

NOTICE TO CLOSING AGENTS: THIS IS A FEE-ASSESSED SUBDIVISION. CHECK WITH THE HOMEOWNERS ASSOCIATION-FOR FEE SCHEDULE.

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
RIVER WEST P.U.D. COMMUNITY ASSOCIATION
(a Common Interest Community)**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR RIVER WEST P.U.D. COMMUNITY ASSOCIATION is made and entered into this 5th day of November, 1997, by RIVER RIDGE DEVELOPMENT COMPANY OF WINDSOR LLC, a Colorado limited liability company ("the Declarant").

RECITALS

A. The Declarant is the owner of that certain real property located in the County of Larimer, State of Colorado, legally described on Exhibit "All attached hereto and incorporated herein by reference ("the Real Estate").

B. The Declarant desires to create a Common Interest Community on the Real Estate pursuant to the Colorado Common Ownership Act, C.R.S. S 38-33.3-101, et seq., as it may be amended from time to time ("the Act") , in which portions of the Real Estate will be designated for separate ownership and the remainder of which will be owned by an Association of Lot Owners.

C. The Declarant has caused to be incorporated under the laws of the State of Colorado RIVER WEST P.U.D. COMMUNITY ASSOCIATION, a nonprofit corporation, for the purpose of exercising the functions herein set forth.

ARTICLE 1. SUBMISSION OF REAL ESTATE

The Declarant hereby publishes and declares that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors and assigns. Additionally, Declarant hereby submits the Real Estate to the provisions of the Act. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

ARTICLE II. DEFINITIONS

Section 1: "Allocated Interests" shall mean and refer to the Common Expense Liability and votes in the Association.

Section 2: "Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

Section 3: "Architectural Control Committee" shall mean and refer to the committee established to review and approve plans for the construction of improvements on Lots as set forth in Article VIII of this Declaration.

Section 4: "Architectural Guidelines" shall mean and refer to the architectural guidelines, architectural procedures, architectural standards, architectural criteria, and all other rules and regulations adopted by the Executive Board, including all amendments thereto.

Section 5: "Association" or "Lot Owners' Association" shall mean and refer to a Lot Owners' association organized and existing under Section 38-33.3-301 of the Act.

Section 6: "Bylaws" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

Section 7: "Common Elements" shall mean and refer to any Real Estate within the Common Interest Community owned or leased by the Association, other than a Lot.

Section 8: "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Lot pursuant to this Declaration.

Section 9: "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

Section 10: "Common Interest Community" shall mean and refer to the Real Estate described on Exhibit "All attached hereto and incorporated herein by reference.

Section 11: "Dealer" shall mean and refer to a Person in the business of selling Lots for such Person's own account.

Section 12: "Declarant" shall mean and refer to any Legal Entity, Person, or group of Persons acting in concert who:

(a) As a 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

(b) Reserves or succeeds to any Special Declarant Right.

Section 13: "Declaration" shall mean and refer to this Declaration, including any amendments hereto, and also including, but not limited to, Plats of the Real Estate recorded in the Clerk and Recorder's office of Larimer County, Colorado.

Section 14: "Dispose" or "Disposition" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Lot, but the term does not include the transfer or release of a Security Interest.

Section 15: "Documents" shall mean and refer to this Declaration, the Plat, the Architectural Guidelines, the Articles of Incorporation, Bylaws, and rules and regulations of the Association.

Section 16: "Executive Board" shall mean and refer to the Executive Board of the Association.

Section 17: "Identifying Number" shall mean and refer to a symbol or address that identifies only one Lot or Lot owner in the Common Interest Community.

Section 18: "Lot" shall mean and refer to a physical portion of the Common Interest community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Plat. The term "Lot" as used in this Declaration shall have the same meaning as the term "Unit" as used in the Act.

Section 19: "Lot Owner" shall mean and refer to 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. The Declarant is the Owner of any Lot created in the Declaration until that Lot is conveyed to another Person. The term "Lot owner" as used in this Declaration shall have the same meaning as the term "Unit owner" as used in the Act.

Section 20: "Mortgagee" shall mean and refer to any Person who has a security interest in a Lot and who has provided written notice of such interest to the Association. "First Mortgagee" shall mean and refer to a Mortgagee who has a Security Interest in a Lot prior to all other Security Interests except the Security Interest for real property taxes and assessments made by any governmental authority having jurisdiction over the Common Interest Community. "Eligible Mortgagee" shall mean a First Mortgagee that has given written notice to the Association of its first mortgage and has made demand for the notices required by Article XI hereinafter.

Section 21: "Person" shall mean and refer to a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or combination thereof.

Section 22: "Plat" shall mean and refer to the Plat of the Real Estate recorded in the office of the Clerk and Recorder of Larimer County, Colorado, and all recorded amendments thereto.

Section 23: "Purchaser" shall mean and refer to a Person, other than a Declarant or a Dealer, who, by means of a transfer, acquires a legal or equitable interest in a Lot, other than:

- (a) A leasehold interest in a Lot of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or
- (b) A Security Interest.

Section 24: "Real Estate" shall mean and refer to the real estate described on Exhibit "All attached hereto and incorporated herein by reference.

Section 25: "Residence" shall mean and refer to a single-family residential dwelling constructed on a Lot.

Section 26: "Residential Use" shall mean and refer to use of a Residence as a dwelling by a Single Family.

Section 27: "Rules and Regulations" shall mean and refer to any instruments, however denominated, which are adopted by the Executive Board for the regulation and management of the Common Interest Community, including any amendment to those instruments.

Section 28: "Security Interest" shall mean and refer to an interest in real estate created by contract or conveyance which secures payment or performance of an 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 lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 29: "Single Family" shall mean and refer to any individual or group of persons related by blood or marriage or any

unrelated group of not more than three (3) Persons living together in a Residence.

ARTICLE III. COMMON INTEREST COMMUNITY

Section 1: Name. The name of the Common Interest Community is RIVER WEST P.U.D.

Section 2: Association. The name of the Association is RIVER WEST P.U.D. COMMUNITY ASSOCIATION.

