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**DECLARATION
of
Conditions, Covenants, Restrictions and Easements
for
VENTANA, FILING #1**

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**DECLARATION
of
Conditions, Covenants, Restrictions and Easements
for
VENTANA, FILING #1**

VENTANA AT PUEBLO, L.L.C., a Colorado Limited Liability Company (called the "Declarant" in this Declaration), is the sole owner of property described as follows:

All of Ventana, Filing #1 according to the recorded plat or plats thereof including, without limitation, all lots and tracts and any other easements for drainage or utility, except Parcel 'C' and Lot 18, Block #1.

**ARTICLE I
PURPOSE AND DEFINITIONS**

Section 101. The purpose of this Declaration is to place protective covenants, conditions, restrictions, reservations, liens and charges upon the subdivision to protect the Subdivision's quality residential living environment and also to protect its desirability, attractiveness and value and to exempt the property and the subdivision from the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes (The Act). Consequently, the Subdivision is hereby subjected to the following easements, covenants, restrictions and conditions (collectively referred to as "Covenants"), all of which shall run with the Subdivision and shall be binding upon all parties having or acquiring any rights, title or interest in it or any part hereof, and shall inure to the benefit of each Owner thereof.

Section 102. Definitions. The following words and expressions as used in the Covenants have the meanings indicated below unless the context clearly requires another meaning:

102.1 Accessory Building. Detached garages, storage sheds, patios, swimming pools, covers, enclosures, dressing rooms or other similar structures, recreation facilities, separate guest houses without kitchens, separate servants' quarter without kitchens and other buildings customarily used in connection with the single-family residence.

102.2 Approved Builder. "Approved Builder" shall mean and refer to a contractor that meets all of the following requirements: (a) a contractor licensed in the City and County of Pueblo (b) one who has been designated in writing as an Approved Builder by Declarant or Design Review Committee and (c) one who has submitted to, and obtained approval from the Declarant or Design Review Committee of general plans and specifications for such residential dwelling units.

102.3 Area of Common Responsibility . The Common Area, together with such other areas, Maintenance Areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract, or agreement.



102.4 Assessments. The Board of Directors of the Association may levy various assessments against owners of lots as set forth in this Declaration.

102.5 Association. Ventana Homeowners Association of Pueblo, Inc., a Common Interest Community, which shall operate under the Colorado Revised Nonprofit Corporation Act, as amended. See section 901. Also referred to as the "HOA".

102.6 Bandera Improvement District. A Special Improvement District established by the City of Pueblo, Colorado that includes all lots in Ventana Subdivision Filing #1. This District will provide landscape maintenance for all of the Bandera Boulevard Right of Way. An additional property tax will be charged to each property.

102.7 Building Site. A lot as established by the recorded plat of this Subdivision or any re-subdivision of any areas within the Subdivision or the combination of two or more Lots or portions thereof as approved by Declarant.

102.8 These Covenants. This Declaration and the provisions contained in it.

102.9 Common Area. All real and personal property, including easements, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners. The Common Areas include, but are not necessarily limited to, those parcels and tracts of land identified as Common Areas on the Plat or hereafter identified as Common Areas on any Supplemental Plat, and any real or personal property hereafter identified as Common Area in any Supplemental Declaration.

102.10 Declarant Control Period. The period of time during which the Declarant is entitled to exercise Development Rights and Special Declarant Rights. The Control Period shall commence upon the date that this Declaration is recorded and shall terminate per definitions set forth in Section 904.

102.11 Due Notice. Written notice delivered in accordance with the requirements of these Covenants at least ten days prior to the action required by the notice.

102.12 Executive Board. Governing body of the Association. See definition in Section 902. May be referred to as "Board" or "Board of Directors".

102.13 Enumerations Inclusive. A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

102.14 Exclusive Common Areas. A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods or Units, as more particularly described in Section 2.2

102.15 Garden Level. A level of floor space that has a floor to ceiling height of not less than eight feet and which has a ceiling that is not less than three feet above finished grade.



102.16 Gender and Number. Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations and to other entities, singular to include plural and plural to include singular.

102.17 Landscape. The treatment of ground surface with live plant materials, wood chips, crushed stone, decorative rocks or mulch materials, or other decorative surfacing materials approved by the Design Review Committee. For purposes of this definition, the word "Landscape" shall include all other forms of the word Landscape, such as Landscaped and Landscaping.

102.18 Lot. Each area designated as a lot in the recorded plat of the Subdivision or any re-subdivision of all or a portion of the area included within the Subdivision.

102.19 Lot Lines. Front, side and rear Lot Lines shall be the same as defined in the zoning regulations of the City of Pueblo in effect from time to time. In the absence of such a definition, a front Lot Line is each boundary line (whether one or more) between the Lot and any public street. A corner Lot bordering two public streets has two front Lot Lines. A side Lot Line is any boundary line which meets and forms an angle with a public street, except for such boundary lines which constitute one of the two front Lot Lines on a corner Lot.

102.20 Maintenance Areas. Areas that the Association or another entity overseas the cost and management of maintaining. These would include medians, roundabouts, parcels for drainage, right of ways as described herein and other Common Areas. Where there is a Standard Fence, the Maintenance Area would be from the fence to the back of curb. Where there is no Standard Fence but the property abuts a public right of way on the side or rear, the Maintenance area would be from the edge of sidewalk to the back of curb. Some Maintenance Areas will be maintained by the Bandera Improvement District. All other areas are maintained by the lot owner.

102.21 Neighborhood. A separately developed area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all members of the Association. For example, and by way of illustration and not limitation, a group of single-family attached or detached houses may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. Neighborhood boundaries may be established and modified as provided in Section 906.

102.22 Neighborhood Assessments. Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Section 1116 (a).

102.23 Neighborhood Association. An owners association having concurrent jurisdiction with the Association over a Neighborhood.

102.24 Neighborhood Expenses. The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular



Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Neighborhood(s).

102.25 Optional Users Fees. Fees adopted by the Declarant or a vote of the Association or any Neighborhood that are above and beyond the standard expenses to operate and maintain the association. These might include but not be limited to; trash pick-up, lawn and maintenance for all homes not just Maintenance Areas or Common Areas, exterior maintenance coverage, group insurance coverage for property.

102.26 Owner. Person having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.

102.27 Special Assessment. Any Assessment levied to offset any expense that was not in the budget. Further described in Section 1120.

102.28 Standard Fence(s). Fences approved by the Design Guidelines to be the only fences installed in the Subdivision along the Common Areas and Public Right of Ways. Interior Fences may be of different design but are limited to specific designs also. These are further described in Section 211.

102.29 Structure. Any thing or device other than trees and Landscaping the placement of which upon any Building Site might affect its exterior appearance, including by way of illustration and not limitation, any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, mail-box, outdoor lighting and lawn ornamentation. Structure shall also mean an excavation or fill the volume of which exceeds five cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

102.30 The Subdivision. The area subdivided as Ventana, Filing #1, according to the plat recorded in the office of the Clerk and Recorder of the County of Pueblo and State of Colorado.

