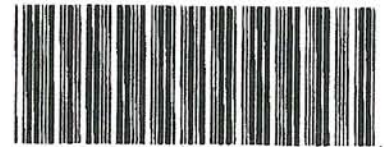


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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE OAKS



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CLERK & RECORDER
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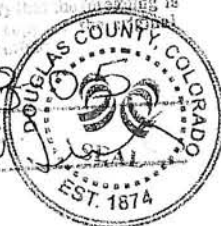
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Carole R. Murray, Clerk and Recorder
in and for the County of Douglas, State of
Colorado, do hereby certify that the foregoing is
a full, true and correct copy of the
instrument recorded in my office.

DATE

BY

Deputy Clerk & Recorder



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE OAKS

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS	1
Section 1.1. Act.....	1
Section 1.2. Agencies.....	1
Section 1.3. Allocated Interests.....	2
Section 1.4. Annexable Area.	2
Section 1.5. Architectural Review Committee.	2
Section 1.6. Assessment.....	2
Section 1.7. Association.....	2
Section 1.8. Board of Directors or Board.....	2
Section 1.9. Common Elements.....	2
Section 1.10. Community.	3
Section 1.11. Declarant.	3
Section 1.12. Declaration.....	3
Section 1.13. Development Rights.....	3
Section 1.14. Governing Documents.	4
Section 1.15. Improvements.....	4
Section 1.16. Initially Unoccupied Lots.....	4
Section 1.17. Lot.	4
Section 1.18. Lots that May Be Included.....	4
Section 1.19. Member.	4
Section 1.20. Owner.....	5
Section 1.21. Person.....	5
Section 1.22. Plat.	5
Section 1.23. Security Interest.	5
Section 1.24. Security Interest Holder.	5
Section 1.25. 75% Control Period.....	6
Section 1.26. Special Declarant Rights.....	6
ARTICLE 2. MEMBERSHIP AND VOTING RIGHTS.....	6
Section 2.1. Association.....	6
Section 2.2. Board of Directors.....	6
Section 2.3. Voting Rights.....	7
ARTICLE 3. ASSOCIATION	7
Section 3.1. Authority of Board of Directors.....	7
Section 3.2. Election of Part of the Board of Directors During the 75% Control Period.....	7
Section 3.3. Authority of Declarant During 75% Control Period.	7
Section 3.4. Termination of 75% Control Period.	7
Section 3.5. Delivery of Property by Declarant.	8
Section 3.6. Budget.	8

Section 3.7.	Rules and Regulations.....	8
Section 3.8.	Association Books and Records.....	8
Section 3.9.	Information Regarding Security Interests.	8
Section 3.10.	Management Agreements and Other Contracts.	9
Section 3.11.	Cooperation with any other Community Association(s) and/or any District(s).	9
Section 3.12.	Merger.....	9
ARTICLE 4. ASSESSMENTS		10
Section 4.1.	Personal Obligation for Assessments.....	10
Section 4.2.	Purpose of Assessments.....	10
Section 4.3.	Initial Annual Assessment.	10
Section 4.4.	Rate of Assessment.	10
Section 4.5.	Date of Commencement of Annual Assessments.	11
Section 4.6.	Special Assessments.	11
Section 4.7.	Notice and Quorum for Any Special Assessments.	12
Section 4.8.	Assessments/Charges for Services to Less Than All Lots.	12
Section 4.9.	Lien for Assessments.	12
Section 4.10.	Priority of Association Lien.	13
Section 4.11.	Certificate of Status of Assessments.....	13
Section 4.12.	Effect of Non-Payment of Assessments; Remedies of the Association.....	14
Section 4.13.	Surplus Funds.....	14
Section 4.14.	Working Capital Fund.....	14
Section 4.15.	Other Charges.	14
Section 4.16.	Charges for Misconduct.....	15
ARTICLE 5. ARCHITECTURAL REVIEW COMMITTEE		15
Section 5.1.	Composition of Committee; Authority of Representative.....	15
Section 5.2.	Review and Approval by Committee; Reimbursement for Expenses; Requirement for Additional Approvals.	15
Section 5.3.	Procedures.....	16
Section 5.4.	Design Guidelines.....	16
Section 5.5.	Vote and Appeal.	17
Section 5.6.	Prosecution of Work After Approval.....	17
Section 5.7.	Inspection of Work.....	17
Section 5.8.	Records.	17
Section 5.9.	Variance.	17
Section 5.10.	Waivers; No Precedent.	18
Section 5.11.	Liability.....	18
Section 5.12.	Exemption for Declarant.....	18
ARTICLE 6. INSURANCE.....		18
Section 6.1.	Insurance.	18
Section 6.2.	Insurance on the Structures on Lots.	18
Section 6.3.	General Provisions of Insurance Policies.....	19

Section 6.4.	Deductibles.	19
Section 6.5.	Payment of Insurance Proceeds.....	20
Section 6.6.	Owner's Insurance as Primary Coverage.....	20
Section 6.7.	Acceptable Insurance Companies.	20
Section 6.8.	Insurance to be Maintained by Owners.....	20
Section 6.9.	Insurance Rates.	21
Section 6.10.	Annual Review of Insurance Policies.	21
ARTICLE 7. DAMAGE OR DESTRUCTION		21
Section 7.1.	Damage or Destruction.	21
Section 7.2.	Lots.	22
ARTICLE 8. PARTY WALLS		22
Section 8.1.	Definition.	22
Section 8.2.	General Rules of Law to Apply.	22
Section 8.3.	Sharing of Repair and Maintenance.....	22
Section 8.4.	Destruction by Fire or Other Casualty.	22
Section 8.5.	Weatherproofing.	23
Section 8.6.	Right to Contribution Runs with Land.....	23
Section 8.7.	Arbitration.....	23
ARTICLE 9. EXTERIOR MAINTENANCE		23
Section 9.1.	General.	23
Section 9.2.	Maintenance, Repair and Replacement Obligations.	24
Section 9.3.	Association's Right to Repair, Maintain and Reconstruct.	24
Section 9.4.	Non-Interference with Grade and Drainage.	24
Section 9.5.	Irrigation Recommendations Around Foundations and Slabs.	24
Section 9.6.	Owner's Acts or Omissions.....	25
ARTICLE 10. EASEMENTS		25
Section 10.1.	Easements.	25
Section 10.2.	Access Easement.....	25
Section 10.3.	Utilities Easement.	25
Section 10.4.	Easement for Encroachments.....	26
Section 10.5.	Drainage Easement.	26
Section 10.6.	Easement for Unannexed Property.....	26
ARTICLE 11. RESTRICTIONS		27
Section 11.1.	General Plan.....	27
Section 11.2.	Restrictions Imposed.....	27
Section 11.3.	Residential Use.	27
Section 11.4.	Household Pets.....	27
Section 11.5.	Temporary Structures; Unsightly Conditions.	28
Section 11.6.	Miscellaneous Improvements.	28
Section 11.7.	Vehicular Parking, Storage and Repairs.	29

Section 11.8. Nuisances	30
Section 11.9. No Hazardous Activities; No Hazardous Materials or Chemicals.....	30
Section 11.10. No Annoying Light, Sounds or Odors.	31
Section 11.11. Restrictions on Trash and Materials.	31
Section 11.12. Lots to Be Maintained.....	31
Section 11.13. No Mining and Drilling.	31
Section 11.14. Restriction on Interval Ownership.	31
Section 11.15. Leases.....	32
Section 11.16. Exemption for Declarant.....	32
 ARTICLE 12. PROPERTY RIGHTS IN THE COMMON ELEMENTS.....	 32
Section 12.1. Owners' Easements of Enjoyment.....	32
Section 12.2. Extent of Owners' Easements.....	32
Section 12.3. Use of Common Elements by Declarant.....	33
Section 12.4. Delegation of Use.....	33
Section 12.5. Payment of Taxes or Insurance by Security Interest Holders.	33
Section 12.6. Conveyance or Encumbrance of Common Elements.....	34
Section 12.7. Designation of Common Elements.	34
Section 12.8. Duty to Accept Property and Facilities Transferred by Declarant or Dedicated on the Plat.	34
 ARTICLE 13. DISPUTE RESOLUTION.....	 34
Section 13.1. Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.....	34
Section 13.2. Definitions Applicable to this Article.....	34
Section 13.3. Approval Required for Association Actions.....	35
Section 13.4. Notice and Quorum for Association Actions.....	35
Section 13.5. Required Form of Proxy or Ballot.	36
Section 13.6. Exclusions from "Claim".	36
Section 13.7. Right to Inspect.	37
Section 13.8. Mandatory Procedures.	38
Section 13.9. Liability for Failure of Association to Maintain an Action.....	39
Section 13.10. Severability.	39
Section 13.11. Amendment.....	40
 ARTICLE 14. GENERAL PROVISIONS.....	 40
Section 14.1. Enforcement; Fines.	40
Section 14.2. Severability.	40
Section 14.3. Conflict of Provisions.	41
Section 14.4. Conflict with the Act.....	41
Section 14.5. Annexation; Withdrawal.....	41
Section 14.6. Minor Violations of Setback Restrictions.....	42
Section 14.7. Subdivision or Replatting of Lots.....	42
Section 14.8. Declarant's Use.....	43
Section 14.9. Duration, Revocation, and Amendment.....	43

Section 14.10. Registration of Mailing Address.	44
Section 14.11. HUD or VA Approval.	44
Section 14.12. Termination of Community.	44
Section 14.13. Transfer of Special Declarant Rights.	45
Section 14.14. Eminent Domain.	45
Section 14.15. Limitation on Liability.	45
Section 14.16. No Representations, Guaranties or Warranties.	45
Section 14.17. Disclaimer Regarding Safety.	45
Section 14.18. Headings.	46
Section 14.19. Gender.	46
Section 14.20. Run with Land; Binding Upon Successors.	46
<u>Exhibit A</u> - The Community	
<u>Exhibit B</u> - Common Elements	
<u>Exhibit C</u> - Certain Title Exceptions	
<u>Exhibit D</u> - Annexable Area	
<u>Exhibit E</u> - Fence Restrictions	

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE OAKS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE OAKS ("Declaration") is made and entered into by AMBER HOMES, INC., a Colorado corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property situated in the County of Douglas, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, Declarant desires to subject and place upon the property described on Exhibit A certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein; and

WHEREAS, a common interest community may be created pursuant to the Act (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

NOW, THEREFORE, Declarant hereby declares that a plat which includes the property described on the attached Exhibit A has been recorded and that all of the real property described on that attached Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which shall run with, the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1.
DEFINITIONS**

Section 1.1. *Act.*

"Act" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended.