Section 3: Planned Community. The Common Interest Community is a planned community.

Section 4: County. The name of every county in which any part of the Common Interest Community is situated is Larimer County, Colorado.

Section 5: Legal Description. A legal description of the Real Estate included in the Common Interest Community is set forth on Exhibit "All attached hereto and incorporated herein by reference.

Section 6: Maximum Number of Lots. The maximum number of Lots that the Declarant reserves the right to create within the Common Interest Community is two hundred twenty (220).

Section 7: Boundaries of Lots. The boundaries of each Lot are set forth on the Plat of the Real Estate. The Plat sets forth the Lot's Identifying Number.

Section 8: Allocated Interests. The Common Expense Liability and votes in the Association shall be allocated among the owners as follows:

(a) Except as provided in Article VI, Section 5, of this Declaration, each Owner's share of the Common Expenses shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within the Common Interest Community.

(b) Each owner shall be entitled to one (1) vote for each Lot owned.

Section 9: Recording Data. All easements and licenses to which the Common Interest Community is presently subject are listed on Exhibit "B" attached hereto and incorporated herein by reference. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to the terms of this Declaration.

Section 10: Notice. Notice of matters affecting the Common Interest Community may be given to Lot Owners by the Association or by other Lot Owners in the following manner: Notice shall be hand delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. Such notice shall be deemed given when hand delivered or when deposited in the United States mail.

ARTICLE IV. ASSOCIATION

Section 1: Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. ownership of

such Lot shall be the sole qualification for membership. The **Association does not contemplate pecuniary gain or profit to the** Members thereof, and the specific purposes for which it is formed are as follows: (a) to operate the Common Interest Community in accordance with the Act, as amended, and the Colorado Nonprofit Corporation Act, as amended; (b) to promote the health, safety, welfare, and common benefit of the residents of the Common Interest Community; and (c) to do any and all permitted acts, and to have and exercise any and all powers, rights, and privileges which are granted to a common interest community association under the laws of the State of Colorado, this Declaration, and the Bylaws, Rules and Regulations, and other governing documents of the Association.

Section 2: Voting Rights and Assignment of Votes. The effective date for assigning votes to Lots created pursuant to this Declaration shall be the date on which this Declaration is recorded in the records of the Clerk and Recorder of Larimer County, Colorado.

Section 3: Authority. The business and affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by this Declaration and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association, as amended from time to time.

Section 4: Powers. The Association shall have all of the powers, authority, and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Common Interest Community.

Section 5: Declarant Control. The Declarant, or persons designated by it, may appoint and remove the members of the Executive Board of the Association for a period of twenty (20) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of Section 38-33.3-303(5) of the Act.

Section 6: Executive Board Powers and Duties. The Executive Board may act in all instances on behalf of the Association. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws.
- (b) Adopt and amend rules and regulations regarding the use and enjoyment of the Common Elements and the activities of occupants thereon.
- (c) Adopt and amend budgets for revenues, expenditures, and reserves.
- (d) Collect Common Expense Assessments from Lot Owners.
- (e) Hire and discharge Managers.
- (f) Hire and discharge independent contractors, employees, and agents, other than Managers.
- (g) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Documents in the Association's name, on behalf of the Association, or two (2) or more Lot owners on any matters affecting the Common interest Community.

- (h) Make contracts and incur liabilities.
- (i) Regulate the use, maintenance, repair, replacement, and modification of the Common Elements.
- (j) Cause additional improvements to be made as a part of the Common Elements.
- (k) Acquire, hold, encumber, and convey in the Association's name, any right, title, or interest to real estate or personal property, but the Common Elements may be conveyed or subjected to a Security Interest only pursuant to this Declaration and the Act.
- (l) Grant easements for any period of time, including permanent easements, leases, licenses, and concessions through or over the Common Elements, subject to the restrictions and limitations of this Declaration and the Act.
- (m) Impose and receive a fee or charge for the use, rental, or operation of the Common Elements and for services provided to Lot owners.
- (n) Impose a reasonable charge for late payment of Assessments and levy a reasonable fine for violation of the Documents.
- (o) Impose a reasonable charge for the preparation and recordation of supplements or amendments to this Declaration and for statements of unpaid Assessments.
- (p) Provide for the indemnification of the Association's officers and the Executive Board and maintain directors' and officers' liability insurance.
- (q) Assign the Association's right to future income, including the right to receive Common Expense Assessments, but only upon the affirmative vote of the owners of Lots to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose.
- (r) Exercise any other powers conferred by the Documents.
- (s) Exercise any other power that may be exercised in the State of Colorado by a legal entity of the same type as the Association.
- (t) **Exercise any other power** necessary and proper for the governance and operation of the Association.
- (u) By resolution, establish permanent and standing committees of Executive Board members to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Lot Owners and the Executive Board.

Section 7: Professional Management and Contract Termination Provisions. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term

of three (3) years and shall provide for termination by either **party thereto, with or without cause. and without payment of a** termination fee, upon sixty (60) days' prior written notice. Any contracts, licenses, or leases entered into by the Association while there is Declarant control of the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of Declarant control of the Association, upon sixty (60) days' prior written notice; provided, however, that any contract entered into at any time by the Association providing for services of the Declarant shall provide for termination at any time by either party thereto, without cause and without payment of a termination fee, upon sixty (60) day's prior written notice.

Section 8: Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine their qualifications, powers, and duties or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

Section 9: Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration in the event that the need for maintenance or repair of the Common Elements or any improvements located thereon is caused by the willful or negligent act, omission, or misconduct of any Lot Owner or by the willful or negligent act, omission, or misconduct of any member of such Lot owner's family or by a guest or invitee of such Lot Owner or any tenant or tenant's family, the costs of such repair and maintenance shall be the personal obligation of such Lot Owner, and any costs, expenses, and fees incurred by the Association for such maintenance, repair, or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall be a lien against such Owner's Lot as provided in this Declaration. A determination of the willful or negligent act, omission, or misconduct of any Lot Owner or any member of a Lot Owner's family or a guest or invitee of any Lot Owner or tenant or tenant's family and the amount of the Lot owner's liability therefore shall be determined by the Executive Board after notice to the Lot Owner and the right to be heard before the Executive Board in connection therewith.