**ARTICLE II
COVENANTS TO PRESERVE THE RESIDENTIAL
CHARACTER OF THE SUBDIVISION**

Section 201. Property Uses. All Lots and Building Sites in the Subdivision shall be used exclusively for private residential purposes except for Lot #18, Block #1, which may be used for commercial purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family dwelling except for utility and pump sheds on Parcel "C". No



business, profession or other activity conducted for gain shall be carried on or within any Lot of Building Site, except the above commercial lots, without approval of the Design Review Committee.

Section 202. Structures. No structure shall be erected on any lot within the Subdivision except single-family dwellings and those Accessory Buildings and accessory Structures which have been approved by the Design Review Committee. Connected town homes on separate lots are considered single-family dwellings. The commercial lots are exempt from this requirement. No Structure other than a dwelling with an attached garage for a minimum of two cars, no Accessory Building and no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Structure may be placed on any Building Site before completion of the dwelling upon such Building Site except with the permission of the Design Review Committee.

Section 203. Construction Type. All construction shall be new. No building previously used at another location nor any building or Structure originally constructed as a mobile dwelling or Structure may be moved onto a Lot or Building Site except as expressly hereinafter provided in section 207 for temporary construction, sales or administration buildings.

Section 204. Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 205. Completion of Work. A Structure shall not be occupied in the course of original construction until substantially completed. Construction must begin, evidenced by purchasing of building permit, within twelve months after the purchase of a lot from the Declarant. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed, not to exceed 18 months from issuance of building permit.

Section 206. Construction Completion. The exterior of the buildings or other Structures must be completed within six months after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. For purposes of this section 206, "commencement of construction" for a single-family dwelling, is defined as the obtaining of the building permit as referenced in Section 205 above, and for all other Structures, is the undertaking of any visible exterior work. If construction is not completed within twelve months after commencement, or if construction shall cease for a period of sixty days without permission of the Design Review Committee, the Design Review Committee will give the Owner thereof Due Notice of such fact, and if construction work on such Structure is not diligently pursued within thirty days after such notice, the unfinished Structure or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner.



Section 207. Construction of Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Design Review Committee. Model homes may be used and exhibited only with the permission of the Design Review Committee. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 208. Drilling Structures. No derrick or other Structure designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphalt or other hydrocarbon substances be produced from any well located upon, in or under any Lot.

Section 209. Easements. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the five foot strips along and adjoining each rear Lot Line of each Lot, and each of the five foot strips along and adjoining each side Lot Line or each Lot and all utility and drainage easements set forth on the Plat of the Subdivision for the use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes.

Section 210. Underground Utilities. All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground.

Section 211. Standard Fence and Maintenance Areas. Declarant reserves the right to construct and maintain a standard fence along the Lot Lines of any Lot which Lot Line borders a right of way or Common Area and the right to install and maintain Landscaping and maintain utility lines adjacent to such standard fences and the adjacent streets (which areas, and the improvements located thereon, are included in areas which are referred to in these Covenants as "Maintenance Areas"). Entry by Declarant or proper representatives of the Association on a Lot in order to construct and maintain Maintenance Areas shall not be a trespass. The height, construction, color, or appearance of the standard fence installed by Declarant may not be changed. Except with the Design Review Committee's approval, no other fence shall be of a different height construction, color or appearance than the standard fence. Interior Fences will be of a slightly different makeup than the Standard Fence and shall be approved by the Design Review Committee. Different Neighborhoods may have a different Interior Fence but with in each Neighborhood, all Interior Fences shall be the same. The Declarant has the right to install some particular Interior Fences as they see fit. Just because the Declarant installed them does not mean that they are the "Standard Fence" and that the Association must maintain them. Any Interior Fence will be the responsibility of the Lot Owner. The HOA or the Bandera Maintenance District shall be responsible



for maintenance of any common or maintenance area between the Standard Fence and the back of curb, plus any damage or maintenance to any Standard Fence. Where no fence exists, the HOA will maintain from the sidewalk to the curb.

**ARTICLE III
DENSITY, SETBACK AND QUALITY STANDARDS**

Section 301. Limitation on Dwellings. No more than one livable dwelling shall be erected or maintained within any lot or Building Site. All dwellings will be required to follow these guidelines along with any additional "Design Guidelines" specifically formulated for this Subdivision.

Section 302. Conformance to Building Codes. All construction must also conform to the building code, zoning code and subdivision regulations of the City of Pueblo, which regulations may vary from the provisions of this section and other sections.

Section 303. Dwelling Area Requirements.

- (a) For the following lots:
 - Lots 1-4, Blk 1
 - Lots 21-24, Blk 2
 - Lots 10-16, Blk 5
 - Lots 1-14, Blk 6
 - Lots 1-12, Blk 7
 - Lots 1-9, Blk 8

No dwelling shall be erected which, exclusive of basements, porches, patios, covered but unenclosed areas, garages and any attached Accessory Building, has a gross livable floor area of less than 2,000 square feet if a single-story dwelling; 3,200 square feet if two-story with 2,000 square feet minimum on main level. Story and one-half plan must have 2,000 (60% of 2-story) square feet minimum on main level with total no less than 3,200 square feet. Required setbacks for the above lots will be as follows: Minimum side yard setback will be 7 1/2 feet on each side. Exceptions may be granted if neighbor has 10 feet or more which would result in a 15 foot distance between homes. Minimum front yard setback will be 30 feet from front property line. Minimum rear yard setback will be 30 feet from rear property line.

- (b) For the following lots:
 - Lots 5-16, Blk 1
 - Lots 1-16, Blk 2
 - Lots 1-10, Blk 3
 - Lots 1-16, Blk 4
 - Lots 1-9, Blk 5

No dwelling shall be erected which, exclusive of basements, porches, patios, covered but unenclosed areas, garages and any attached Accessory Building, has a gross livable floor area of less than 1,590 square feet if a single-story dwelling; 2,400 square feet if two-story with 1,400 square feet minimum on



main level. Story and one-half plan must have 1440 (60% of 2-story) square feet minimum on main level with total no less than 2,100 square feet. Required setbacks for the above lots will be as follows:
Minimum side yard setback will be 5 feet on each side. Minimum front yard setback will be 25 feet from the front property line. Minimum rear yard setback will be 20 feet from the rear property line.

(c) For the following lots:

Lot 17, Blk 1

No dwelling shall be erected which, exclusive of basements, porches, patios, covered but unenclosed areas, garages and any attached Accessory Building, has a gross livable floor area of less than 1,100 square feet if a single-story dwelling (does not include basement area if walk-out lot); 1,500 square feet if two-story with 900 square feet minimum on main level. Story and one-half plan must have 900 (60% of 2-story) square feet minimum on main level with total no less than 1,500 square feet. Building setbacks shall be determined with a future Special Area Plan approved by the Design Review Committee.