Section 1.2. *Agencies.*

"Agencies" mean the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development, including the Federal Housing

Administration (HUD), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

Section 1.3. *Allocated Interests.*

"Allocated Interests" means the share of assessments and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time.

Section 1.4. *Annexable Area.*

"Annexable Area" means the property described on Exhibit D attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as the Declarant hereby reserves the right to elect in its sole discretion in an amount not exceed the maximum permitted pursuant to the Act.

Section 1.5. *Architectural Review Committee.*

"Architectural Review Committee" or "Committee" means the committee appointed by the Declarant or by the Board of Directors to review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

Section 1.6. *Assessment.*

"Assessment" means annual assessments and special assessments, which are provided for in this Declaration. For purposes of Sections 4.1, 4.4.2, 4.9 through 4.16, inclusive, and 13.6 of this Declaration, "Assessment" means annual assessments, special assessments, and late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees, and any other charges, which are provided for in this Declaration.

Section 1.7. *Association.*

"Association" means The Oaks Owners Association, Inc., a community association as provided in the Act.

Section 1.8. *Board of Directors or Board.*

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration and the Bylaws of the Association to act on behalf of the Association.

Section 1.9. *Common Elements.*

"Common Elements" means any property owned or leased by the Association other than a Lot which exists for the common use of more than one of the Owners. The Common Elements at the time of recordation of this Declaration is described on Exhibit B attached hereto and incorporated herein by this reference.

Section 1.10. *Community.*

"Community" means the real estate described on Exhibit A to this Declaration, as supplemented and amended from time to time, and with respect to which a Person, by virtue of such Person's ownership of a Lot, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in this Declaration. The Community is a planned community under the Act. The name of the Community is The Oaks.

Section 1.11. *Declarant.*

"Declarant" means AMBER HOMES, INC., a Colorado corporation, and any other Person(s) acting in concert, to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

1.11.1. As part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Lot not previously disposed of to a purchaser; or

1.11.2. Reserves or succeeds to any Special Declarant Right.

Section 1.12. *Declaration.*

"Declaration" means this Declaration of Covenants, Conditions and Restrictions of The Oaks and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, plats and maps.

Section 1.13. *Development Rights.*

"Development Rights" means the following rights or combination of rights hereby reserved by the Declarant, as such Development Rights may be further described in this Declaration, to:

1.13.1. add real estate to this Community, as provided in Section 14.5 of this Declaration (Annexation; Withdrawal);

1.13.2. subdivide or replat Lots, as provided in Section 14.7 of this Declaration (Subdivision or Replatting of Lots); or

1.13.3. withdraw real estate from this Community, as provided in Section 14.5 of this Declaration (Annexation; Withdrawal).

The Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any such development rights. The Declarant's right to exercise Development Rights shall terminate automatically as provided in Section 1.26 of this Declaration (Special Declarant Rights).

Section 1.14. *Governing Documents.*

"Governing Documents" means this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, and any rules and regulations or design guidelines adopted by the Board of Directors.

Section 1.15. *Improvements*

"Improvements" means all improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment, if any. For purposes of Article 5 hereof, and only in such Article, the word "exterior" shall be inserted immediately preceding the fourth word "improvements" in the preceding sentence.

Section 1.16. *Initially Unoccupied Lots.*

"Initially Unoccupied Lots" means only those Lots which have not been conveyed by the Declarant to the initial Owner thereof other than the Declarant.

Section 1.17. *Lot.*

"Lot," for the purposes of this Declaration means each platted lot shown upon any recorded subdivision map of the real property described on the attached Exhibit A, as the same may be subdivided or replatted from time to time. However "Lot" shall not include any Common Elements or any publicly dedicated property. "Lot" also includes any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements and any publicly dedicated property. Each Lot shall constitute a "unit" under the Act, and it shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Lot.

Section 1.18. *Lots that May Be Included*

"Lots that May Be Included" means One Hundred Forty (140) Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including the Lots within the property described on the attached Exhibit A and those Lots which may be added if all of the Annexable Area is annexed to this Declaration. However, the aforesaid number of Lots that May Be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in or constructed as part of the Community.

Section 1.19. *Member.*

"Member" means all Owners of a Lot collectively or, following termination of the Community, of all former Owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. The Association shall have one (1) class of

membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership in the Association and there is only one (1) Member per Lot, even if the Lot is owned by multiple Owners.

Section 1.20. *Owner.*

"Owner" means each fee simple title holder of a Lot, including without limitation, the Declarant, or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one (1) Owner of a Lot.

Section 1.21. *Person.*

"Person" means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.

Section 1.22. *Plat.*

"Plat" means that certain final plat of The Oaks Subdivision Filing No. One, recorded at the Douglas County, Colorado Clerk and Recorder on November 7, 2001 at Reception No. 01106090, as amended and supplemented.

Section 1.23. *Security Interest.*

"Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.11 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3 of this Declaration (General Provisions of Insurance Policies), "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of the County in which the property is located, show the Administrator as having the record title to the Lot.

Section 1.24. *Security Interest Holder.*

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.11 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3 of this Declaration (General Provisions of Insurance Policies), the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land

records of the Clerk and Recorder of the County in which the property is located, show the said Administrator as having the record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

Section 1.25. 75% Control Period.

"75% Control Period" means a length of time expiring seven (7) years after initial recording of this Declaration in Douglas County, Colorado. However, the 75% Control Period shall terminate earlier, upon the first to occur of the following events, if any of the following occur within the time period that is specified in the first sentence of this Section: sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant; two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or two (2) years after any right to add new Lots to the Declaration was last exercised.

Section 1.26. *Special Declarant Rights.*

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, and signs advertising the Community and sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to merge or consolidate a Community of the same form of ownership; or to appoint or remove any officer of the Association or any Board of Directors member during any 75% Control Period. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically at such time as Declarant no longer owns any portion of the Property described on the attached Exhibits A and D.

ARTICLE 2.

MEMBERSHIP AND VOTING RIGHTS

Section 2.1. *Association.*

The Association has been or will be formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs; except as hereinafter provided, the Board of Directors shall be elected by the Members.

Section 2.2. *Board of Directors.*

The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the

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

Section 2.3. *Voting Rights.*

Each Member shall be entitled to one (1) vote for each Lot owned except that no votes allocated to a Lot owned by the Association may be cast. The maximum number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

**ARTICLE 3.
ASSOCIATION**

Section 3.1. *Authority of Board of Directors.*

Except as provided in this Declaration, the Articles of Incorporation, or the Bylaws of the Association, the Board of Directors may act in all instances on behalf of the Association.

Section 3.2. *Election of Part of the Board of Directors During the 75% Control Period.*

No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than a Declarant, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board of Directors. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board of Directors.

Section 3.3. *Authority of Declarant During 75% Control Period.*

Except as otherwise provided in this Article, during the 75% Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and members of the Board of Directors, and may remove all officers and members of the Board of Directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the 75% Control Period; but, in that event, the Declarant may require, for the duration of the 75% Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 3.4. *Termination of 75% Control Period.*

Not later than the termination of the 75% Control Period, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers.

Section 3.5. *Delivery of Property by Declarant.*

After the Members other than the Declarant elect a majority of the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, if and to the extent required by the Act.

Section 3.6. *Budget.*

Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as allowed for in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by eighty percent (80%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

Section 3.7. *Rules and Regulations.*

Rules and regulations affecting, concerning and governing the Lots, Common Elements, and/or this Community may be adopted, amended or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines (in accordance with Section 14.1 of this Declaration (Enforcement; Fines)) for the violation of any of such rules and regulations. The rules and regulations may state procedural requirements, interpretations and applications of the provisions of this Declaration, including without limitation, blanket requirements, blanket interpretations, and blanket applications. By way of example, and not by way of limitation, the Rules and Regulations may state that "reasonable" as used in Section 11.4 of this Declaration (Household Pets) means a specified number of pets. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration and all provisions hereof.

Section 3.8. *Association Books and Records.*

The Association shall make available to Owners, prospective purchasers, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

Section 3.9. *Information Regarding Security Interests.*

Each Member shall, within twenty (20) days of encumbering such Member's Lot with a Security Interest, and at other times upon request of the Association, provide the Association with the name and address of such Security Interest Holder, a copy of the instrument(s) creating

the Security Interest(s), and the loan number(s) (or other identifying number of such Security Interest(s)). Within twenty (20) days after any change in the name or address of a Security Interest Holder on a Member's Lot, and at other times upon request of the Association, such Member shall provide the aforesaid information to the Association with respect to each Security Interest held by such Security Interest Holder.