Section 10: Indemnification. To the full extent permitted by law, each officer and member of the Executive Board of the Association shall be and are hereby indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party or in which they may become involved by reason of their being or having been an officer or 'member of the Executive Board of the Association, or any settlement thereof, whether or not they are an officer or a member of the Executive Board of the Association at the time such expenses are incurred, except in such cases where such officer or member of the Executive Board is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Association.

ARTICLE V.

SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 1: Special Declarant Rights. Declarant hereby reserves the right for a period of twenty (20) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado, to perform the acts and exercise the

rights hereinafter specified ("the Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- (a) Completion of Improvements. The right to complete improvements indicated on the Plat.
- (b) Sales Management and Marketing. The right to maintain sales offices, management offices, signs advertising the Common Interest Community, and model Residences. The Declarant shall have the right to determine the number of model Residences and the size and location of the sales offices, management offices, and model Residences. The Declarant shall also have the right to relocate the sales offices, management offices, and model Residences from time to time at its discretion.
- (c) Construction Easements. The right to use easements through the Common elements for the purpose of making improvements within the Common Interest Community.
- (d) Master Association. The right to make the Common Interest Community subject to a master association.
- (e) Merger. The right to merge or consolidate a Common Interest Community with another Common Interest Community of the same form of ownership.
- (f) Control of Association and Executive Board. The right to appoint or remove any Executive Board member. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Lot Owners other than the Declarant, at least one (1) Member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Lot Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Lot Owners other than the Declarant, not less than thirty-three and one-third percent (33.3%) of the Members of the Executive Board shall be elected by Lot Owners other than the Declarant.

Section 2: Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 1 above, Declarant also reserves the following additional rights ("the Additional Reserved Rights"):

- (a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of and to serve the Lot Owners within the Common Interest community.
- (b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of Common Elements, which may or may not be a part of the Common Interest Community for the benefit of the Lot owners and/or the Association.

- (c) Other Rights. The right to exercise any Additional Reserved Right created. by any other provision of this Declaration.

Section 3: Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in each county in which any portion of the Real Estate is located. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE VI. ASSESSMENT FOR COMMON EXPENSES

Section 1: Common Expenses Prior to Assessments. Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses.

Section 2: Personal Obligation of owners for Common Expenses. After Assessments are made by the Executive Board, the Declarant, for each Lot owned, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Common Expense Assessments imposed by the Association to meet the estimated Common Expenses.

Section 3: Purpose of Assessment. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and for the improvement and maintenance of the Common Elements.

Section 4: Amount of Assessment. Except as provided for in Section 5 below, the amount of the Assessment for the estimated Common Expenses which shall be paid by each Owner shall be determined by dividing the aggregate sum the Association reasonably determines to be paid by all owners by the total number of Lots within the Common Interest Community, and the Owner of each Lot shall pay his proportionate share of such aggregate sum.

Section 5: Disproportionate Assessments.

- (a) Any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited in the proportions determined by the Executive Board.
- (b) The costs of insurance shall be assessed in proportion to the risk.
- (c) The cost of utilities shall be assessed in proportion to usage.
- (d) If any Common Expense is caused by the misconduct of any Lot Owner, the Executive Board may assess said expense exclusively against said owner as provided in Article IV, Section 9, of this Declaration.
- (e) Fees, charges,, taxes, impositions, late charges, fines, collection costs, and interest charged against a Lot or Lot Owner shall be assessed as a Common Expense Assessment against that Lot or Lot Owner.

Section 6: Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Assessment shall be Five Hundred Dollars (\$500) per Lot.

- (a) From and after January 1 of the year immediately **following the conveyance of the first Lot to an Owner**, the maximum annual Assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index for the Denver/Boulder region (published by the Department of Labor, Washington, D.C.) for the preceding month of July.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual Assessment may be increased above that established by the Consumer Price Index formula by a vote of the Owners for the next succeeding two (2) years, and at the end of each such period of two (2) years, for each succeeding period of two (2) years, provided that any such change shall have the assent of two-thirds of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the Assessments undertaken as an incident to a merger or consolidation in which the Association participates.
- (c) The Executive Board may fix the annual Assessment at an amount not in excess of the maximum. For purposes of this Section 6, the calculation of the maximum annual Assessment shall exclude any Lot owner's portion of Assessments associated with the maintenance and repair of Limited Common Elements or Assessments made pursuant to Section 5(e) above.

Section 7: Special Assessments for Capital Improvements. In addition to the annual Assessments authorized above, the Association may levy, in any assessment year, 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 the common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two thirds of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8: Notice and Quorum for any Action Authorized Under Sections 6 and 7. Written notice of any meeting called for the purpose of taking any action authorized under Section 6 or 7 shall be sent to all owners 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 Owners or of proxies entitled to cast sixty percent (60%) of all the votes of the Owners 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 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 9: Uniform Rate of Assessment. Except as otherwise provided in section 5 above, both annual and special Assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 10: Date of Commencement of Annual Assessments; Due Dates. The annual Assessments provided for herein shall commence as to all Lots on **the first day of the** month following the conveyance of a Lot by the Declarant to a Purchaser. Unless the

Declarant is paying all assessments as provided in Section 1 above, (in which event no Annual Assessments shall commence during the period of time that Declarant is paying all said Assessments) . The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. written notice of the annual Assessment shall be sent to every owner subject thereto. The due dates shall be established by the Executive Board. The Executive Board may, at its discretion, permit annual assessments to be payable in installments, as determined by the Executive Board.

Section 11: Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Colorado shall be exempt from the Assessments created herein, except no land or improvements devoted to Residential Use shall be exempt from said Assessments.