Section 304. Height Restrictions. No dwelling or other Structure shall be more than 28 feet in height except with the prior written permission of the Design Review Committee. Height shall be measured from the highest original ground contour at any point adjoining the foundation perimeter of the Structure to the highest point on the Structure exclusive of standard chimneys. Original ground contour shall mean the ground contour established during development of the Lots and existing immediately prior to commencement of construction (as defined in section 206) of any dwelling or other Structure.

Section 305. Roofs. All roof areas shall be of heavily textured composition shingles, tile or other material approved by the Design Review Committee. All composition shingles & tiles must be of earth-tone colors, textures and materials only as approved by the Design Review Committee.

Section 306. Accessory Buildings (Sheds & Detached Garages). Any Accessory Building or Structure shall harmonize in appearance with the dwelling situated on the same Lot. They shall be no taller than 8 feet at the plate above ground level and cannot block any drainage and must comply with building setback or building code requirements. They must be less than 100 square feet total and constructed of the same materials, STUCCO, and be of the same exterior design and color as dwelling. ALL ACCESORY BUILDINGS MUST BE APPROVED BY THE DESIGN REVIEW COMMITTEE.

Section 307. Roof Projections. No air conditioning units, aerial, antenna or microwave system for reception or transmission of radio, television or other electronic signals, or other roof projection, including but not limited to lightning rods, weather vanes shall be placed on the roof or any other exterior location of a building or Lot, unless approved by the Design Review Committee. TV dishes less than 28" in diameter are allowed with location approved by Design Review Committee.



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Section 308. Owner Maintenance. Each Owner shall maintain the exterior of the dwelling, any Accessory Building and all other Structures, lawns and Landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing becomes weather-beaten or worn off. Unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association.

Section 309. Rebuilding or Restoration. Any dwelling or building which may be destroyed in whole or part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a sightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six months from the time the damage occurred.

Section 310. Fences. All fences shall be constructed of stucco covered concrete block, brick, stone, preapproved vinyl or vertical steel and shall be no more than six feet high and must be approved by the Design Review Committee. No other material may be used for fences - specifically no chain link, wood, block or brick or open wire mesh. Except with approval of the Design Review Committee, no fence or hedge more than two feet high shall be installed closer to an adjoining street than the dwelling or any other building located on the Lot is to the street. Fences must be constructed to allow flow of surface water thru any drainage easement.

Section 311. Other Architectural Requirements. All plans for construction must be approved by The Design Review Committee prior to commencement of construction. The Design Review Committee will examine all four elevations of home for style and design and will expect consistency of design and detailing on all exterior elevations. On corner lots or lots that side or rear of house will be highly visible, home may be required to provide additional design features on those elevations. Any exposed concrete foundation of more than 6 inches will be required to be covered in material of the structure above. This pertains to all elevations including all exterior colors and exterior plans including site plans and landscaping plans must be approved in writing by the Design Review Committee before commencing construction. Horizontal and vertical articulation of planes, massing of structures and general architectural style will be factors in determining approval of plans. Consistency of design will be a factor in approval, also. The purpose of these requirements is to create and maintain a community of quality design to promote the real estate values of the community.

ARTICLE IX LIVING ENVIRONMENT STANDARDS

Section 401. Building and Grounds Conditions. Each Owner shall maintain the exterior of the



dwelling, any Accessory Building, fence and all other Structures, lawns and Landscaping, walks and driveways, in first class condition and shall cause them to be repaired as the effects of damage or deterioration become apparent, if the Owner fails to properly perform such maintenance, the Design Review Committee may, after giving thirty days' written notice, effect such repairs and maintenance as it deems necessary at the expense of the owner, in its judgment to maintain the standards of the Subdivision. Unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association.

Section 402. Garage Doors. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 403. Maintenance Equipment. All maintenance equipment shall be stored in an enclosed Structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 404. Clotheslines. All outdoor clothes poles, clotheslines and other facilities for drying or airing of clothing or household goods shall be placed or screened by landscaping or shrubbery so as not to be visible from neighboring property or adjacent streets.

Section 405. Refuse. No unsightly objects or materials, including but not limited to: ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefore, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collections. After a period of two weeks of continued violation of this section 405, the Design Review Committee shall have the right to enter upon the Lot involved and remove such unsightly objects or materials at the expense of the Owner. Such an entry shall not be deemed a trespass and the Owner shall be liable for all costs incurred relative thereto.

Section 406. Nuisances. No noxious or offensive activity shall be carried on upon any lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on any Lot or in any living unit or Accessory Building. No annoying lights, sounds or odors shall be permitted to emanate from any living units or Accessory Buildings.

Section 407. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices except security devices or patio speakers shall be located, used or placed on any Structure or within any Lot.



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Section 408. Landscaping. Within six months after completion of a dwelling or within any extension of that period granted by the Design Review Committee, all yards and open spaces shall be Landscaped and thereafter maintained in Landscape. The Design Review Committee will consider all designs whether bluegrass, zeriscape or a combination of the two. ALL LANDSCAPING PLANS MUST BE APPROVED BY THE DESIGN REVIEW COMMITTEE.

Section 409. Weeds. All yards and open spaces and the entire area of every lot on which no building has been constructed shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which in the reasonable opinion of the Design Review Committee are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the reasonable opinion of the Design Review Committee causes undue danger of fire or an unsightly appearance to the Subdivision.

Section 410. Mowing and Pruning. In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any Lot upon which a building has not been constructed shall mow, cut, prune, clear and remove from the premises unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot.

Section 411. Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any lot as fixed by the original finish grading except after first obtaining the prior consent and approval of the Design Review Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture and to minimize erosion and sedimentation. All Builders and Homeowners must comply with approved grading and drainage plans and shall be responsible to comply with all dust and storm water control plans. These regulations must be complied with until the lot and home is fully landscaped and completed.

Section 412. Animals. No animals except domesticated birds or fish and other small domestic animals permanently confined indoors and except an aggregate of two domesticated dogs or cats shall be maintained in or on any Lot with the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of the Design Review Committee makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes.

Section 413. Trailers. Campers, etc. No boat, trailer, camper (on or off supporting vehicles), tractor commercial vehicle, mobile home, motor home, any towed trailer unit or truck, excepting only pickups with or without bed toppers and passenger vans for the private use of the residents of a dwelling as primary transportation on a day-to-day basis, shall be parked within any Lot or Building Site except in a



completely enclosed Structure such as a garage. No nonconforming vehicles as described in this section, shall be parked overnight on any street.

Section 414. Junk Cars. No unused, stripped down, partially wrecked or junk motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot except in an enclosed garage. An unused vehicle shall be any vehicle which is not properly licensed or registered or has remained immobile for more than a week as determined by the Design Review Committee.

Section 415. Vehicle Repairs. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within an enclosed garage.