Section 3.10. *Management Agreements and Other Contracts.*

Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the 75% Control Period shall be subject to review and approval by HUD or VA, if at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more Security Interests (and if HUD or VA requires such approval), and shall terminate absolutely, in any event, no later than thirty (30) days after termination of the 75% Control Period.

Section 3.11. *Cooperation with any other Community Association(s) and/or any District(s).*

The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community associations and/or any districts, to share the costs and/or responsibility for any maintenance, repair, reconstruction, or other matters, to perform maintenance, repair or reconstruction for any Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association and/or any other community associations and/or any districts, or to otherwise cooperate with any other community associations, or any districts, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other community associations and/or any districts, as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with the one or more community associations and/or any districts to collect assessments, other charges, or other amounts which may be due to the any other community association(s) and/or any districts and to permit the any other community association(s) and/or any districts to collect assessments, other charges, or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such community association(s) and/or any such districts of any amounts collected by the Association or to the Association of any amounts collected by such community association(s) and/or any such districts.

Section 3.12. *Merger.*

The Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Owner or any other Person. This right

shall terminate automatically as provided in Section 1.26 of this Declaration (Special Declarant Rights).

ARTICLE 4. **ASSESSMENTS**

Section 4.1. *Personal Obligation for Assessments.*

Each Owner of a Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association any and all Assessments as provided in this Declaration; with such Assessments to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all Assessments attributable to their Lot. Each assessment shall be the personal obligation of the Person(s) who was the Owner of such Lot at the time when the amount became due. The personal obligation for delinquent amounts (including assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 4.2. *Purpose of Assessments.*

The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law; provided, however, that Assessments levied during the 75% Control Period may not be used for the purpose of constructing capital Improvements.

Section 4.3. *Initial Annual Assessment.*

Until the effective date of an Association budget ratified by the Members with a different amount for the annual Assessments, as provided above, the amount of the annual Assessment against each Lot shall not exceed Forty Dollars (\$40.00) per month, exclusive of any amounts due to any district and/or any other Person or entity. However, the rate of the annual Assessments paid by Initially Unoccupied Lots shall be less than those paid by the other Lots, as provided in the next Section.

Section 4.4. *Rate of Assessment.*

4.4.1. Annual and special Assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual Assessment and special Assessment against the Initially Unoccupied Lots shall be set at a lower rate than that charged against other Lots, because the Initially Unoccupied Lots receive and benefit from fewer services funded by the annual and special Assessments than the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefiting fewer than all of the units shall

be assessed exclusively against the units benefited." Based on this provision, the Initially Unoccupied Lots shall pay annual and special Assessments at the rate of forty percent (40%) of any annual Assessment or special Assessment charged to Lots other than Initially Unoccupied Lots. The annual Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles.

4.4.2. During the 75% Control Period, the Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall be treated as an advance against Assessments then or thereafter due from the Declarant; provided, however, that any such advances which have not been credited against Assessments due from the Declarant as of termination of the 75% Control Period shall then be repaid by the Association to the Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the 75% Control Period terminates; and provided further, however, that any of such advances which are not repaid to the Declarant shall continue to constitute advances against Assessments then or thereafter due from the Declarant until automatic termination of the Special Declarant Rights as provided in Section 1.26 of this Declaration (Special Declarant Rights). If the Declarant elects in its discretion to pay any amounts as provided in this subsection, Declarant shall not, under any circumstances, be obligated to continue payment or funding of any such amount(s) in the future.

Section 4.5. *Date of Commencement of Annual Assessments.*

Annual Assessments shall commence at such time as the Board of Directors may determine in its discretion. After any annual Assessment has been made by the Association, annual Assessments shall initially not be greater than the amount set forth in Section 4.3 of this Declaration (Initial Annual Assessment), and thereafter shall be based on a budget adopted by the Association as provided in this Declaration. A budget shall be so adopted by the Association no less frequently than annually. The annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

Section 4.6. *Special Assessments.*

In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of the votes of sixty-seven percent (67%) of a quorum of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, a special Assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon any portion of the property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any deficit of the Association. Any such special Assessment shall be set

against each Lot in accordance with the Allocated Interests set forth in this Declaration, except that the rate of special Assessments against Initially Unoccupied Lots shall be set as provided in Section 4.4.1 of this Declaration. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 4.7 of this Declaration (Notice and Quorum for Any Special Assessments). Notwithstanding the foregoing, special Assessments levied during the 75% Control Period may not be used for the purpose of constructing capital Improvements.

Section 4.7. *Notice and Quorum for Any Special Assessments.*

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 of this Declaration (Special Assessments) shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.8. *Assessments/Charges for Services to Less Than All Lots.*

The Association may, at any time from time to time, provide services to less than all of the Lot(s) in the Community. If such services are not funded by the Association's annual or special Assessments, then such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Lots for which such service is to be provided, with such agreement to include a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services, and which amounts shall include overhead expenses of the Association. Services which may be provided by the Association pursuant to this Section may include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions to or for such Lot(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

Section 4.9. *Lien for Assessments.*

4.9.1. The Association has a statutory lien on a Lot for Assessments levied against that Lot or the Owner thereof. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

4.9.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and

record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the Assessment for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

Section 4.10. *Priority of Association Lien.*

4.10.1. A lien under this Article is prior to all other liens and encumbrances on a Lot except:

4.10.1.1. Liens and encumbrances recorded before the recordation of the Declaration;

4.10.1.2. A Security Interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the amount(s) due to the Association became delinquent; and

4.10.1.3. Liens for real estate taxes and other governmental assessments or charges against the Lot.

4.10.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.10.1.2 to the extent, if any, provided in the Act.

4.10.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other amounts made by the Association.

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

Section 4.11. *Certificate of Status of Assessments.*

The Association shall furnish to an Owner or such Owner's designee, or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or Security Interest Holder or their designee, delivered personally (including delivery by telefax) or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 4.12. *Effect of Non-Payment of Assessments; Remedies of the Association.*

Any Assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may assess thereon a monthly late charge in such amount as may be determined, from time to time, by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including, without limitation, in a foreclosure action, such judgment or decree shall include reasonable attorney's fee to be fixed by the court, together with the costs of the action, and may include interest and late charges, as above provided. No Owner may be exempt from liability for payment of any Assessment by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the Assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

Section 4.13. *Surplus Funds.*

Any surplus funds of the Association remaining after payment of or provision for Assessments, and any prepayment of or provision for reserves, shall be retained by the Association and need not be paid to the Owners or credited to them to reduce their future Assessments.

Section 4.14. *Working Capital Fund.*

The Association shall require the first Owner (other than the Declarant) of any Lot who purchases that Lot from the Declarant to make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual Assessment (regardless of whether or not annual Assessments have commenced as provided in Section 4.5 of this Declaration (Date of Commencement of Annual Assessments)). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot and shall, until use, be maintained for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the sale of his Lot, an Owner shall be entitled to reimbursement at closing (in the form of a credit on the closing settlement statement) from the purchaser of such Lot (but not from the Association) for the portion of the aforesaid contribution to working capital fund which has not been used by the Association at the time of conveyance of the Lot by such Owner.

Section 4.15. *Other Charges.*

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amounts(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; return check charges; charges for telefaxes; long distance telephone calls; transfer

charges or fees upon transfer of ownership of a Lot; charges for notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s).

Section 4.16. *Charges for Misconduct.*

If any Association expense is caused by the misconduct of any Owner, as determined by the Board of Directors, the Association may assess that Association expense exclusively against such Owner and his Lot, including without limitation any increased insurance rates as provided for in Section 6.9 hereof.

ARTICLE 5.
ARCHITECTURAL REVIEW COMMITTEE

Section 5.1. *Composition of Committee; Authority of Representative.*

5.1.1. The Architectural Review Committee shall consist of three (3) or more persons appointed by the Board of Directors; provided, however, that until automatic termination of the Special Declarant Rights as provided in Section 1.26 of this Declaration (Special Declarant Rights), the Declarant may appoint the entirety of the Architectural Review Committee. The power to "appoint" the Architectural Review Committee, as provided herein, shall include without limitation the power to: constitute the initial membership of the Architectural Review Committee; appoint member(s) to the Architectural Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor.

5.1.2. The Committee may at any time, from time to time, appoint a representative to act on its behalf. If the Committee does so, then the actions of such representative shall be the actions of the Committee, subject to the right of appeal as provided below. However, if such a representative is appointed by the Committee, then the Committee shall have full power over such representative, including without limitation the power to at any time withdraw from such representative any of such representative's authority to act on behalf of the Committee and the power to at any time remove or replace such representative.

Section 5.2. *Review and Approval by Committee; Reimbursement for Expenses; Requirement for Additional Approvals.*

5.2.1. Except as provided in Sections 5.9 (Variance) and 5.12 (Exemption for Declarant) of this Declaration, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the

Committee in its sole discretion), shall have been first submitted to and approved by the Architectural Review Committee.

5.2.2. The Architectural Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures.

5.2.3. In its review of such plans, specifications and other materials and information, the Architectural Review Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the Assessments against the Lot for which the request for Architectural Review Committee approval was made, but shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection of Assessments, as more fully provided in this Declaration.

5.2.4. In addition to the required approvals by the Architectural Review Committee as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the Town of Castle Rock, Colorado and compliance with Douglas County regulations, if required, shall be a precondition to commencement of construction of, alteration of, addition to or change in any Improvement.