Section 12: Reserve Fund. Upon the sale, transfer, or conveyance of a Lot, the Purchaser or transferee of the Lot shall deposit with the Association as a reserve fund an amount equal to one-third of the annual Assessment established by the Executive Board for the year in which the transfer occurs. If, at any time, an owner is in default in the payment of any Assessments due to the Association, the Association shall have the right to use said reserve, or as much thereof as may be necessary, to pay any delinquent amount owed to the Association and to reimburse the Association for any expenses incurred by the Association in collecting delinquent Assessments from the owner. In such event, the owner shall, upon written demand of the Association, promptly remit to the Association a sufficient amount of cash to restore the reserve to its original amount. In the event the reserve account is not used to make delinquent payments, then it shall be refunded to the owner, without interest, upon the sale of the owner's Lot. The Association shall have the right to commingle the reserve account with other funds of the Association and shall have no obligation to retain the reserve funds in a separate account or pay interest on the reserve funds. The reserve account shall not be deemed to be liquidated damages, and if claims of the Association against an Owner exceed the reserve account, the owner shall remain liable for the payment of the balance of such claims to the Association.

Section 13: Record of Receipts and Expenditures. The Association shall keep detailed and accurate records in chronological order of all of its receipts and expenditures, specifying and itemizing the maintenance and repair of the Common Elements and any other expenses incurred. Such records shall be available on request for examination by the Lot Owners and others with an interest, such as prospective lenders.

Section 14: Notice to Security Interest. Upon the request of a holder of a First Security Interest on a Lot, and upon payment of reasonable compensation therefor, the Association shall report to such party any unpaid assessment or other defaults under the terms of this Declaration which are not cured by the Lot owner within thirty (30) days.

Section 15: Certificate of Status of Assessments. The Association, upon written request to the Association, and upon payment of a reasonable fee, shall furnish to a Lot Owner or such Lot owner's designee or to a holder of a Security Interest or 'its designee, a statement, in recordable form, setting out the amount of the unpaid Common Expense Assessments against the Lot. The statement must be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the

Executive Board, and each Lot Owner - A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. Omission or failure to fix an assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of a Lot owner from his or her obligation to pay the same.

ARTICLE VII. LIEN FOR NONPAYMENT OF COMMON EXPENSES

Any Assessment, charge, or fee provided for in this Declaration or any monthly or other installment thereof which is not fully paid within ten (10) days after the date due shall bear interest at a rate determined by the Executive Board. In addition, the Executive Board may assess a late charge thereon. Any owner who fails to pay any Assessment, charge, or fee of the Association shall also be obligated to pay to the Association, on demand, all costs and expenses incurred by the Association, including reasonable attorney's fees, in attempting to collect the delinquent amount. The total amount due to the Association, including unpaid Assessments, fees, charges, fines, interest, late payment penalties, costs, and attorney's fees, shall constitute a lien on the defaulting Owner's Lot as provided in the Act. Said lien shall have the priority provided for in Section 38-33.3-116 of the Act. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association or any monthly or other installment thereof and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association or monthly or other installments thereof may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien.

ARTICLE VIII. ARCHITECTURAL CONTROL

Section 1: Architectural Control Committee.

- (a) Membership. The Architectural Control Committee shall consist of not less than three (3) nor more than five (5) persons. The number and members of each Architectural Control Committee shall be appointed by the Executive Board.
- (b) Purpose. The Architectural Control Committee is established for the purpose of maintaining within the Common Interest Community a consistent and harmonious general character of development and a style and nature of building design and visual appeal consistent with the natural beauty and features of the Common Interest Community.
- (c) Term. Each member of an Architectural Control Committee shall serve at the pleasure of the Executive Board. In the event of the death or resignation of any member of the Architectural Control Committee, the Executive Board shall appoint a successor.
- (d) Decisions. All decisions of the Architectural Control Committee shall be by a majority vote of those members of the Committee present at a meeting at which a quorum is present. A majority of the members of the Architectural Control Committee shall constitute a quorum.
- (e) Compensation. The members of the Architectural Control Committee shall not be entitled to any

compensation for services performed pursuant to this Declaration but shall be entitled to reimbursement by the Association for all costs and expenses incurred in performing their duties pursuant to this Declaration.

- (f) Delegation. The Architectural Control Committee shall have the power to delegate the responsibility for reviewing any application submitted to the Architectural Control Committee to a professional architect, landscape architect, engineer, or other professional person who is qualified to pass on the issues raised in the application. The Architectural Control Committee shall also have the power to require that the applicant pay the fees reasonably incurred by the Architectural Control Committee in retaining such professional to review the application submitted.

- (g) Nonliability. No member of the Architectural Control Committee shall be liable to the Association or to any Owner or Member for any loss, damage, or injury arising out of or in connection with the performance of the duties of the Architectural Control Committee under this Declaration, unless such action constitutes willful misconduct or bad faith on the part of the Architectural Control Committee. Review and consideration of any application submitted to the Architectural Control Committee shall be pursuant to this Declaration, and any approval granted shall not be considered approval of the structural safety or integrity of the improvements to be constructed or conformance of such improvements with building codes, zoning resolutions, subdivision regulations, or other governmental rules and regulations applicable to the Common Interest Community.

Section 2: Control. No construction, alteration, addition, modification, exterior decoration, exterior redecoration, or reconstruction of any building, fence, wall, structure, or other improvement within the Common Interest Community shall be commenced or maintained until the plans and specifications thereof shall have been approved by the Architectural Control Committee.

Section 3: Submission. Each application for approval shall include the following:

- (a) Two (2) complete copies of a site plan of the Lot. The site plan shall show the following information with a scale of one (1) inch on the plans for each twenty (20) feet of actual distance on the Lot:
 - (1) Finished elevation of the improvement.
 - (2) A building footprint with dimensions from front, rear, and side boundary lines of the Lot.
 - (3) Driveways and walkways located or to be constructed on the Lot.
 - (4) Any existing structures on the Lot.
 - (5) Location of improvements with respect to utility lines and facilities.