Section 416. Signs. The only signs permitted on any lot or Structure shall be:

- (a) One sign of customary size for offering of the signed property for sale or for rent;
- (b) One sign of customary size for identification of the occupant and address of any dwelling;
- (c) Multiple signs for sale and administration purposes installed by, or with the permission of Declarant during development;
- (d) signs as may be necessary to advise of rules and regulations or to caution or warn of danger only if approved by the Design Review Committee; and
- (e) Such signs as may be required by law.

Except for permitted signs, there shall not be used or displayed on any Lot or Structure any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental. All permitted signs must be professionally painted, lettered and constructed.

**ARTICLE V
ARCHITECTURAL CONTROL**

Section 501. Building Approval. No Structure shall be commenced, erected, placed, moved onto a Lot, permitted to remain on any lot or altered in any way so as to materially change the Lot's previously existing exterior appearance, except in accordance with plans, specifications and other information submitted to the Design Review Committee and approved by the Design Review Committee no more than one year before start of the construction, alteration or installation. All construction or alteration must be performed by an "Approved Builder". Matters which require the approval of the Design Review Committee include but are not limited to: the exterior appearance, material, color, height and location of



each Structure, covering, drive, walk and fence, grading and landscaping of site. In granting or withholding approval, the Design Review Committee shall consider among other things: the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relation of the Structure or covering to the environment and to surrounding uses, the degree, if any, to which the proposed Structure or covering will cause intrusions of sound, light or other effect on neighboring sites beyond those reasonably to be expected in a quality urban residential area from considerate neighbors.

Section 502. Approving Builders. The Design Review Committee will make final approval of all applicants to become an "Approved Builder". Applicant must be a licensed contractor in Pueblo County. Other qualifications will also be considered.

Section 503. Plans Submissions. All plans, samples and other materials to be submitted to the Design Review Committee shall be submitted in duplicate along with plan check fee. The minimum scale of these plans shall be one-eighth inch equals one foot. The plot plan minimum scale shall be one-twentieth inch equals one foot and shall show the location of all buildings, drives, walks, fences and any other Structures. Proposed new contours throughout the Lot and abutting existing elevations on all sides must be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. Calculated living area square footage, per section 303, must be shown on the floor plan pages of plans.

Section 504. Approval Process. All action required or permitted to be taken by the Design Review Committee shall be in writing and any such written statement shall establish the action of the Design Review Committee and shall protect any person relying on the statement. If the Design Review Committee does not execute and acknowledge such a statement within thirty days after delivery of all required materials to the members of the Design Review Committee, the materials so delivered shall be deemed approved for the purpose of these Covenants. The Design Review Committee may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to this Declaration. The Design Review Committee shall be entitled to retain one copy of all approved plans as part of its files and records.

Section 505. Variances. The Design Review Committee shall have the authority to grant for a Lot or Building Site a variance from the terms of one or more of sections 206, 211, 303, 304, 305, 306, 307, 310 and 311 subject to terms and conditions which may be fixed by the Design Review Committee and will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to

exceptional and extraordinary circumstances, literal enforcement of all of those sections will result in unnecessary hardship. Following an application for a variance:

(a) The Design Review Committee shall within thirty days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Design Review Committee fails to act on the request for the variance within thirty days, the variance shall be deemed approved.

(b) Whether or not anyone appears at the meeting in support of or in opposition to the application for variance, the Design Review Committee shall within one week after the meeting either grant or deny the variance.

(c) The Design Review Committee shall determine whether or not a variance granted hereunder shall run with the Lot or Building Site for which granted on a case-by-case basis.

(d) If a variance is denied, another application for a variance for the same Lot or Building Site may not be made for a period of two months.

(e) a variance shall not be granted unless the Design Review Committee shall find that all of the following conditions exist:

- (i) the variance will not authorize the operation of a use other than private, single-family residential use; Lot 18 Block 1 is exempt from this requirement.
- (ii) owing to the exceptional and extra-ordinary circumstances, literal enforcement of the sections above enumerated will result in unnecessary hardship;
- (iii) the variance will not substantially or permanently injure the use of other property in the Subdivision;
- (iv) the variance will not alter the essential character of the Subdivision;
- (v) the variance will not weaken the general purposes of these Covenants;
- (vi) the variance will be in harmony with the spirit and purpose of these Covenants;
- (vii) the circumstances leading the applicant to seek a variance are unique to the Lot or Building Site or its Owner, and are not applicable generally to Lots in the Subdivision or their Owners.

ARTICLE VI DESIGN REVIEW COMMITTEE

Section 601. Composition of the Design Review Committee. Declarant shall appoint Design Review Committee which shall consist of three individuals. Declarant shall have the continuing right to



appoint all three members of the Design Review Committee until January 1, 2010 when authority shall pass to Executive Board of the Association. During the period of development of the Community while Declarant has the right to appoint members of the Design Review Committee, Declarant shall give the Association written notice of the appointment or removal of any member of the Design Review Committee.

Section 602. Liability. Members of the Design Review Committee shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

Section 603. Address of Design Review Committee. The address of the Design Review Committee shall be the Declarant or the Association's address.

Section 604. Meetings of Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of its members, designate a Committee Representative (who may be but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval to any Improvement to property and granting of variances. Decisions of the Committee Representative within the authority of such Committee Representative or the written consent or vote of a majority of the members of the Design Review Committee shall constitute the action of the Design Review Committee.

Section 605. Records of Actions. The Design Review Committee shall report in writing to the HOA all final actions of the committee, and the Board shall keep a permanent record of such reported actions.

**ARTICLE VII
ASSOCIATION PROPERTIES**

Section 701. Member's Rights of Use and Enjoyment Generally. Unless otherwise provided in this Declaration, all Members may use, or enjoy the benefits of the Association Properties as appropriate.

Section 702. Right of Association to Regulate Use. The Association, acting through the Executive Board, shall have the power to regulate use of Association Properties by members and the public to further enhance the overall rights of use and enjoyment of all Members.

Section 703. No Partition of Association Properties. No Owner shall have the right to partition of the Association Properties or any part thereof.

Section 704. Liability of Owners for Damage by Member. Each Member shall be liable to the Association for any damage to Association Properties or Maintenance Areas or for any expense or liability



incurred by the Association, to the extent not covered by insurance, caused by the negligence or willful misconduct of such member or any Person using the Association Properties through such member and for any violation by such Member or any such Person of this Declaration or any Rule and Regulation adopted by the Association. The Association shall have the power, as provided elsewhere in this Declaration, to levy and collect a Reimbursement Assessment against a Member, after Notice and Hearing, to cover the costs and expenses incurred by the Association on account of any such damage or violation of this Declaration or Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 705. Association Duties upon Damage or Destruction. In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Association Properties by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment in accordance with section 1019, or if a Member or group of Members is liable for such damage, levy a Reimbursement Assessment against the responsible Member or group of Members to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the excess for future maintenance, repair, improvement, and operation of other Association Properties.