Section 5.3. *Procedures.*

The Architectural Review Committee shall decide each request for approval within forty-five (45) days after the complete submission of all plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Architectural Review Committee fails to decide any request within forty-five (45) days after the complete submission of all plans, specifications, materials and other information with respect thereto, then such request shall be deemed to have been denied by the Committee.

Section 5.4. *Design Guidelines.*

The Architectural Review Committee, with the advice of the Board of Directors, may, at any time from time to time, enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce, a manual of Design Guidelines for the Community, or other design or architectural guidelines, to interpret and/or implement any provisions of this Article and the Declaration. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Committee, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the Architectural Review Committee. Any architectural or design guidelines so adopted by the Committee shall be consistent, and not in conflict, with this Article and this Declaration.

Section 5.5. *Vote and Appeal.*

A majority vote of the Architectural Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Architectural Review Committee decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Committee, upon a written request therefor submitted to the Committee within thirty (30) days after such decision by the Committee's representative.

Section 5.6. *Prosecution of Work After Approval.*

After approval of a request for architectural approval, the work to complete the same shall be accomplished as promptly and diligently as possible and in complete conformity with the approval. Failure to complete the proposed Improvement within ninety (90) days after the date of approval of the application therefor, or to complete the Improvement in accordance with the description and materials furnished to the Committee and the conditions imposed with such approval, shall constitute a violation of this Article; provided, however, that the Architectural Review Committee, in its discretion, may grant extensions of time for completion of any proposed Improvements.

Section 5.7. *Inspection of Work.*

The Architectural Review Committee or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion of the same, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with this Article and any approval therefor granted by the Committee. However, unless the Committee expressly states, in a written document, that an Improvement is being completed or has been completed in conformance with the approval therefor, no such conformance shall be implied from inspection of the Improvement either during the work or after completion thereof.

Section 5.8. *Records.*

The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 5.9. *Variance.*

The Architectural Review Committee may in its sole discretion grant or withhold approval of reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 11 of this Declaration (Restrictions), in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 5.10. *Waivers; No Precedent.*

The approval or consent of the Architectural Review Committee or any representative thereof to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee or any representative thereof as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

Section 5.11. *Liability.*

The Architectural Review Committee, and any members thereof, shall not be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within their jurisdiction hereunder. In reviewing any matter, the Architectural Review Committee shall not be responsible for the safety, whether structural or otherwise, of the Improvements submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor any other matters, and any approval of an Improvement by the Architectural Review Committee shall not be deemed an approval of any of the same. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Architectural Review Committee.

Section 5.12. *Exemption for Declarant.*

Notwithstanding anything herein to the contrary, until automatic termination of the Special Declarant Rights as provided in Section 1.26 of this Declaration (Special Declarant Rights), the Declarant shall be exempt from the provisions of this Article except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.2.4 hereof).

**ARTICLE 6.
INSURANCE**

Section 6.1. *Insurance.*

The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, including the Act, which insurance shall include, without limitation, property insurance, commercial general liability insurance, and fidelity coverage. In addition, the Association may maintain insurance against such other risks as the Board of Directors may elect from time to time, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association, workers' compensation insurance, and may maintain insurance on such other property and/or against such other risks as the Board of Directors may elect in its discretion from time to time.

Section 6.2. *Insurance on the Structures on Lots.*

The Board or its agent may in its discretion, but shall not be required to, obtain and maintain, to the extent that such insurance is reasonably available, considering the availability,

cost and risk coverage provided by such insurance, a policy of property insurance covering the structure(s) located on each Lot, except for land, excavations, foundations and other matters normally excluded from property policies, in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the insurance policy. Said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement," an "Agreed Amount Endorsement," and may include other endorsement(s) as deemed appropriate by the Board from time to time. Such insurance shall afford protection against at least the following:

6.2.1. loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

6.2.2. such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "All Risk" endorsement, where such is available.

Section 6.3. *General Provisions of Insurance Policies.*

All policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner or member of such Owner's household. Further, all policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 6.4. *Deductibles.*

The Association may adopt and establish written non-discriminatory policies and procedures relating to the responsibility for deductibles. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, may be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, and/or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question in such amount(s) as the Board of Directors deems appropriate.

Section 6.5. *Payment of Insurance Proceeds.*

Any loss covered by an insurance policy described in Section 6.1 or Section 6.2 of this Declaration 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 Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to Section 7.1 of this Declaration (Damage or Destruction), the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored and any budget or reserve deficit funded, or unless the Community is terminated.

Section 6.6. *Owner's Insurance as Primary Coverage.*

If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be secondary to any such Owner's policy, which Owner's policy shall be the primary insurance not contributing with any of such other Association insurance policy. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner.

Section 6.7. *Acceptable Insurance Companies.*

Each insurance policy purchased by the Association must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 6.8. *Insurance to be Maintained by Owners.*

An insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Lot and the Improvements thereon (except to the extent, if any, that insurance coverage thereon is carried by the Association in its discretion), as well as on all the furnishings and personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot. Owners shall also be responsible for obtaining any policies of title insurance required in connection with any sale of a Lot other than the purchase by the initial Owner(s) from the Declarant. In the event the homeowner's insurance policies held by different Owners of Lots or held by an Owner and the Association and which are underwritten by different insurers, the Owner shall be responsible for ensuring that such Owner's insurer agrees, in the event damage occurs to the covered property, to facilitate payment of the insurance proceeds when two insurers are involved and that the insurer will pay all undisputed proceeds

and one-half of any disputed proceeds (up to the amount of coverage provided by such insurance) subject to the right of such insurer to recover from the other insurer any such sums for which the other insurer is found to be liable.

Section 6.9. *Insurance Rates.*

Nothing shall be done or kept on or at the Community which will increase the rate of insurance on any owned or insured by the Association, including without limitation the Common Elements, without the approval of the Board of Directors, nor shall anything be done or kept on or at the Community which would result in the cancellation of insurance on any Common Elements or which would be in violation of any law. If acts or omissions of an Owner or Occupant (as hereinafter defined) result in an increase of insurance rates on any Association owned or insured property, such increase shall be assessed to such Owner in accordance with Section 4.16 of this Declaration.

Section 6.10. *Annual Review of Insurance Policies.*

All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association.

**ARTICLE 7.
DAMAGE OR DESTRUCTION**

Section 7.1. *Damage or Destruction.*

7.1.1. Any portion of the Community for which casualty insurance is required to be carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

7.1.1.1. The Community is terminated;

7.1.1.2. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

7.1.1.3. The Members casting sixty-seven percent (67%) of the Association votes, in person or by proxy, including every Member whose residence will not be rebuilt, vote not to rebuild; or

7.1.1.4. Prior to conveyance of any Lot to a Person other than the Declarant, a Security Interest Holder rightfully demands all or a substantial part of the insurance proceeds;

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other

Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the assessment liability of all the Lots.

Section 7.2. *Lots.*

Except as otherwise provided in Section 7.1 of this Declaration (Damage or Destruction), any damage to or destruction of any structure located on a Lot shall be promptly repaired and reconstructed by the Owner(s) thereof. "Repaired and reconstructed," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner(s) of a Lot do not commence repair or reconstruction activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Architectural Review Committee, then the Association may, in its reasonable discretion, after providing the notice required in Section 9.3 of this Declaration (Association's Right to Repair, Maintain and Reconstruct), enter upon the Lot and complete such repair or reconstruction. If the Members vote not to rebuild any Lot, that Lot's Allocated Interests are automatically reallocated upon the vote as if the Lot had been condemned as provided in Section 14.14 of this Declaration (Eminent Domain), and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting such reallocations.

**ARTICLE 8.
PARTY WALLS**

Section 8.1. *Definition.*

For purposes of this Article, "Party Wall" means any wall which is part of the original construction of the structures located on Lots as such wall(s) may be repaired or reconstructed from time to time, is placed on or immediately adjacent to a Lot's lot line, and separates two (2) or more structures as a common wall. "Party Wall" includes any two walls which meet the foregoing criteria and which are separated by a small amount of air space.

Section 8.2. *General Rules of Law to Apply.*

To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 8.3. *Sharing of Repair and Maintenance.*

The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Lots whose Owner has a right to use such Party Wall.

Section 8.4. *Destruction by Fire or Other Casualty.*

If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has a right to use the Party Wall may restore it, and each Lot whose Owner has a right to use such Party Wall shall equally contribute to the cost of restoration thereof without prejudice, however,

to the right of any Owner to call for a larger contribution from one or more other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

Section 8.5. *Weatherproofing.*

Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act (or the negligent or willful act of a Person for whom such Owner is legally responsible) causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 8.6. *Right to Contribution Runs with Land.*

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

Section 8.7. *Arbitration.*

In the event of any dispute arising concerning a Party Wall, under the provisions of this Article, such dispute shall be resolved as follows unless such dispute is subject to Article 14 of this Declaration (Dispute Resolution): each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party fail or refuse to appoint an arbitrator within ten (10) days after written request therefor by the Owner with whom such party shares a Party Wall, the Board shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

ARTICLE 9.
EXTERIOR MAINTENANCE

Section 9.1. *General.*

9.1.1. Maintenance, repair or replacement of the Common Elements and all Improvements located thereon, and of any underdrain, drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. Without limiting the generality of the foregoing, the Association shall maintain, repair and replace the islands now or hereafter located in Live Oak Road and Valley Oak Road even though such islands are in the publicly dedicated rights of way. Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors deems appropriate from time to time, including without limitation publicly-dedicated property and Improvements located thereon.