- (b) Two (2) complete sets of construction plans and specifications. Said plans and specifications shall include the following minimum information:
- (1) Floor plans of all levels of any Residence, which plans shall contain sufficient detail to describe the elements of the floor plan design.
 - (2) Total square footage for each level of any Residence.
 - (3) Building elevations on all sides of the proposed structure containing sufficient detail to determine roof form and material, window locations, siding material, and door placements.
 - (4) A written description of the materials to be used in the roof and exterior walls of the structure.
 - (5) The size, type, and material to be incorporated in any fencing to be located on the Lot.
 - (6) The color of any paint or stain to be applied to the improvements and the color of the roofing material.

Section 4: Guidelines. The Executive Board shall issue rules setting forth procedures for the submission of plans for approval and shall issue guidelines setting forth the criteria and standards that the Architectural Control Committee will use in considering plans submitted to it for approval. The Architectural Guidelines may include rules, criteria, and standards for height of structures; size of Residences, garages, and other structures; setbacks; roof pitch and materials; siding width and material; color; window and door design; fencing style, material, design, and location; driveway and walkway location and material; building location; and landscaping.

Section 5: Review of Plans and Specifications. The Architectural Control Committee shall consider and act upon any and all requests submitted for its approval. The Architectural Control Committee shall approve plans and specifications submitted to it only if it determines that the construction, alteration, or additions contemplated thereby, and in the location as indicated, will comply with this Declaration and the Architectural Guidelines, will serve to preserve and enhance the values of Lots within the Common Interest Community, and will maintain a harmonious relationship among structures, vegetation, topography, and the overall development of the surrounding area. The Architectural Control Committee shall consider the quality of workmanship, type of materials, and harmony of exterior design with other Residences located within the surrounding area. Should the Architectural Control Committee fail to approve or disapprove the plans and specifications submitted to it by an Owner of a Lot within thirty (30) days after complete submission of all required documents, then such approval shall not be required; provided, however, that no building or other structure shall be erected or allowed to remain on any Lot which violates the Architectural Guidelines or any of the covenants or restrictions contained in this Declaration. The issuance of a building permit or license for the construction of improvements inconsistent with this Declaration shall not prevent the Association or any owner from enforcing the provisions of this Declaration. Approval by the Architectural Control committee shall be in writing or by endorsement on the plans.

Section 6: Appeal. Any Owner who is dissatisfied with a decision of the Architectural Control Committee may appeal the decision to the Executive Board. Notice of appeal shall be delivered to any member of the Executive Board within ten (10) days after the decision of the Architectural Control Committee which is being appealed. Upon receipt of the notice of appeal, the Executive Board shall call a special meeting to be held within thirty (30) days after receipt of the notice of appeal. A member of the Architectural Control Committee, the Lot owner, and any other interested party shall have the right to present evidence to the Executive Board. The Executive Board shall affirm the decision of the Architectural Control Committee unless the Executive Board determines from the evidence presented that the decision of the Architectural Control Committee was arbitrary, capricious, or an abuse of discretion. Any owner who is dissatisfied with the decision of the Executive Board to either affirm or reverse the decision of the Architectural Control Committee may appeal the decision of the Executive Board to the general membership. Notice of appeal to the general membership shall be delivered to the president or the secretary of the Association within ten (10) days after the decision of the Executive Board. Upon receipt of the notice, the president or secretary shall convene a special meeting of the membership to be held within sixty (60) days after receipt of the notice of appeal. At the meeting of the general membership, a member of the Architectural Control Committee, the Lot Owner, and any other interested party shall have the right to present evidence and testimony concerning the decision of the Executive Board. The decision of the Executive Board shall be affirmed unless a majority of the entire membership votes to reverse the decision of the Executive Board.

Section 7: No Waiver of Future Approval. The approval by the Architectural Control Committee of any proposal or plans and specifications for any work to be done on a Lot shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans, specifications, drawings, or other matter subsequently or additionally submitted for approval by the same owner or by another Owner.

Section 8: Construction. Construction of a Residence or other structure approved by the Architectural Control Committee shall commence within three (3) months after approval of the plans and specifications, and the owner shall thereafter proceed diligently with such construction. The exterior of any such structure shall be completed within nine (9) months of the date of commencement of construction, and all landscaping shall be completed within twelve (12) months after the issuance of a certificate of occupancy for the Residence. The Architectural Control Committee may grant an extension of the foregoing time periods for good cause and when such extension is requested by the Owner. Upon approval of plans and specifications for the construction of a Residence on a Lot, the Owner of the Lot shall deliver to the Architectural Control Committee an amount as determined by the Architectural Control Committee, to be held by the Architectural Control Committee as a deposit ("the Deposit"). The Deposit shall be returned to the owner within thirty (30) days after the Residence has been completed; all excess debris removed from the Lot and adjacent sidewalks, streets, and Common Elements; and all landscaping installed. If the exterior of the Residence is not completed within nine (9) months after the date of commencement of construction, then the owner shall forfeit the Deposit. If the Residence is completed within nine (9) months of commencement of construction, but the owner has failed to complete construction in strict conformity with the approved Plans and Specifications or all excess debris has not been removed from the Lot and adjacent streets, sidewalks, and Common Elements within such time period or the landscaping is not completed within twelve (12) months after the issuance of a certificate of occupancy, then the Association

shall have the right, but not the obligation, to enter upon the Lot if necessary and complete the improvements in conformity with the approved Plans and Specifications, to remove such excess debris, or to complete the landscaping and deduct the cost of such work from the Deposit. The balance of the Deposit, if any, shall be returned to the owner within thirty (30) days after all excess debris has been removed from the Lot and adjacent streets, sidewalks, and Common Elements and all landscaping completed. Nothing in this section shall be interpreted to preclude the Architectural Control Committee or the Executive Board from seeking any other legal or equitable remedy against the owner, including specific performance, injunction, and additional damages.

Section 9: Land Use and Building Type. No building or other structure shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) Single-Family Residence per Lot, with attached garage, and such other structures as may be approved by the Architectural Control Committee.

Section 10: Garages. Each Residence shall include an attached garage having space for not less than two (2) nor more than four (4) automobiles parked side-by-side.