Section 706. Association Powers in the Event of Condemnation. If any Association properties or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in Maintenance Funds, as a reserve for future maintenance, repair, reconstruction, or replacement of Association Properties or may be used for Improvement or



additions to or operation of Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

Section 707. Title to Association Properties on Dissolution of Association. In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to appropriate public, governmental or quasi-governmental agencies or organizations or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the Association properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Members in proportion to the number of Lots owned by such Member in the Community.

**ARTICLE VIII
DECLARANT'S RIGHTS AND RESERVATIONS**

Section 801. Period of Declarant's Rights and Reservation. Declarant shall have, retain, and reserve certain rights as hereinafter set forth with respect to the Association and the Association Properties from the date hereof until: (a) the time that the last Lot within the Community has been sold and conveyed by Declarant to persons other than Declarant and a certificate of occupancy has been issued for the residence constructed thereon; (b) the date which is twenty years from Recordation of this Declaration, whichever event occurs first. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Association whether or not specifically stated therein and in each deed or other instrument by which any property within the Community is conveyed by Declarant. The rights, reservations, and easements hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration, Declarant's consent to any one such amendment shall not be construed as consent to any other amendment.

Section 802. Right to Construct Improvements. Declarant shall have and hereby reserves the right, but shall not be obligated to, construct Improvements on Association Properties at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in an increase in the then current Common Assessments applicable to a Lot by more than ten percent. If any construction of Improvements would have such effect, Declarant may nevertheless construct such Improvements so long as Declarant agrees to directly subsidize the Association for the excess expenses. Declarant shall convey or transfer such Improvements to the Association, and the Association shall be



obligated to accept title to, care for, and maintain the same as Association Properties as elsewhere provided in this Declaration.

Section 803. Declarant's Rights of Use for Promotion and Marketing. Declarant shall have and hereby reserves rights (which rights may be assigned to Approved Builders, in whole or in part, one or more times), as hereafter provided. This right of assignment applies to Sections 703 and 704 to reasonable use of Lots owned by Declarant (or Lots owned by Approved Builders, if such right has been assigned to them) and to reasonable use of the Association properties and services offered by the Association in connection with the promotion, development, construction of Improvements and marketing of the Community. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of such Lots and the Association Properties such signs, temporary buildings, and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development, construction of Improvements and marketing of real property within the Community. Declarant may maintain up to three sales offices and one management office (any of which may be located in model dwellings or sales trailers), all of which may be located on any Lot. Declarant and Approved Builders may also use vehicles and equipment on Association Properties for promotional purposes; may permit prospective purchasers of property within the boundaries of the Community who are not Owners or Members of the Association to use Association Properties at reasonable times and in reasonable numbers; and may refer to the Association Properties and to the Association and services offered by the Association in connection with the promotion, development, construction of Improvements and marketing of property within the boundaries of the Community.

Section 804. Declarant's Right to Re-subdivide. Declarant shall have the right to re-subdivide areas within the Subdivision including existing Lots and road rights-of-way for creation of additional Lots for town home lots or other projects at the sole discretion of the Declarant. Any property which the developer re-subdivides shall be subject to covenants and the creation of a homeowners association for the property re-subdivided. All Lots in any re-subdivision will remain subject to the provisions of this Declaration requiring that dues shall be paid to the Association. Dues of any re-subdivided properties may be adjusted based on the size of the lots.

805. Declarant's Approval of Conveyances or Changes in Use. Until Declarant no longer owns a lot in the Subdivision, the Association shall not, without first obtaining the written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties, Mortgage the Association Properties, or use Association Properties other than solely for the benefit of Members or as specifically allowed hereunder.



Section 806. Declarant's Rights to Grant and Create Easements. Declarant and the Association, by and through the Executive Board, shall have and hereby reserve the right to grant or create or be the beneficiary of temporary or permanent easements located in, on, under, over, and across (a) Lots owned by Declarant, and (b) Association Properties, for access, utilities, drainage, water, and other purposes incidental to development and sale of portions of the Community.

Section 807. Declarant's Rights to Convey Additional Property To Association. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and Improvements thereon to the Association at any time and from time to time in accordance within this Declaration, so long as any conveyance does not directly result in an increase in the then current Common Assessments applicable to a Lot by more than ten percent, unless Declarant agrees to directly subsidize the Association for the excess expenses.

Section 808. Additional Covenants and Easements. During the Declarant Control Period, the Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the subdivision approval of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

Section 809. Approved Builders. Subject to approval by Declarant, and to the extent of specific assignments from Declarant to an Approved Builder and any limitations contained therein, Approved Builders shall have the right to construct or alter Improvements and complete development and construction on any property owned by the Approved Builder or an owner who has contracted with an Approved Builder within the Community, including temporary buildings as approved by the Design Review Committee and the right to maintain model homes, approved by the Design Review Committee, to post signs subject to approval of the Declarant incidental to promotion, development, construction of Improvements, marketing, or sales of property within the boundaries of the Community.

**ARTICLE IX
ASSOCIATION OPERATION**

Section 901 Association. The Association has been or will be formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the



duties, powers, and rights as set forth in the Colorado Revised Nonprofit Corporation Act, this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereunder, the Association shall have an Executive Board to manage its affairs. Except as may be provided herein, the Articles of Incorporation or the Bylaws, the Executive Board shall be elected by Owners acting in their capacity as Members of the Association.

Section 902. Association Executive Board. The affairs of the Association shall be managed by an Executive Board. The number, term, and qualifications of the members of the Executive Board shall be fixed in the Articles of Incorporation and Bylaws. The Executive Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Executive Board or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

Section 903. Membership in Association. Each Owner of a Lot within the Community shall be a Member of the Association. There shall be one Membership in the Association for each Lot within the Community. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Lot. Declarant and Approved Builders shall hold a Membership in the Association for each Lot owned by them. Membership in the association shall not be assignable separate and apart from fee simple title to a Lot except that an Owner may assign some or all rights as an Owner and as a Member of the Association to a tenant or Mortgagee and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Declaration, but no Owner shall be permitted to be relieved of responsibility for fulfillment of the obligations of an Owner under this Declaration.

Section 904. Voting Rights of Members. Each Member shall have the right to cast one vote for each Lot owned by such Member in accordance with the Bylaws. Notwithstanding the foregoing, Declarant, in its sole discretion, shall be entitled to select and appoint members of the Executive Board in accordance with the Bylaws until the expiration of the Declarant's Control Period as hereinafter defined; provided, however that:

- (a) no later than sixty days after twenty-five percent of the Lots that may be created within the Community are conveyed by Declarant to Owners other than Declarant, at least one member and not less than twenty-five percent of the members of the Executive Board must be elected by Owners other than Declarant;
- (b) no later than sixty days after fifty percent of the Lots that may be created within the Community are conveyed to Owners other than Declarant, at least three members and not less than



thirty-three and one-third percent of the members of the Executive Board, must be elected by Owners other than Declarant.