9.1.2. The maintenance, repair and replacement of each Lot, and the landscaping, building and other Improvements thereon, shall be performed by the Owner(s) thereof at

such Owner's sole cost and expense. However, the foregoing is subject to the provisions of Section 9.6 of this Declaration (Owner's Acts or Omissions).

Section 9.2. *Maintenance, Repair and Replacement Obligations.*

Any Improvement which has been changed, altered or modified by or for an Owner or occupant of a Lot shall be maintained, repaired and replaced by such Owner to the extent of the change, alteration or modification. If the Improvement is newly constructed, erected, placed, planted, applied or installed by an Owner or occupant of a Lot, then the entirety of such Improvement shall be maintained, repaired and replaced by, the Owner of such Lot.

Section 9.3. *Association's Right to Repair, Maintain and Reconstruct.*

In the event any Owner shall fail to perform his maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owner by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or reconstruction. The cost of such maintenance, repair or reconstruction shall be the personal obligation of the Owner of the Lot on which such work is performed and shall be subject to a lien as provided in Article 4 of this Declaration.

Section 9.4. *Non-Interference with Grade and Drainage.*

Each Owner and the Association agree, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established or governmental approved drainage pattern over any real property. In the event that it is necessary or desirable to change the established drainage over any Lot or Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Review Committee for its review and approval, in accordance with Article 5 of this Declaration (Architectural Review Committee), and any such change shall also be made in accordance with all laws, regulations and resolutions of all applicable governmental entities. For purposes of this Section, "established or governmental approved drainage" is defined as the drainage which exists at the time final grading by the Declarant is completed.

Section 9.5. *Irrigation Recommendations Around Foundations and Slabs.*

The occupant of a Lot, including the Owner thereof, shall not plant flower beds (especially annuals), vegetable gardens and other landscaping which requires regular watering, within five (5) feet of the foundation of the dwelling unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot should water such shrubbery by "controlled hand-watering," and should avoid excessive watering.

Section 9.6. *Owner's Acts or Omissions.*

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Elements, a Lot, or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any member of such Owner's family or by a tenant, guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado. A determination of the act or omission of any Owner, or any member of an Owner's family or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner.

**ARTICLE 10.
EASEMENTS**

Section 10.1. *Easements.*

In addition to any other easements which may be granted or reserved elsewhere in this Declaration, the following Sections describe easements to which the Community is or may be subject.

Section 10.2. *Access Easement.*

Each Owner hereby grants to the Association and the other Owners, and to their agents, employees and contractors, a right and easement on, over, across and through such Owner's Lot for maintenance, repair and replacement as provided in this Declaration, including without limitation as provided in Article 9 of this Declaration (Exterior Maintenance). If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance, repair and/or replacement; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner or occupants of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible. The interior of any dwelling unit shall not be subject to the easement that is granted in this Section.

Section 10.3. *Utilities Easement.*

Declarant hereby reserves a blanket easement upon, across, over and under the Common Elements for utilities and the installation, use, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect, use, and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, use, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits,

conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.26 of this Declaration (Special Declarant Rights), at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

Section 10.4. *Easement for Encroachments.*

To the extent that any Lot or Common Elements encroaches on any other Lot or Common Elements, a valid easement for the encroachment exists.

Section 10.5. *Drainage Easement.*

In addition to those easements shown on the plat(s) of the Community, Declarant hereby reserves, to itself, and to the Association, easements for drainage and drainage facilities across the five (5) front, five (5) rear and five (5) side feet of each Lot. No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself, and to the Association the right to enter in and upon each five foot front, rear and side yard drainage easements, at any time, to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant, or the Association may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.26 of this Declaration (Special Declarant Rights), at which time said reserved right shall vest solely in the Association.

Section 10.6. *Easement for Unannexed Property.*

The Declarant hereby reserves, for the use and benefit of the Annexable Area, a non-exclusive, perpetual easement and right-of-way on, over, across and under the Common Elements for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein the "Annexable Area Easement"). By virtue of this Annexable Area Easement, the Declarant generally intends to provide for utilities services to those portion(s) of the Annexable Area which have not been included, from time to time, in the Community pursuant to Section 14.5 of this Declaration (Annexation; Withdrawal). Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration pursuant to the aforesaid Section; and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

ARTICLE 11. **RESTRICTIONS**

Section 11.1. *General Plan.*

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lots.

Section 11.2. *Restrictions Imposed.*

The Community is subject to the recorded easements, licenses and other matters listed on Exhibit C, attached hereto and incorporated herein by this reference. Finally, the Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. It shall be the intent of the Declarant that the term "Occupant" as used in this Declaration shall include any Owner and such Owner's family members, guests, tenants, invitees and any other occupant of a Lot.

Section 11.3. *Residential Use.*

Subject to Section 14.8 of this Declaration (Declarant's Use), Lots shall be used for residential use (excluding group homes) only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Occupants may conduct business activities within their homes provided that the following conditions are satisfied:

11.3.1. The business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

11.3.2. The existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

11.3.3. The business does not result in an undue volume of traffic or parking within the Community, which determination may be made by the Board of Directors in its sole discretion from time to time;

11.3.4. The business conforms to all zoning requirements and is lawful in nature;
and

11.3.5. The business conforms to any rules and regulations that may be imposed by the Board of Directors from time to time on a uniform basis to protect the peace, tranquility and quality of the Community.

Section 11.4. *Household Pets.*

No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Occupant of a Lot may keep a reasonable number of dogs, cats, or other domestic animals which are bona fide household pets,

so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Lots. The Association shall have, and is hereby given, the right and authority to: establish a maximum number of household pets which may be kept on any Lot; set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine in its sole discretion that any dog(s), cat(s) or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; or that an Occupant is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or that an Occupant is otherwise in violation of the provisions of this Section; and take such action or actions as it deems appropriate to correct any of the foregoing. An Occupant's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets.

Section 11.5. *Temporary Structures; Unsightly Conditions.*

Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be visible from a street or from any other Lot.

Section 11.6. *Miscellaneous Improvements.*

11.6.1. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent" or security sign(s) of not more than a total of five (5) square feet, and no advertising or signs of any character shall be erected, placed, permitted or maintained in the front yard of any Lot (except only in a front window of the residence on such Lot). Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant in connection with the sale or rental of the Lots, or otherwise in connection with development of or construction on the Lots, shall be permissible.

11.6.2. No wood piles or storage areas shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot.

11.6.3. No types of refrigerating, cooling or heating apparatus shall be permitted on a roof. No such apparatus shall be permitted elsewhere on a Lot except when appropriately screened and approved by the Architectural Review Committee subject to any provisions of the Design Guidelines.

11.6.4. Except as may otherwise be permitted by the Architectural Review Committee, no exterior radio antenna, television antenna, or other antenna, satellite dish,

or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended from time to time. As to "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended, the Association shall be empowered to adopt rules and regulations governing the types of "antenna" (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

11.6.5. No fences shall be permitted without the prior, written approval of the Architectural Review Committee (with the acceptable type of fence, subject to the last sentence of this subsection, as depicted on Exhibit E attached hereto and incorporated herein by this reference), except such fences as may be constructed, installed or located by the Declarant in the development of, or construction of Improvements in, the Community. Without limiting the foregoing, the Board of Directors may in its discretion, at anytime, alter Exhibit E or any provision thereof without the need to amend this Declaration.

11.6.6. No wind generators, clotheslines, drying yards, or service yards, shall be constructed, installed, erected or maintained on any Lot.

11.6.7. Dog runs are not permitted.

11.6.8. Grills and other cooking devices shall at no time be located closer than five feet (5') from a structure and shall at all times be kept a reasonable distance from fences.

Section 11.7. *Vehicular Parking, Storage and Repairs.*

11.7.1. No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (excluding pickup trucks that are 1 ton or less), self-contained motorized recreational vehicle, jet ski, snow mobile, or other type of recreational or commercial vehicle or equipment, may be parked or stored on the Lots, or parked or stored on any property visible from the ground level of any other Lots, unless such parking or storage is entirely within the garage area of any Lot, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles which are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon.

11.7.2. Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community (including without limitation in garages in the Community), or parked or stored on any property visible from the ground level of any other Lot. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of forty-eight (48) hours or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

11.7.3. In the event the Association shall determine that a vehicle is parked or stored on any Lot in violation of subsections 11.7.1 or 11.7.2 above, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

11.7.4. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

Section 11.8. *Nuisances.*

No nuisance shall be permitted in the Community nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs the resident of any Lot or which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof, by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities in, the Community. No noxious or offensive activity shall be carried on in the Community nor shall anything be done or placed in the Community which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no immoral, improper, offensive or unlawful use shall be permitted in the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

Section 11.9. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted on any Lot or within Improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms (including without limitation potato guns) 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. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 11.10. *No Annoying Light, Sounds or Odors.*

No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others. Any exterior lighting installed or maintained on a Lot or Improvements(s) shall be permitted only with the prior, written approval of the Architectural Review Committee as provided in this Declaration and shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property.

Section 11.11. *Restrictions on Trash and Materials.*

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall any such items be deposited on a street, unless placed in a suitable container suitably located solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner nor for longer than twenty-four (24) hours prior to and twenty-four (24) hours after garbage or trash pickup.

Section 11.12. *Lots to Be Maintained.*

Each Lot shall at all times be kept in a clean, sightly and wholesome condition by the Owner of the Lot. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction or as provided in Section 11.11 of this Declaration (Restrictions on Trash and Materials).