Section 11: Fences. Any fence to be constructed on a Lot must be approved by the Architectural Control Committee and conform to the design criteria set forth in the Architectural Guidelines.

Section 12: Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, by example and not limitation, satellite dishes, shall be erected, used, or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Architectural Control Committee.

Section 13: Maintenance of Lots and Improvements. Owners of Lots shall keep or cause to be kept all buildings, fences, and other structures and all landscaping located on their property in good repair. Rubbish, refuse, garbage, and other solid, semisolid, and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate on any Lot, and shall be disposed of in a sanitary manner. No Lot shall be used or maintained as a dumping ground for such materials. All containers shall be kept in a neat, clean, and sanitary condition and shall be stored inside a garage or other approved structure. No trash, litter, or junk shall be permitted to remain exposed upon any Lot and visible from adjacent streets or other Lots. Burning of trash on any Lot shall be prohibited. No lumber or other building materials shall be stored or permitted to remain on any Lot unless screened from view from other Lots and from the streets, except for reasonable storage during construction.

Section 14: Damage or Destruction of Improvements. In the event any Residence or, other structure constructed on a Lot is damaged, either in whole or in part, by fire or other casualty, said Residence or other structure shall be promptly rebuilt or remodeled to comply with this Declaration; or in the alternative, if the Residence or other structure is not to be rebuilt, all remaining portions of the damaged structure, including the foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Residence or other structure.

ARTICLE IX. USE RESTRICTIONS

Section 1: Trash Collection. The Association, acting through its Executive Board, shall have the right to require that any trash collection within the Common Interest Community be performed by one

company and that trash be collected from all Lots by such company on the same day of each week. The Executive Board shall select the trash company based on competitive bids. The cost of trash collection shall be paid by each Owner directly to the trash collection company, and the Association shall not have the duty to assess the cost of trash collection as a Common Expense. Nothing herein contained shall be construed to prohibit an owner from personally disposing of trash from his Lot. This Section shall not apply to a contractor during the construction of a Residence or other improvements on a Lot. The contractor may dispose of trash, rubbish, debris, and other construction materials from the Lot either personally or by contracting with a trash collection company. The trash collection company may remove trash, rubbish, debris, and other construction materials from the Lot during the construction of the Residence as often as the contractor deems appropriate.

Section 2: Resubdivision. No Lot may be further subdivided without the approval of the Executive Board. This provision shall not be construed to prohibit or prevent the dedication or conveyance of any portion of a Lot as an easement for utilities.

Section 3: Restrictions on Leasing. No Lot Owner shall lease his or her Residence to any group of people other than a Single Family nor shall any lease be for a period of less than thirty (30) days. All such leases shall be in writing and shall contain a covenant by the tenant or tenants that their use and occupancy of the Residence pursuant to the terms of the lease are subject to the terms and conditions set forth in this Declaration and that such tenant will abide by the terms contained herein as well as all Rules and Regulations promulgated by the Association.

Section 4: Household Pets. No animals of any kind shall be raised, bred, kept, or boarded upon any Lot, except that dogs, cats, or other household pets, as the same may be defined and determined by the Association, may be kept on any portion of the Common Interest Community, provided the same are not kept, bred, or maintained for any commercial purposes. Household pets shall be subject to all Rules and Regulations adopted by the Association and all governmental ordinances or laws applicable to the Common Interest Community. Dogs shall at all times be confined by fence, leash, or under voice command. Each Owner of a pet shall be responsible for the prompt clean up and removal of such pet's excrement from his or her Lot and the Common Elements.

Section 5: Use of Common Elements. All use of the Common Elements shall be subject to and governed by the Rules and Regulations adopted by the Executive Board. No damage shall be committed to the Common Elements by Lot Owners, their families, tenants, guests, and invitees.

Section 6: General Prohibition. No use shall be made of an owner's Lot which will in any manner violate the statutes or rules and regulations of any governmental authority having jurisdiction over the use of said Owner's Lot.

Section 7: Nuisance. Nothing shall be done or permitted on any Lot which is or may become a nuisance. No obnoxious or offensive activities or commercial businesses or trades shall be conducted on any Lot, except home occupations as defined and permitted by the applicable zoning resolution of the governmental entity having jurisdiction over the Common Interest Community and approved by the Executive Board. The Executive Board shall have the right to authorize business activities or home occupations upon any Lot, provided that it shall first determine that such home occupation or business shall not unreasonably interfere with the use and enjoyment of the Common Interest Community by other Lot owners and provided further that the owner conducting such business

activities or home occupation agrees to such reasonable Rules and Regulations as may be imposed upon him or her by the Executive Board.

Section 8: Temporary Structures. No structure of a temporary character, including, by example and not limitation, trailers, converted trailers, shacks, basements, tents, garages, or accessory buildings, shall be used on any Lot as a Residence, temporarily or permanently.

Section 9: Storage of Vehicles. Boats, campers, recreational vehicles, snowmobiles, all-terrain vehicles, motor homes, trailers, machines, tractors, semi-tractors, tractor trailers, trucks (except standard pickup trucks), and inoperative automobiles shall not be stored, parked, or permitted to remain on any Lot, except within fully-enclosed garages or within fully-screened, fenced areas approved by the Architectural Control Committee. For purposes of this provision, any disassembled or partially disassembled car or other vehicle or any car or other vehicle which has not been moved under its own power for more than one (1) week shall be considered an inoperative automobile subject to the terms of this Section.

Section 10: Disturbing the Peace. No person shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, disorderly, or obstreperous conduct, and no Owner shall knowingly permit such conduct upon any Lot owned by such Owner.

ARTICLE X. DRAINAGE

Section 1: Acknowledgement. The soils within the state of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Residence if the Residence and the Lot on which it is constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils.

Section 2: Perimeter Drain and Moisture. Each Owner shall install a perimeter drain around his or her foundation as necessary. Each Owner of the following Lots shall be required to install a perimeter drain around the foundation of his or her Residence, and said drain shall be tied to the underdrain system in the Real Estate: Lots 95 through 103, inclusive; 119 through 135, inclusive; 180 through 191, inclusive; and 200 through 203, inclusive. Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Residence constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Residence.