The Declarant's Control period shall cease on the happening of any of the following events, whichever occurs earlier: (a) when seventy-five percent of the Lots that may be created within the Community have been conveyed to Persons other than Declarant; (b) two years after the last conveyance of a Lot by Declarant in the ordinary course of business; (c) two years after any right to add new Lots to the Community was last exercised; or (d) when, in its discretion, Declarant so determines (Collectively, the "Declarant's Control Period").

Section 905. Determination of Member Voting Percentages. Notwithstanding anything to the contrary contained in this Declaration, only Members whose voting rights are in good standing under the Association's Bylaws (e.g., voting rights that have not been suspended as provided therein) shall be entitled to vote on Association matters. In accordance therewith, any and all provisions contained herein requiring the approval of a certain percentage of members of the Association shall be deemed satisfied when the requisite percentage of Members entitled to vote has voted affirmatively for approval.

Section 906. Neighborhoods, Voting Delegates and Voting Groups.

(a) Neighborhoods. The Declarant, in its sole discretion, may establish Neighborhoods within the Subdivision. During the Declarant Control Period, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to assign property to a specific Neighborhood, to redesignate Neighborhood boundaries, or to remove property from a specific Neighborhood. The units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of a Neighborhood association in addition to the Association. However, a Neighborhood Association shall not be required. Any Neighborhood which does not have a Neighborhood Association may, but shall not be obligated to elect a Neighborhood Committee, as described in the By-Laws, to represent the interests of Owners of Units in such Neighborhood.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood and upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Units within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.



**ARTICLE X
DUTIES AND POWERS OF ASSOCIATION**

Section 1001. General Duties and Powers of Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Executive Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve, and enhance the common interests of the Members, to maintain, improve, and enhance Association Properties, and to improve and enhance the attractiveness, aesthetics, and desirability of the Community.

Section 1002. Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any real property, including any Improvements thereon and personal property transferred to the Association by Declarant, and equipment related thereto, together with the responsibility to perform any and all Administrative Functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests, and licenses to use. Any real property or interest in real property transferred to the Association by Declarant shall be within the boundaries of the Community. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration and easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances. Except as otherwise specifically approved by resolution of the Executive Board, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

Section 1003 Duty to Manage and Care for Association Properties. The Association shall manage, operate, care for, maintain, and repair all Association Properties and Maintenance Areas, including offsite easements and all areas maintained by Declarant and the median and right-of-way areas next to roadways, and shall keep the same in an attractive and desirable condition for the use and enjoyment of the Members. The Association shall have a responsibility to maintain the water system in all Common Areas and to pay all necessary expenses for repair and replacement of the water system and for the water used to maintain landscaping. All lot owners will be members of the Bandera Improvement District which will impose a mill levy assessment on each property but will furnish maintenance for all the landscape within the Bandera Right of Way and also the Siena Right of Way per the District's bylaws.



(a) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Neighborhood Association or (ii) such property is dedicated to any local, state or federal governmental or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, or a Specific Assessment against the particular Units to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Section 1004. Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Association Properties and all taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties that may accrue if the contest of such taxes is unsuccessful.

Section 1005. Duty to Maintain Casualty Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, property insurance on all insurable Improvements and personal property owned by the Association or that must be owned by the Association in the future, in broad form for causes of loss, including casualty, fire, and extended coverage insurance and, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property insurance policies.



Section 1006. Duty to Maintain Liability Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of Association Properties, including officers and directors' liability insurance covering the individual members of the Executive Board and covering public liability for bodily injury and property damage and, if the Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable: (a) have limits of not less than five hundred thousand dollars (\$500,000) per person and one million dollars (\$1,000,000) per occurrence; (b) insure the Board and individual members of the Board, the Association, the manager, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured in such Declarant's capacity as a Member or Board member; (d) include the members as an additional insured, but only for claims and liabilities arising in connection with the ownership, existence, use or management of Association Properties; and (c) cover claim of one or more insured parties against other insured properties.

Section 1007. General Provisions Respecting Insurance. Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is cancelled or renewed without a replacement policy having been obtained, the Association shall promptly cause notice of that fact to be delivered to all Members. The Association may carry any other type of insurance it considers appropriate, in amounts it deems appropriate, to insure the interests of the Association. Insurance policies carried pursuant to sections 1005 and 1006 shall provide that: (a) each Member is an Insured Person under the policy with respect to liability arising out of such Member's interest in the Association Properties or membership in the Association; (b) the insurer waives its rights of subrogation under the policy against the Association, each Member, and any Person claiming by, through, or under such Member or any other director, agent, or employee of the foregoing; (c) no act or omission by any Member, unless acting within the scope of such Member's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, there is other insurance in the name of a Member covering the same risk covered by the policy, the Association's policy shall be the primary insurance. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium



payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance policies and insurance coverage shall be reviewed at least annually by the Executive Board to ascertain whether coverage under the policies is sufficient considering the current values of the Association Properties and in light of the possible or potential liabilities of the Association. The insurance may be provided under blanket policies covering the Association Properties and property of Declarant. In no event shall insurance coverage obtained or maintained by the Association be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees.

Section 1008. Fidelity Bonds Required. The Association shall obtain and keep in force at all times a fidelity bond or bonds for any Person handling funds of the Association. Each such bond shall name the Association as obligee and shall be not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate Common Assessments on all Lots plus reserve funds.

Section 1009. Other Insurance and Bonds. The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity, or other bonds as the Association shall deem necessary or desirable.

Section 1010. Duty to Prepare Budgets. The Association shall prepare Budgets for the Association as elsewhere provided in this Declaration.

Section 1011. Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as provided in this Declaration.

Section 1012. Duty to Keep Association Records. The Association shall keep financial records sufficiently detailed to enable the Association to:

- a. provide a statement setting forth the amount of assessments charged to each unit.
- b. provide a statement setting forth the amount of assessments paid by the owners of each unit.
- c. provide a statement setting forth the amount of any unpaid assessments currently levied against a unit.
- d. provide a statement setting forth the sources of all income to the Association, including payment of assessments in total, and setting forth all expenses paid by the Association from Association funds.



Section 1013. Duties with Respect to Design Review Committee Approvals. The

Association shall perform functions to assist the Design Review Committee as elsewhere provided in this Declaration.

Section 1014. Power to Acquire Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners including improvements and personal property. The Association may construct and maintain improvements on property, including fences, and may demolish existing Improvements.