Section 11.13. *No Mining and Drilling.*

No portion of the Community shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate dirt or any other materials; provided however the Declarant or the Association may, by appropriate written permit, grant, license, or easement agreement, allow the drilling of wells and the installation of filtration galleries or other facilities for the extraction, retention, pumping, draining and circulation of water.

Section 11.14. *Restriction on Interval Ownership.*

No Owner of any Lot shall offer or sell any interest in such Lot under a timesharing or interval ownership plan, or any similar plan.

Section 11.15. *Leases.*

The term "lease", as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Each Owner shall be liable for the actions and omissions of his/her lessees and renters, their family members, guests and invitees. Each Owner shall have the right to lease his Lot, or any portion thereof, under the following conditions:

11.15.1. All leases shall be in writing; and

11.15.2. All leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

Section 11.16. *Exemption for Declarant.*

Notwithstanding anything herein to the contrary, until automatic termination of the Special Declarant Rights as provided in Section 1.26 of this Declaration (Special Declarant Rights), the Declarant shall be exempt from all provisions of this Article.

ARTICLE 12.
PROPERTY RIGHTS IN THE COMMON ELEMENTS

Section 12.1. *Owners' Easements of Enjoyment.*

Subject to this Article, every Owner shall have a non-exclusive right and easement for the purpose of access to their Lots and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 12.2. *Extent of Owners' Easements.*

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Elements may not be used in any manner which violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Elements; and no Owner may place any structure on the Common Elements. In addition, such rights and easements are subject to the following rights of the Association:

12.2.1. The right of the Association to borrow money for any purpose and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest except in accordance with the Act; and

12.2.2. The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

12.2.3. The right of the Association to promulgate and publish standards, guidelines, rules and regulations, with which each Member shall strictly comply; and

12.2.4. The right of the Association to suspend the voting rights of a Member for any period during which any Assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Association Bylaws or the rules and regulations of the Association; and

12.2.5. The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless the same is done in accordance with the Act. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection; and

12.2.6. The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

12.2.7. The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

Section 12.3. *Use of Common Elements by Declarant.*

An easement is hereby granted to the Declarant on, over, under and through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights or other rights of the Declarant, and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant's easements through the Common Elements.

Section 12.4. *Delegation of Use.*

Any Owner may delegate his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 12.5. *Payment of Taxes or Insurance by Security Interest Holders.*

Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

Section 12.6. *Conveyance or Encumbrance of Common Elements.*

Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only in accordance with the Act and this Declaration.

Section 12.7. *Designation of Common Elements.*

Declarant in recording this Declaration has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Elements owned by the Association are not dedicated hereby for use by the general public.

Section 12.8. *Duty to Accept Property and Facilities Transferred by Declarant or Dedicated on the Plat.*

The Association shall accept title to any Common Elements, including Improvements thereon, as well as personal property, equipment, and easements, transferred to or dedicated on the Plat to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant or dedicated on the Plat to the Association are planned to consist only of fee simple title to Common Elements to be located in the property described on the attached Exhibit A and/or the Annexable Area and/or easements.

ARTICLE 13.
DISPUTE RESOLUTION

Section 13.1. *Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.*

13.1.1. Each Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims (as defined below) each alleges to have to the procedures set forth in this Article and not to a court of law.

13.1.2. By acceptance of a deed for a Lot, each Owner agrees to abide by the terms of this Article.

13.1.3. No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 13.2. *Definitions Applicable to this Article.*

For purposes of this Article only, the following terms have the meanings set forth in this Section:

13.2.1. "AAA" means the American Arbitration Association.

13.2.2. "Claimant" means any Party having a Claim.

13.2.3. "Claim" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (i) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Party under any of the Governing Documents; (ii) the design or construction of improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party.

13.2.4. "Inspecting Party" means a Party causing an inspection of the Subject Property to be made.

13.2.5. "Party" means each of the following: Declarant, its officers, directors, partners, members, employees and agents; its officers, directors, partners, members, employees and agents; the Association, its officers, directors and committee members; all persons subject to this Declaration, their officers, directors, partners, members, employees and agents; and any person not otherwise subject to this Declaration who agrees to submit to this Article.

13.2.6. "Respondent" means any Party against whom a Claimant asserts a Claim.

13.2.7. "Subject Property" means the property being inspected pursuant to the inspection right provided in Section 13.7 of this Declaration (Right to Inspect).

13.2.8. "Termination of Mediation" means a period of time expiring thirty (30) days after a mediator has been agreed upon by the parties (however, a mediator shall be selected no later than forty-five (45) days after the Claimant has given notice to the Respondent of the Claim and if the parties are unable to agree on a mediator, one shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent) and upon the expiration of which the Claimant and Respondent have not settled the Claim.

Section 13.3. *Approval Required for Association Actions.*

Except as provided in Section 13.6 of this Declaration (Exclusions from "Claim"), the approval of seventy-five percent (75%) of a quorum (as provided in Section 13.4 of this Declaration (Notice and Quorum for Association Actions)) of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, or voting pursuant to written ballot, must be obtained before the Association shall have the power to institute action on any Claim pursuant to this Article, or to make any counterclaim or cross-claim in any lawsuit or other action brought against the Association. Such approval must be obtained in accordance with the requirements of Section 13.4 of this Declaration (Notice and Quorum for Association Actions).

Section 13.4. *Notice and Quorum for Association Actions.*

Written notice of any meeting of Members which includes a vote pursuant to Section 13.3 of this Declaration (Approval Required for Association Actions) shall be sent to all Members not

less than thirty (30) days nor more than fifty (50) days in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include the following information:

13.4.1. A statement regarding the nature of the Claim. Such statement shall include, without limitation, the name(s) of the proposed Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and

13.4.2. A good-faith estimate of the costs and fees, including the fees of consultants, expert witnesses and attorneys, reasonably anticipated to be incurred by or for the Association in prosecuting the Claim, with such estimate prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

13.4.3. A statement advising Members that the costs and fees of prosecuting any Claim may substantially increase the amount of assessments payable by the Owners to the Association; and

13.4.4. A good-faith estimate of the manner in which any moneys reasonably anticipated to be recovered from the Claim will be distributed or paid to consultants, expert witnesses, the Association, its attorney(s) and any others, prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

13.4.5. A good faith estimate of the projected time frame for resolution of the Claim; and

13.4.6. All terms and provisions of the agreement between the Association and the attorney(s) the Board proposes to have prosecute the Claim.

The presence of Members or of proxies, or if by ballot then receipt by the Association of written ballots, entitled to cast seventy-five percent (75%) of all of the Association votes, shall constitute a quorum at any meeting at which the Members vote on approval of any Claim the Association wishes to bring.

Section 13.5. *Required Form of Proxy or Ballot.*

Each written proxy, and each ballot, which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim shall contain the following statement:

Despite the fact that my annual assessments may be significantly increased by the costs and fees associated with the proposed claim, I/we APPROVE the authority of the Association to bring such claim.

Section 13.6. *Exclusions from "Claim".*

Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties

thereto otherwise agree, "Claim" does not include the following, whether such are brought by lawsuit, counterclaim or cross-claim and the same shall not be subject to the provisions of this Article:

13.6.1. An action by the Association to enforce any provision of Article 4 of this Declaration (Assessments); and

13.6.2. An action by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to enforce any of the provisions of Article 11 of this Declaration (Restrictions) or of Article 5 of this Declaration (Architectural Review Committee); and

13.6.3. any suit between or among Owners, which does not include Declarant, or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

13.6.4. any suit in which any indispensable party is not a Party.

Section 13.7. *Right to Inspect.*

Prior to any Party commencing any proceeding to which another Party is a party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute; provided, however, any correction to, or redesign of, an Improvement shall be made upon terms and conditions acceptable to all affected Parties. In the exercise of the inspection rights contained herein, the Inspecting Party shall:

13.7.1. Be careful to avoid unreasonable intrusion upon, or harm, damage or costs to the affected Party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any Improvements to the Subject Property;

13.7.2. Minimize any disruption or inconvenience to any person who occupies the Subject Property;

13.7.3. Remove daily all debris caused by the inspection and located on the Subject Property; and

13.7.4. In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials from the Subject Property and repair and replace all damage, and restore the Subject Property to the condition of the Subject Property as of the date of the inspection unless the Subject Property is to be immediately repaired.

The Inspecting Party shall not permit any lien, claim or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the Subject Property. The

Inspecting Party shall indemnify, defend, and hold harmless the affected Owners and their tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from any breach of this Section by the Inspecting Party.

Section 13.8. *Mandatory Procedures.*

13.8.1. *Good Faith Negotiations.* The Parties shall make every reasonable effort to meet in person and confer for the purposes of resolving the Claim by good faith negotiation. Any Party may be represented by attorneys and independent consultants to assist such Party in negotiations and to attend meetings.

13.8.2. *Notice.* Prior to proceeding with any claim against a Respondent, each Claimant shall give a notice to each Respondent, which notice shall state plainly and concisely:

13.8.2.1. the nature of the Claim, including all persons involved and Respondent's role in the Claim;

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

13.8.2.3. the specific relief and/or proposed remedy sought.