Section 3: Slope Drain and Moisture. Each Owner of the following Lots shall be required to install an appropriate slope drain to be located at least ten (10) feet behind the Residence, to grade the rear of the Lot toward this slope drain, and to connect this drain to the perimeter drain around the foundation of the Residence: Lots 125 through 135, inclusive, and Lots 182 through 191, inclusive.

Section 4: Grading. Each owner of a Lot shall maintain the grading and drainage patterns of the Lot as indicated in the subdivision plans on file with the Planning Office of the governmental entity having jurisdiction over the Real Estate.

Section 5: Water Flow. The Owner of a Lot shall not impede or hinder in any way the water falling on the Lot from reaching the drainage courses established for the Lot and the Common Interest Community.

Section 6: Action by Owner. To accomplish the foregoing, each Owner of a Lot covenants and agrees, among other things:

- (a) Not to install improvements, including, but not limited to, landscaping, items related to landscaping, walls, walks, driveways, parking pads, patios, fences, additions to the Residence, outbuildings, or any other item or improvement which will change the grading of the Lot. The installation of such improvements is acceptable so long as the manner of installation is consistent with, and does not change, the grading and drainage patterns of the Lot.
- (b) To fill with additional soil any back-filled areas adjacent to the foundation of the Residence and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.
- (c) Not to water the lawn or other landscaping on the Lot excessively.
- (d) Not to plant flower beds (especially annuals) and vegetable gardens adjacent to or within three (3) feet of the foundation and slabs of the Residence.
- (e) If evergreen shrubbery and grass is used within five (5) feet of the foundation walls, to water the shrubbery and grass by controlled hand watering and to avoid excessive watering.
- (f) To minimize or eliminate the installation of piping and heads for sprinkler systems within five (5) feet of foundation walls and slabs.
- (g) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to nonperforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.
- (h) To install a moisture barrier (such as polyethylene) under any gravel beds.
- (i) To maintain the gutters and downspouts which discharge water into extensions or splash blocks by assuring that (1) the gutters and downspouts remain free and clear of all obstructions and debris; (2) the water that flows from the extension or the splash block is allowed to **flow rapidly away from the foundation and/or** slabs; and (3) the splash blocks are maintained under sill cocks.
- (j) To re-caulk construction joints opening up between portions of the exterior slabs and garage slabs in order to thereby seal out moisture.

Section 7: Disclaimer. The Declarant shall not be liable for any loss or damage to the Residence, any other building or structure, concrete slab, driveway, patio, sidewalk, wall, or other

structure on any Lot caused by, resulting from, or in any way connected with soil conditions on any-Lot.

ARTICLE XI. MORTGAGEE PROTECTION

Section 1: Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests and others as identified in Section 2. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 2: Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Lots which in the aggregate have allocated to them such specified percentage of votes in the Association as compared to the total allocated to all Lots then subject to Security Interests held by Eligible Mortgagees.

Section 3: Notices of Actions. The Association shall give prompt written notice to each Eligible Mortgagee of (and each Lot owner hereby consents to and authorizes such notice):

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Lot in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee, as applicable.
- (b) Any' delinquency in the payment of Common Expense assessments owed by a Lot Owner whose Lot is subject to a first Security Interest held, insured, or guaranteed, by such Eligible Mortgagee, as applicable, which remains uncured for a period of sixty (60) days.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in section 4 below.
- (e) Any judgment rendered against the Association.

Section 4: Consent and Notice Required.

- (a) Document Changes. Notwithstanding any requirement of this Declaration or the Act, no amendment of any provision of the Documents by the Association or Lot Owners described in this Subsection may be effective without notice to all Eligible Mortgagees as required by Section 3 above, and the vote of at least sixty-seven percent (67%) of the Lot Owners (or any greater Lot Owner vote required in this Declaration or the Act) and until approved by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration) which affect or modify:
 - (1) Voting rights.
 - (2) Assessments, assessment liens, or priority of assessment liens.

- (3) Reserves for maintenance, repair, and replacement of Common Elements.
- (4) Responsibility for maintenance and repairs.
- (5) Reallocation of interest in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Lot Owners, only those Lot Owners and only the Eligible Mortgagees holding Security Interest in such Lots need approve such action.
- (6) Redefinition of boundaries of Lots, except that when boundaries of only adjoining Lots are involved, or a Lot is being subdivided, then only those Lot Owners and the Eligible Mortgagees holding security Interests in such Lot or Lots need approve such action.
- (7) Convertibility of Lots into Common Elements or Common Elements into Lots.
- (8) Expansion or contraction of the Common Interest Community, or the addition, annexation or withdrawal of property to or from the Common Interest Community.
- (9) Insurance or fidelity bonds.
- (10) Leasing of Lots.
- (11) Imposition of any restrictions on a Lot owner's right to sell or transfer his Lot.
- (12) A decision by the Association to establish self-management when professional management had been required previously by the Document or any Eligible Mortgagee.
- (13) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Documents.
- (14) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation.
- (15) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right, Special Declarant Rights, or Additional Reserved Rights.

- (b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights, Additional Reserved Rights, or Development Rights without the notice to all Eligible Mortgagees as required by Section 3 above, and approval of a least fifty-one percent (51%) (or the indicated percentage) of the Eligible Mortgagees:

- (1) Convey or encumber the Common Elements or any portion thereof, where an eighty percent (80%) Eligible Mortgagee approval is required. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause.)
 - (2) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation, as to which sixty-seven percent (67%) of the Votes of Eligible Mortgagees is required.
 - (3) The alteration of any partition or creation of any aperture between adjoining Lots (when Lot boundaries are not otherwise being affected), in which case only the owners of Lots affected and Eligible Mortgagees of those Lots need approve the action.
 - (4) The granting of any permits, easements, leases, licenses, or concessions through or over the Common Elements (excluding, however, any utility, road or other easements serving or necessary to serve the Common Interest Community and excluding any leases, licenses, or concessions for no more than one year).
 - (5) The establishment of self-management when professional management has been required previously by the project's documents or by any Eligible Mortgagee.
 - (6) Restoration or repair of the Common Elements after a hazard damage or partial condemnation in a manner other than specified in the documents.
 - (7) The merger of the Common Interest Community with any other common interest community.
 - (8) The assignment of the future income of the Association, including its right to receive Common Expense Assessments.
 - (9) Any action taken not to repair or replace Common Elements.
- (c) The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association delivered by certified or registered mail, return receipt requested, for approval of an addition or amendment of the Documents wherever Eligible Mortgagee approval is required, shall constitute an implied approval of the addition or amendment.