Section 1015. Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community, including Lots, and the general restrictions and covenants described in Article 3. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Executive Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Member at the address for notices to members as elsewhere provided in this Declaration or the Bylaws, and copies of the currently effective Rules and Regulations shall be made available to each member upon request and payment of the reasonable expense of copying same. Each member shall comply with the Rules and Regulations and shall cause Persons claiming through such Member to comply with the Rules and Regulations. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 1016. Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause compliance by each member and each person claiming by, through, or under such member ("Related Users"). Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (a) by entry upon any property within the Community after Notice and Hearing (unless a bona fide emergency exists), without liability to the Owner thereof or the Association, for the purpose of enforcement or causing compliance with this Declaration or the Rules and regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations;



(d) by suspension, after Notice and Hearing, of the voting rights of a Member during and for up to ten days following any breach by such member or a Related User of such Member of this Declaration or the Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (e) by levying and collecting, after Notice and Hearing, a Reimbursement Assessment against any Member for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member; and (f) by levying and collecting uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related user for breach of this Declaration or the Rules and Regulations by such Member or Related user of such member. In the event that the Association fails to enforce the provisions of this Declaration as provided for herein, each member shall, upon thirty days' written notice to the Association, have the powers: (a) to enforce the provisions hereof by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration, by mandatory injunction or otherwise; or (b) to commence or maintain actions and suits to recover damages for breach of any of the provisions of this Declaration.

Section 1017. Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility, and other such easements in, on, over, or under Association Properties, as well as the power to designate portions of the Association Properties as limited common elements for the benefit of Owners or specific Lots.

Section 1018. Power to Convey Property to Governmental Agencies. The Association, with the approval of Members representing at least eighty percent of the votes entitled to vote (excluding the votes of Declarant), shall have the power to grant, convey, dedicate, or transfer any Association Properties or facilities to any public, governmental or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, subject to the provisions contained elsewhere in this Declaration for approval of the same by Declarant with respect to property transferred to the Association by Declarant. Further, to the extent that any easement or right-of-way is required under or across any Association Properties that would not impair or hinder the use of them, the Association shall have the right to grant or convey the same without the consent of the Members.

Section 1019. Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money and, with approval of Members representing at least eighty percent of the votes of the Association entitled to vote (excluding the votes of Declarant), to encumber Association Properties as security for such borrowing, subject to provisions elsewhere contained in this Declaration with respect to required approvals and consents to such action. An Agreement to convey or subject the Association Properties to a security interest in accordance with this section shall be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The



agreement shall specify a date after which the agreement will be void unless Recorded before that date and shall be effective upon Recordation. Repayment of any borrowings shall be made by the Association pursuant to the terms.

Section 1020. Power to Engage Employees, Agents, and Consultants. The Association shall have the power to hire and discharge employees and agents, to retain and pay for a manager, (e.g. management company), and legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

Section 1021. Power to Enter into Trash Removal Contract. The Association shall have the power and authority to enter into a trash removal contract that provides for exclusive trash removal services for all Lots located within the Community. In the event the Association elects to enter into such trash removal contract, all Owners of Lots in the Community who are currently occupying residences on their Lots must use the services of and shall be entitled to benefits of such trash removal services. The Association shall have the power and authority to pass through and allocate to the Owners of all Lots who are currently occupying completed residences on their Lots a proportionate share of all costs and expenses charged to the Association under the trash removal contract. The Association shall have the right to terminate the trash removal services of any Owner of a Lot who fails to pay their proportionate share of the Trash Removal Allocation. No Owners shall have the right to separately contract for any trash removal services unless the Association elects not to enter into a contract for such services as contemplated herein.

Section 1022. Power to Maintain Landscaping. The Association shall have the power and authority to maintain, repair, and replace any landscaping located on property designated as open space or Common Areas and along the perimeter of the Community and at the entry way and to include the costs and expenses of such landscaping within the determination of Common Assessments as more particularly provided herein. The Association shall have the power and authority to enter into maintenance and repair contracts to maintain, repair, and replace the landscaping and other improvements on Association properties, Common Areas and right-of-ways.

Section 1023. Power and Responsibility to Construct and Maintain Improvements. The Association shall have the power to construct improvements located on Common Areas and Maintenance Areas. The Association shall have the responsibility to maintain, repair and replace any facilities and other Improvements including Landscaping located on the Common Area or Maintenance Areas whether constructed by the Association or by Declarant. These would include water quality ponds at the end of cul-de-sacs.



Section 1024. Lighting of Common Areas. If the Declarant or the Association installs any lighting (other than normal street lighting) to light Common Areas the Association shall have the power and responsibility to maintain, repair and replace said lighting and to make payments for all costs of said lighting and include said costs and expenses within the determination of Common Assessments as more particularly provided herein.

Section 1025. General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things that may be authorized, required, or permitted to be done under this Declaration, the Articles of Incorporation or Bylaws and to do and perform any and all acts that may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration, the Articles of Incorporation or Bylaws.

Section 1026. Powers Provided by Law. In addition to the powers provided in this Declaration, the Articles of Incorporation, or Bylaws, the Association shall have full power to take and perform any and all actions that may be lawfully taken by the Association under the Colorado Revised Nonprofit Corporation Act or the Colorado Common Interest Ownership Act.

Section 1027. Powers of the Association Relating to Neighborhood Associations. The Association may veto any action taken or contemplated by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Governing Documents or Community-Wide Standard. The Association also may require specific action to be taken by any Neighborhood Association to fulfill its obligations and responsibilities under any Governing Document. For example, the Association may require that specific maintenance or repairs or aesthetic changes be performed by the Neighborhood Association. If the Neighborhood Association fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may effect such action on behalf of the Neighborhood Association and assess the Units within such Neighborhood for any expenses incurred by the Association in taking such action. Such assessments may be collected as a Specific Assessment.

Section 1028. Trails. The Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Properties, including the Common Areas, to be used as recreational bike and pedestrian pathways and trails ("trail system"). Each Owner acknowledges, understands and covenants to inform its lessees and all occupants of such Owner's Unit, that the Properties may contain a trail system and that there may be certain inconveniences and loss of privacy



associated with the ownership of Units adjacent to such trail system resulting from the use of the trail system by the Declarant, the Association, its Members, their families, lessees and guests, and the public.

Section 1029. Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association. Each Owner shall also maintain all landscaping located between the street curb and the property line in the front of their lot unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association. If their lot sides or backs to a right of way that has a Standard Fence then the Association shall be responsible for maintenance between the fence and the curb. If there is no Standard Fence on the side or rear the Association will be responsible for the area between the sidewalk and the curb. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

Section 1030. Neighborhood's Responsibility. Upon resolution of the Board, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring Exclusive Common Areas within such Neighborhood. This may include, without limitation, the costs of maintaining any signage or entry features, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association

Any Neighborhood Association having responsibility for maintenance within a particular Neighborhood pursuant to additional covenants applicable to such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard and all Governing Documents. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Units within such Neighborhood as provided in Section 1120.