13.8.3. *Mediation.*

13.8.3.1. If the Parties do not resolve the Claim through negotiations within thirty days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

13.8.3.2. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

13.8.3.3. Any settlement of the Claim through mediation shall be documented in writing by the mediator, shall include a release of the Claim by all Claimants in favor of all Respondents, and shall be signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

13.8.3.4. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

13.8.3.5. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 13.8.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 13.8 of this Declaration (Mandatory Procedures). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

13.8.4. *Binding Arbitration.*

13.8.4.1. Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the parties to the Claim, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

13.8.4.2. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

13.8.4.3. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all parties to the Claim.

Section 13.9. *Liability for Failure of Association to Maintain an Action*

No director or officer of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (i) the director or officer was acting within the scope of his or her duties; (ii) the director or officer was not acting in bad faith; and (iii) the act or omission was not willful, wanton or grossly negligent.

Section 13.10. *Severability.*

All provisions of this Article are severable. Invalidation of any of the provisions of this Article, by judgment, court order or otherwise, shall in no way affect or limit any other provisions of this Article which shall remain in full force and effect.

Section 13.11. *Amendment.*

Notwithstanding anything to the contrary contained in this Declaration and subject to the last sentence of Section 14.9.1 hereof, this Article 13 (Dispute Resolution) shall not be amended unless such amendment is approved by Members to which at least eighty percent (80%) of the votes in the Association are allocated.

**ARTICLE 14.
GENERAL PROVISIONS**

Section 14.1. *Enforcement; Fines.*

14.1.1. Subject to the provisions of Article 13 (Dispute Resolution), enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings subject to Article 13 of this Declaration (Dispute Resolution). For each claim, including, but not limited to, counterclaims, cross claims and third-party claims, in any proceeding to enforce the provisions of the Act or of the Declaration, Articles of Incorporation, Bylaws or rules and regulations of the Association, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

14.1.2. Subject to the following sentence, the Association shall have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. Prior to collection of any fines, the Association, the Board of Directors, or an authorized management company of the Association, shall mail a notice of violation to the Person(s) alleged to be in violation of any such provision and such notified Person(s) has a right to a hearing upon submission to the Board of Directors of a written request for hearing, which is properly signed by such Person(s) and dated, within ten (10) days after the notice of violation has been mailed or such other time as the Board of Directors may decide in its discretion from time to time; failure of a notified Person to request for hearing in writing within the required time period shall constitute a waiver of such right to a hearing.

Section 14.2. *Severability.*

All provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 14.3. *Conflict of Provisions.*

In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 14.4. *Conflict with the Act.*

In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms.).

Section 14.5. *Annexation; Withdrawal.*

14.5.1. Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

14.5.2. Notwithstanding the foregoing, the Declarant may annex to this Declaration the Annexable Area or any portion(s) thereof, until termination of this right as provided below, without consent of any other Owners, Security Interest Holders, or any other Person. The Declarant's right to annex the Annexable Area without approval shall terminate automatically at the time of termination of the Special Declarant Rights as provided in Section 1.26 of this Declaration (Special Declarant Rights). Each such annexation shall be effected, if at all, by recording an Annexation of Additional Land in the County where the annexed property is located, which document:

14.5.2.1. shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land;

14.5.2.2. shall state that the Declarant (or other Person(s)) is the owner of the Lots thereby created, if any;

14.5.2.3. shall assign an identifying number to each new Lot, if any;

14.5.2.4. shall describe any Common Elements within the property being annexed;

14.5.2.5. shall, if the annexed property includes one (1) or more Lots, reallocate the Allocated Interests among all Lots; and

14.5.2.6. may include such other provisions as the Declarant deems appropriate. Other provisions that may be included in an Annexation of Additional Land include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in the preceding sentence may be amended with the consent of the Owners of sixty-seven percent (67%) of the Lots to which such other provisions apply.

14.5.3. Except as otherwise specifically stated in the Annexation of Additional Land, all provisions of this Declaration, including without limitation (as to Lots) those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the effective date of the Annexation of Additional Land (which shall constitute the date of recording of the Annexation of Additional Land unless otherwise stated therein).

14.5.4. The property which is described on the attached Exhibit A and each portion of the Community which is annexed to this Declaration by the Declarant shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, the Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community, upon the first conveyance of any Lot in such portion of the Community to any Person other than the Declarant, but in any event, no later than the automatic termination provided in Section 1.26 of this Declaration (Special Declarant Rights).

Section 14.6. *Minor Violations of Setback Restrictions.*

If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the Lot on which is located the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines or Lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

Section 14.7. *Subdivision or Replatting of Lots.*

The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant in the Community. Without limiting the generality of the foregoing, the Declarant reserves the right to move any Lot line(s) on Lot(s) owned by the Declarant, for the purpose of accommodating Improvements which are constructed or are to be constructed; provided that such Lot line adjustments, if any, shall not change the number of Lots in the Community at the time each such Lot line adjustment is approved by the applicable governmental entity. The rights provided for in this Section shall terminate automatically as provided in Section 1.26 of this

Declaration (Special Declarant Rights). No Lot may be further subdivided from that existing at the time such Lot becomes subject to this Declaration, except by Declarant.

Section 14.8. *Declarant's Use.*

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, (but only with the prior written consent of the Declarant), to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its discretion from time to time. Further, nothing contained in this Declaration shall limit the rights of Declarant or require the Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements; (b) to use any Improvements on any property (with the consent of the Owner thereof) as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or (c) to require Declarant to seek or obtain Architectural Review Committee approval or any other approvals under this Declaration for any such activity. Any real estate used as a sales office, management office, or a model, shall be a Lot or Common Elements, as such real estate is designated in this Declaration or the applicable Annexation of Additional Land.

Section 14.9. *Duration, Revocation, and Amendment.*

14.9.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration (including, without limitation, Sections 13.11 (Amendment), Sections 14.9.3 and 14.9.4 of this Declaration), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests. Notwithstanding the foregoing and except as provided for in Section 14.5.2.6 hereof, while Declarant owns any portion of the property described on Exhibit A and/or Exhibit D, no amendment may be made to this Declaration except with the affirmative vote or agreement of Members holding at least ninety percent (90%) of the Allocated Interests.

14.9.2. Every amendment, if any, to the Declaration must be done in compliance with the Act.

14.9.3. Notwithstanding anything to the contrary contained in this Declaration, the Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically as provided in Section 1.26 of this Declaration (Special Declarant Rights).

14.9.4. Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.26 of this Declaration (Special Declarant Rights).

14.9.5. Except as to amendments which may be made by the Declarant, amendments to the Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration or as permitted by the Act, may be signed by the Declarant and shall require no other signatory.

Section 14.10. *Registration of Mailing Address.*

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the 75% Control Period shall be sent by registered or certified mail, postage prepaid, c/o Amber Homes, Inc. 14901 East Hampden Avenue, Suite 320, Aurora, Colorado 80014, unless such address is changed by the Association during the 75% Control Period; subsequent to termination of the 75% Control Period, the Association shall notify the Owners of a different address for notices.

Section 14.11. *HUD or VA Approval.*

During the 75% Control Period, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more Security Interests and HUD or VA require such approval: amendment of this Declaration (except as provided in Sections 14.5 (Annexation; Withdrawal), 14.9.3 and 14.9.4 of this Declaration); termination of this Community; or merger or consolidation of the Association (except as provided in Section 3.12 (Merger)).

Section 14.12. *Termination of Community.*

The Community may be terminated only in accordance with the Act.

Section 14.13. *Transfer of Special Declarant Rights.*

A Special Declarant Right created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Community is located, and in accordance with the Act.

Section 14.14. *Eminent Domain.*

The taking by eminent domain of a Lot(s), Common Elements, or any portion thereof, shall be done in accordance with applicable law, including without limitation the Act.

Section 14.15. *Limitation on Liability.*

The Association, the Board of Directors, the Architectural Review Committee, the Declarant, and the officers, directors, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice.

Section 14.16. *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the Architectural Review Committee, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, 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 writing. Hence the Declarant shall have no liability for any of the foregoing or for any changes in density, changes to the Plat, changes in zoning, or changes in the number of Lots in the Community.

Section 14.17. *Disclaimer Regarding Safety.*

DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIMS ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS OR RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

Section 14.18. Headings.

The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

Section 14.19. Gender.

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

Section 14.20. Run with Land; Binding Upon Successors.

The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon this Community and all real property and Improvements which are now or hereafter become a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this 4th day of November, 2002

DECLARANT:

AMBER HOMES, INC., a Colorado corporation

By: [Signature]
Its: VICE PRESIDENT

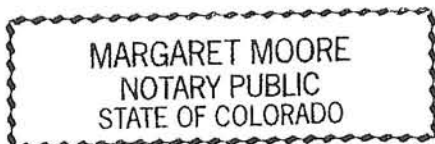
ajr/amber homes/the oaks/declaration for the oaks//10/23/02 7:49 AM

STATE OF COLORADO)
COUNTY OF Arapahoe) ss.

The foregoing instrument was acknowledged before me this 4th day of November 2002 by Scott Miller as Vice President of AMBER HOMES, INC., a Colorado corporation, as Declarant.

