declaration individual Lots and/or Common Elements, provided however that none of the real estate may be withdrawn after any Lot has been conveyed by Declarant to a purchaser. Declarant shall file an amendment of the Map or Plat showing the location of the withdrawn property.

15.4 *Other Reserved Rights.* Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to: (a) complete improvements indicated on the Plats and Maps, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size, within one or more Lots and within the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Lot or, if earlier, five (5) years from the recording of this Declaration with the Clerk and Recorder, (c) to subject the Project to a master association, (d) to make, merge or consolidate the Project with a common interest community of the same form of ownership, and (e) to appoint or remove any officer of the association or any Executive Board member during the period of Declarant control as set forth in Section 5.4 above.

15.5 *Change in Allocated Interests.* If Declarant or Successor Declarant exercises the right to add or withdraw Lots as set forth above or to add Expansion Property, the Allocated Interests of the resulting Owners after such expansion or withdrawal shall be the same as the formula in Section 2.3 above.

15.6 *Create Limited Common Elements.* Declarant reserves the right through October 2006, to create limited common elements from time to time by allocating to a Lot the exclusive use of space that may be designated on the Map as "Not Assigned". The allocation shall become effective, and shall constitute an amendment to the Map and the Declaration, upon the recording in the office of the Clerk and Recorder of a certificate executed by the Declarant that identifies the space by reference to the Map and the Lot to which it is allocated.

15.7 *Termination of Right.* The rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire, unless sooner terminated as required by the Act, five (5) years from the date of recording this Declaration, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever conditions and limitations the Executive Board may impose on the subsequent exercise of the rights by Declarant.

16. *Architectural Control and Design Review.*

16.1 *Common Elements.* No alteration or additions to the Common Elements of any kind (including, without limitation, landscaping, change in color, signage) shall be made unless first approved in writing by the Executive Board. The Executive Board shall exercise reasonable judgment to the end that all modifications to the Common Elements conform to and harmonize with existing surroundings and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.

16.2 *Architectural Review Committee.* There is hereby established an Architectural Review Committee (the "Committee") which shall be responsible for the establishment and administration of Design Guidelines and to carry out the purposes and intent of this Declaration and shall provide advice to the Executive Board on such matters as the Executive Board may request.

16.3 *Membership.* The Committee shall consist of individuals appointed by and responsible to the Executive Board. The Committee shall consist of three (3) members at least one (1) of whom shall be an Owner. Members of the Committee shall be appointed to serve for a period of time established by the Executive Board, but in no event for a period of less than one (1) year. The Committee is authorized, upon approval of the Executive Board, to seek the advice of design professionals or other professionals if the need should arise. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed by the Executive Board.

16.4 *Design Guidelines.* The Committee shall adopt, establish, and publish from time to time the Design Guidelines for the Project and such Design Guidelines shall be an Association Document. All Owners shall comply strictly with the terms of the Design Guidelines. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for the Project including, but not limited to, items such as color, texture, structure, size, design, appearance, landscaping and site improvement standards. The Design Guidelines may be modified or amended from time to time by unanimous approval of the Executive Board and shall be made available to all Owners and their representatives for review. Further, the Committee may recommend, and the Executive Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Project's design review process and design standards is not a substitute for compliance County building, zoning, and subdivision regulations. Each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. If the terms of this Declaration should conflict with the terms of the Design Guidelines, the terms of this Declaration shall control.

16.5 *Requirement for Approval.* No improvements shall be constructed, erected, placed, altered, maintained or permitted on any Lot or on any other part of the Project, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Project until plans and specifications with respect thereto satisfactory to the Committee showing the proposed improvements, site location of such improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by the Committee or Executive Board have been submitted to and approved in writing by the Executive Board. All improvements shall be constructed only in accordance with approved plans. If the Executive Board has not responded to an Owner's request for approval within sixty (60) days of the submission by Owner of all information requested by the Committee and the Executive Board, then such Owner's request shall be deemed approved by the Executive Board.

The Association, upon the unanimous approval by the Executive Board and after reasonable notice to the offender and to the Owner, may remove any improvements constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants, and the Owner of the improvements shall immediately reimburse the Association for all expenses incurred in connection with such removal.

16.6 *Criteria for Approval.* The Committee shall recommend approval and the Executive Board shall approve any proposed improvement only if it deems in its reasonable discretion that the improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole; that the appearance of the proposed improvement will be in harmony with the surrounding areas of the Project; and that the upkeep and maintenance of the proposed improvement will not become a burden on the Association. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography, adequacy of drainage, erosion control, grade and finished around elevation of the structure to that of neighboring structures and natural features of the property, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Executive Board may condition its approval of any proposed improvement upon the making of such reasonable changes therein as the Committee or Executive Board may deem appropriate.