Section 5: Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules, books and records and financial statement. The Association shall permit any Eligible Mortgagee or other First Mortgagee of Lots to inspect the books and records of the Association during normal business hours.

Section 6: Financial Statements. The Association shall provide any Eligible Mortgagee who submits a written request a copy

of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited or shall be reviewed by an independent certified public accountant if:

- (a) The Common Interest Community contains fifty (50) or more units, in which case the cost of the audit shall be a Common Expense; or
- (b) An Eligible Mortgagee requests it, in which case the Eligible Mortgagee shall bear the cost of the audit.

Section 7: Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and their successors and may be enforced by any of them by any available means at law or in equity.

Section 8: Attendance at Meetings. Any representative of an Eligible Mortgagee may attend and address any meeting which a Lot owner may attend.

ARTICLE XII. GENERAL PROVISIONS

Section 1: Enforcement. Enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an owner, by the Architectural Control Committee, or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award to the prevailing party in such litigation, in addition to such damages as the Court may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the prevailing party in connection with such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration.

Section 2: Duration. This Declaration shall run with the land, shall be binding upon all persons owning Lots and any persons hereafter acquiring said Lots, and shall be in effect in perpetuity unless amended or terminated as provided in the Act.

Section 3: Amendment. Except as limited by Section 38-33.3217(4) of the Act, this Declaration may be altered or amended at any time the then record Owners of sixty-seven percent (67%) or more of the Lots so elect through a duly written and recorded instrument.

Section 4: Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of the Documents or the intent of any provision thereof.

Section 5: Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

Section 6: Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the

same, irrespective of the number of violations or breaches *which* may occur.

section 7: Severability: Invalidation of any one of these covenants or restrictions by judgment court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 8: Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, **and** if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.

Section 9: Conflict. The Documents are intended to comply with the requirements of the Act. If there is any conflict between the Documents and the provisions of the Act, the provisions of the Act shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

RIVER RIDGE DEVELOPMENT COMPANY
OF WINDSOR LLC, a Colorado
limited liability company

BY: *Lester M. Kaplan*
LESTER KAPLAN
Managing Member

BY: *Bret Hall*
BRET HALL, Managing Member

STATE OF COLORADO

COUNTY OF LARIMER

The foregoing *instrument was* subscribed, sworn to, and acknowledged before me this 7th day of November 1997, by LESTER M. KAPLAN and BRET HALL as Managing Members of RIVER RIDGE DEVELOPMENT COMPANY OF WINDSOR LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: 3/8/98

Beverly Kellogg
Notary Public

EXHIBIT "A"

Legal Description of the Real Estate

All of River West P. U. D., according to the recorded plat thereof,, Town of Windsor,
County of Larimer,. State of Colorado.

EXHIBIT "B"

Easements/Licenses

1. Right of the proprietor of a vein or lode to extract' and remove his ore therefrom should the same be found to penetrate or intersect the Real Estate as reserved in United States Patent recorded July 25, 1889, in Book 32 at Page 13.
2. Right-of-way for ditch or enlargement/extensions thereof as referred to in deed recorded in Book 55 at Pages 330-332.
3. Terms and conditions of pipeline right-of-way granted to Natural Gas Associates, a Colorado partnership, in instrument recorded August 20, 1984 in Book 2285 at Page 1986.
4. Terms, conditions, stipulations, and obligations which do not contain a forfeiture or reverter clause as contained in, and burdens imposed by, deed of dedication recorded October 19, 1990, at Reception No. 90048303.
5. Terms, conditions, stipulations, and obligations which do not contain a forfeiture or reverter clause as contained in, and burdens imposed by, deed of dedication recorded October 19, 1990, at Reception No. 90048304.
6. Reservation of all oil, gas, and other hydrocarbon minerals in or under and that may be produced from the Real Estate, together with a nonexclusive right of ingress and egress for the purpose of mining, drilling, exploring, operating, and developing the Real Estate for oil, gas, and other hydrocarbon minerals and storing, handling, transporting, and marketing same therefrom as reserved by Harold Schmidt and Ruth Schmidt.
7. Right-of-way granted to Poudre Valley Rural Electric Association in instrument recorded May 11, 1992, at Reception No. 92025998 upon the terms and conditions therein set forth, said right-of-way not being specifically defined.
8. All right, title, and interest of the public, the State of Colorado, and any other governmental entity in and to the bed and banks of the Cache La Poudre River, any water therein, and the right of said river to flow through and on the Real Estate.
9. Terms, conditions, stipulations, and obligations which do not contain a forfeiture or reverter clause as contained in, and burdens imposed by, notice of agreement and easement recorded June 8, 1994, at Reception No. 94049434.
10. Terms, restrictions, limitations, and obligations set forth in general warranty deed for conservation easement in gross from Hall-Irwin Construction Co., a Colorado corporation, to the State of Colorado acting by and through the Colorado Department of Natural Resources, Colorado Division of Wildlife, for the use and benefit of the Colorado Wildlife Commission, dated March 24, 1995, and recorded March 24, 1995, at Reception Nos. 95016671 and 65016672, Larimer county records.
11. Terms, conditions, stipulations, and obligations which do not contain a forfeiture or reverter clause, as contained in, and burdens imposed by, annexation agreement recorded April 28, 1995, at Reception No. 95023996.
12. Easements shown on the Plat.