Witness my hand and official seal.
(S E A L)

Notary Public Margaret Moore
My Commission Expires: 4/19/2005



My Commission Expires 04/19/2005

EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
THE OAKS

(Community)

The following property as shown on the final plat of The Oaks Subdivision Filing No. One, recorded on November 7, 2001, at Reception No. 01106090, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended and supplemented from time to time:

Lot 9, Block 1
Tract A

EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
THE OAKS

(Common Elements)

The following property as shown on the final plat of The Oaks Subdivision Filing No. One, recorded on November 7, 2001, at Reception No. 01106090, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended and supplemented from time to time:

Tract A

EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
THE OAKS

(Certain Title Exceptions)

If recorded, the following documents are recorded in the office of the Clerk and Recorder of Douglas County, Colorado:

1. Taxes and assessments for the year of recording of this Declaration and for subsequent years, not yet due and payable.
2. Right of Way for ditches or canals constructed by the Authority of the United States as reserved in United States Patent recorded October 08, 1899, in Book X at Page 352.
3. Right of proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded October 08, 1899, in Book X at Page 352.
4. Right of proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded November 12, 1895, in Book P at Page 210.
5. Ordinance No. 85-9, relative to Annexation recorded June 14, 1985 in Book 579 at Pages 167 and 258.
6. Ordinance No. 85-10, relative to Annexation recorded June 14, 1985 in Book 579 at Page 173.
7. Ordinance No. 85-11, relative to Annexation recorded June 14, 1985 in Book 579 at Page 204.
8. Annexation and Development Contract between the Town of Castle Rock and First Capitol Corporation recorded June 14, 1985 in Book 579 at Page 208. First Amendment recorded June 16, 1986 in Book 646 at Page 694. Second Amendment recorded July 21, 1987 in Book 735 at Page 675. Ratification recorded July 29, 1987 in Book 737 at Page 464. Third Amendment to Annexation Contract recorded October 24, 1995 in Book 1295 at Page 1046.
9. Annexation of the Oaks of Castle Rock recorded June 14, 1985 at Reception No. 355329.
10. Preliminary Plan of the Oaks of Castle Rock recorded June 14, 1985 at Reception No. 355331.

11. Any boundary discrepancy due to the location of the fence lines and the effect of any right, title or interest that may be claimed due to said discrepancy, as is disclosed by survey by David E. Archer, dated July 14, 1997, Job No. 95-0417.

Note: Upon certification by CLC Associates, Inc. that no fencelines exist to create any boundary discrepancies, the above exception will be deleted.

12. The Oaks Filing No. 1 Final P.D. Site Plan recorded November 7, 2001 under Reception No. 01106089.
13. Terms, conditions and provisions, burdens and obligations of The Oaks Subdivision Filing No. One Subdivision Improvements Agreement recorded November 7, 2001 in Book 2175 at Page 63.
14. Easement Deed as granted to the Town of Castle Rock recorded November 7, 2001 in Book 2175 at Page 93.
15. Terms, conditions and provisions, burdens and obligations of Public Improvements Agreement recorded November 7, 2001 in Book 2175 at Page 101. Assignment of Public Improvements Agreement and Development Rights recorded November 7, 2001 in Book 2175 at Page 114.

EXHIBIT D
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
THE OAKS

(Annexable Area)

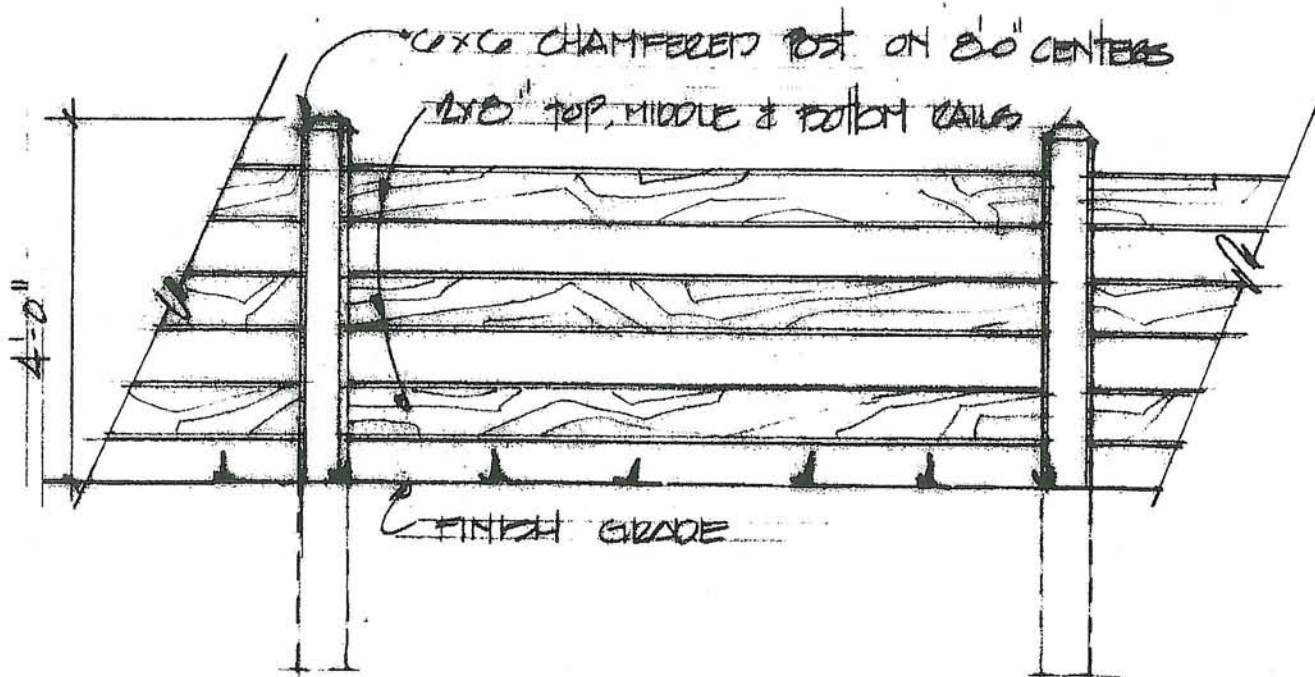
All of the property as shown on the final plat of The Oaks Subdivision Filing No. One, recorded on November 7, 2001, at Reception No. 01106090, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended and supplemented from time to time;

EXCEPT AND EXCLUDING all of the property described on Exhibit A to this Declaration and any publicly dedicated property.

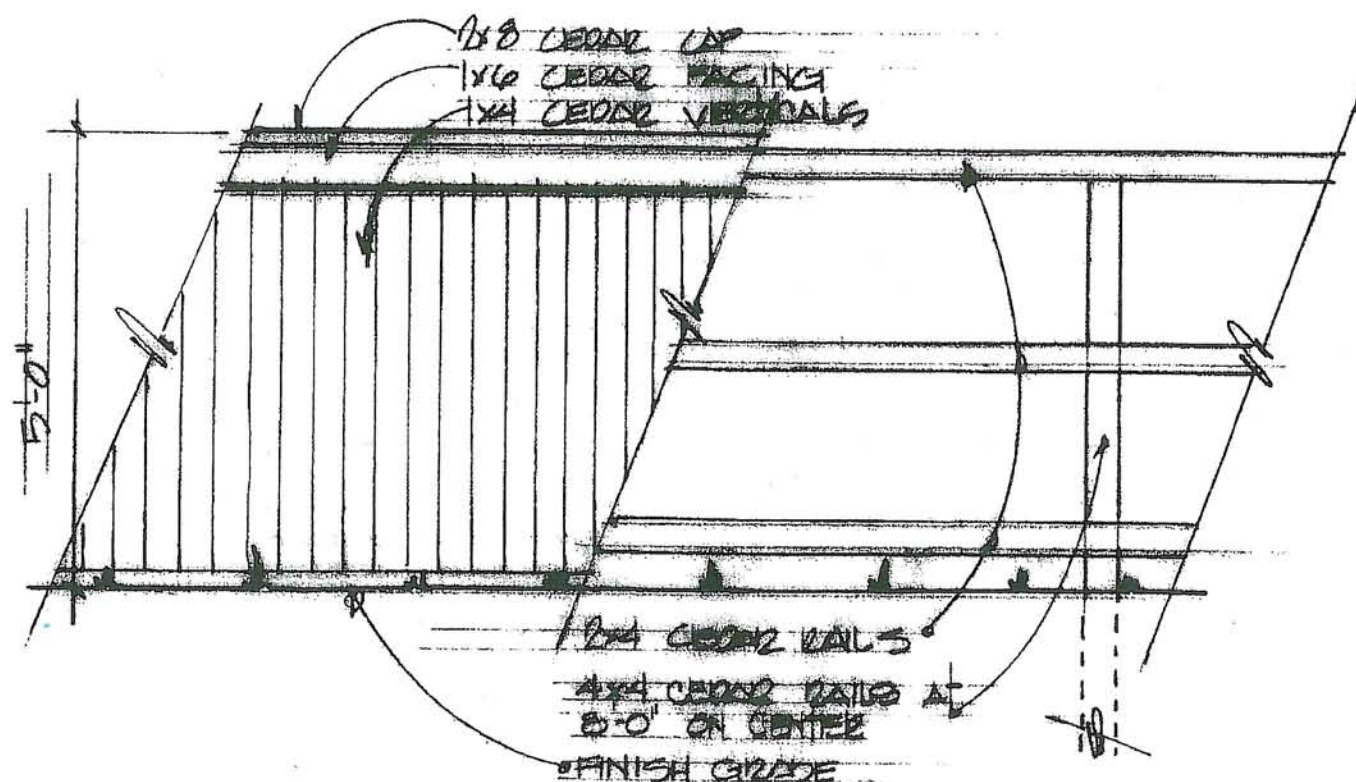
EXHIBIT E
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
THE OAKS

(Fence Restrictions)

EXHIBIT E



FENCE ELEVATION TYPE "A"
SCALE 1/2" = 1'-0"



FENCE ELEVATION TYPE "B"
SCALE 1/2" = 1'-0"