17. *Mortgagee's Rights.* The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Lots and their improvements, as permitted under Colorado law and the Association Documents.

17.1 *Title Taken by Mortgagee.* Any Mortgagee holding a First Mortgage of record against a Lot who obtains title to the Lot and improvements pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Lot (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosures, whichever is earlier, provided, however, that the lien of the Association for unpaid assessments shall not have priority over a First Mortgage in the amount of more than six (6) months of regular common expense assessments, and provided, further, that a First Mortgagee or Agency that acquires title to a Lot through foreclosure of a First Mortgage will not be liable for any fees or charges related to the collection of the six (6) months of unpaid dues or charges that accrued before the First Mortgagee or Agency acquired title to the Lot.

17.2 *Distribution of Insurance or Condemnation Proceeds.* If there is a distribution of insurance proceeds or condemnation awards allocable among more than one Lot for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Lot.

17.3 *Right to Pay Taxes and Charges.* Mortgagees who hold First Mortgages against Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

17.4 *Audited Financial Statement.* Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Lot or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Agency or Mortgagee.

17.5 *Notice of Action.* Any First Mortgagee and any Agency which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the address or number of the Lot), will be entitled to timely written notice of:

- a. Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Lot or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements appurtenant to the Lot or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Lot, or (d) the purposes to which any Lot or the Common Elements are restricted or any amendment set forth in Section 18.2 below;
- b. Any proposed termination of the common interest community;
- c. Any condemnation loss or any casualty loss that affects a material portion of the Project or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Agency;
- d. Any delinquency in the payment of Assessments owed by an Owner subject to the Mortgage where such delinquency has continued for a period of sixty days; and
- e. Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 10.

17.6 *Action by Mortgagee.* If this Declaration or any Association Documents require the approval of any Agency or Mortgagees then, if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

18. *Duration of Covenants and Amendment.*

18.1 *Term.* The covenants and restrictions of this Declaration shall run with and bind the land until twenty (20) years after recording this Declaration, after which time they shall be automatically extended for successive periods of time of ten (10) each, subject to the following provisions and subject to the termination provisions of the Act or unless terminated by the vote of Owners as provided in representing at least seventy-five percent (75%) of Owners within the Property.

18.2 *Amendment.* This Declaration, or any provision of it, may be amended at any time by Owners holding not less than two-thirds (2/3) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose and signed by the Declarant (during the period of Declarant Control) and at least two-thirds (2/3) of the Mortgagees holding First Mortgages against any portion of the Property (based on one (1) vote for each Mortgage owned). Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association.

18.3 *When Modification Permitted.* Notwithstanding the provisions of Sections 18.1, 18.2, 18.3 and 19.1, no termination, amendment, extension or modification of this Declaration made prior to the termination of Declarant Control shall be effective unless prior written consent of Declarant is first obtained.

18.4 *Revocation.* This Declaration shall not be revoked, except as provided in Section 13.3 regarding Complete Condemnation, without the consent of one-hundred percent (100%) of the Owners evidenced by written instrument duly recorded.

19. *Miscellaneous.*

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

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

19.3 *Liberal Interpretation and Interpretation of Documents.* The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration. In the case of conflict between this Declaration and the Articles and Bylaws of the Association, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

19.4 *Governing Law.* This Declaration shall be construed and governed under the laws of the State of Colorado, without giving effect to its conflict of laws principles.

19.5 *Headings.* The section headings contained in this Declaration are for reference purposes only and shall not affect in any way the meaning or interpretation of this Declaration.

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

19.7 *Severability.* If any provision of this Declaration is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

19.8 *Venue.* If any action or proceeding is initiated with respect to this Declaration the venue therefore shall be in Douglas County, Colorado, which is deemed to be a convenient forum.

19.9 *Waiver.* The failure of any party to insist on strict compliance with any of the covenants, conditions or restrictions of this Declaration by any other party shall not be deemed a waiver of that covenant, condition or restriction nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

19.10 *Disclaimer Regarding Safety.* DECLARANT HEREBY DISCLAIMS ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROJECT. ANY OWNER OF PROPERTY WITHIN THE PROJECT ACKNOWLEDGES THAT DECLARANT IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN AND THAT DECLARANT IS NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROJECT.

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Declaration as of the date first above written.

DECLARANT: Sandy Hollow Development Company, LLC, a Colorado limited liability company

By: Eugene A. Gregory, Member

By: Steven M. Gibbons, Member

STATE OF COLORADO ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ by Eugene A. Gregory, Member of Sandy Hollow Development Company, LLC, a Colorado limited liability company. WITNESS my hand and official seal. My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF COLORADO ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ by Steven M Gibbons., Member of Sandy Hollow Development Company, LLC, a Colorado limited liability company. WITNESS my hand and official seal. My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public