**ARTICLE XI
BUDGETS AND FUNDS**

Section 1101. Maintenance Funds To Be Established. The Association may establish and maintain the following separate Maintenance Funds: (a) an Administrative Functions Operating Fund; and (b) an Administrative Functions Reserve Fund. The Maintenance Funds shall be established as one or more savings or checking accounts at any financial institution in which deposits are insured by an agency



of the federal government, each of which accounts shall be held in trust for the Members. Notwithstanding anything else to the contrary contained herein, in no event shall the Association be required to apply any surplus funds of the Association remaining after payment of or provision for common expenses, or any prepayment of or provision for reserves, against any members' future Common Assessment.

Section 1102. Establishment of Other Funds. The Association may establish other funds as and when needed. Nothing herein shall limit, preclude, or impair the authority of the Association to establish other funds for specified purposes authorized by this Declaration. If the Association establishes any additional funds, the Executive Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Association.

Section 1103. Deposit of Common Assessments to Maintenance Funds. Money collected by the Association as Common Assessments shall be deposited in the Maintenance Funds in accordance with the following provisions: (a) there shall be deposited to the Administrative Functions Operating Fund that portion of the Common Assessments that, according to the Association Budget for the year, was budgeted for operating costs and expenses of the Administrative Functions; and (b) there shall be deposited to the Administrative Functions Reserve Fund that portion of the Common Assessments that was budgeted for the Reserve Fund for Administrative Functions.

Section 1104. Other Deposits to Maintenance Funds. The Association shall deposit money received by the Association from sources other than Common Assessments in the Maintenance Fund determined by the Executive Board to be most appropriate. For example, the Reimbursement Assessments shall be deposited to the Maintenance Fund from which the costs and expenses were or will be paid that form the basis for the Reimbursement Assessments; and Special Assessments for capital repairs, maintenance, replacements, and Improvements shall be deposited to the Reserve Fund from which such capital costs have been or will be paid. Interest and late charges received on account of delinquent assessments may be allocated among the Maintenance Funds in the same proportions as the delinquent assessments were allocated or, at the discretion of the Executive Board, may be allocated to any one or more of the Maintenance Funds or other funds.

Section 1105. Disbursements from Maintenance Funds. All amounts deposited in the Maintenance Funds shall be used solely for the common benefit of all the Members for purposes authorized by this Declaration. Disbursements from particular Maintenance Funds shall be limited to specified purposes as follows: (a) disbursements from the Administrative Functions Operating Fund may be made for such purposes as are necessary or proper under this Declaration, except those purposes for which disbursement are to be made from other Maintenance Funds; and (b) disbursements from the



Administrative Functions Reserve Fund shall be made solely for purposes of funding those Administrative Functions that are not expected to recur on an annual or more frequent basis.

Section 1106. Authority for Disbursements. The Executive Board shall have the authority to make, or to authorize an agent to make, disbursements of any money in a Maintenance Fund.

Section 1107. Funding of Reserve Funds. The Executive Board, in budgeting and levying Assessments, shall endeavor, whenever possible, to fund the Administrative Functions Reserve Fund by regularly scheduled payments, included as part of the Common Assessments, rather than by Special Assessments. Money in the Administrative Functions Reserve Fund may be used in the discretion of the Board, from time to time, for any purpose for which a Common or Special Assessment may be used.

Section 1108. Annual Budgets. The Executive Board shall cause to be prepared, at least sixty days prior to the commencement of each calendar year, a Budget for such calendar year, including a reasonable provision for contingencies and deposits into the Administrative Functions and Reserve Funds. The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Maintenance Fund, and shall reflect any expected income of the Association for the coming calendar year, any expected surplus from the prior year, and any existing surplus in any Reserve Fund. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the proper Reserve Fund for major capital repairs, replacements, and improvements, for Association Properties. Within thirty days after the adoption of any Budget, the Board shall cause a copy of the Budget or a summary of it to be distributed to each Member, shall cause a copy of the Budget to be posted at the principal office of the Association, and shall set a date for a meeting of the Owners to consider ratification of the Budget to be held not less than 14 nor more than 60 days after mailing or other delivery of the Budget or a summary of it. Such meeting may be concurrent with the annual meeting of Members as provided in the Bylaws. Unless at that meeting a majority of the Owners entitled to vote reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. In the event the Budget is rejected, the periodic Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board. In the event the Association does not have an address for any member, such posting shall be deemed delivery to such member. If the Association publishes a newsletter for Members, the Budget or a summary shall be published in the newsletter. Copies of the Budget shall be made available by the Association to any Members requesting a copy of the same upon payment of the reasonable copying expense.

Section 1109. Payments by Approved Builders. Approved Builders or individual owners, upon the purchase of a Lot from the Declarant, shall make a non-refundable payment to the Association in the



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amount of \$150.00 for each Lot purchased. Said funds shall be collected and transferred to the Association at the time of closing of the sale. Said sum shall be held, without interest, by the Association as a working fund in the Administrative Functions Reserve Fund. This Fund may be incorporated into the yearly budget as income so as not to create an increase in the common assessment.

Section 1110. Common Assessments.

(a) For each calendar year, the Association may levy a Common Assessment against owners of the Lots. The Common Assessment shall be the amount levied by the Association for each Lot for each calendar year. The beginning Common Assessment shall be \$180.00 unless changed by the Association as set forth in this Declaration. The Association may change the amount of the Common Assessment due for each calendar year by majority vote of the Executive Board. The maximum amount of the Common Assessment shall be subject to the provisions of this paragraph. Each Owner shall be obligated to pay the Common Assessments levied against and allocated to such Owner and the Lot of such Owner, as hereinafter provided. Notwithstanding any other provision in this Declaration, it is the intent of this Declaration that this Community shall be subjected only to Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107, C.R.S. (Provisions of the Colorado Common Interest Ownership Act) pursuant to C.R.S. 38-33.3-116(2) and (3). Therefore, notwithstanding any other provisions in this Declaration the maximum annual average common expense liability of each lot, exclusive of optional users fees and any insurance premiums paid by the Association, may not exceed \$400.00 as adjusted pursuant to C.R.S. 38-33.3-116(3).

(b) Commencement of Common Assessments. Common Assessments shall commence and be due and payable as to each Lot within the Community beginning the first day of the month after the first conveyance of a Lot to an Owner other than the Declarant or an Approved Builder. The obligation to pay Common Assessments shall apply to all Lots included within the Community, except those Lots owned by the Declarant or any Approved Builder. The Common Assessment for the calendar year in which a Lot is sold to an Owner, other than the Declarant or Approved Builder, shall be prorated on the basis of the then current calendar year. This prorated amount of the Common Assessment shall be known as the Initial Common Assessment.

(c) Payment of Initial Common Assessment. The Initial Common Assessment shall be paid to the Association at the time of the closing of the sale of a Lot to an Owner other than the Declarant or an Approved Builder.

Section 1111. Apportionment of Common Assessments. For purposes of assessing the Common Assessments, each Lot shall constitute one Lot regardless of the size, value, location, or use of such Lot. For the purposes of all assessments, including common assessments and supplemental assessments, the term Lot shall include, in addition to all Lots as defined herein, all Lots created by any re-subdivision



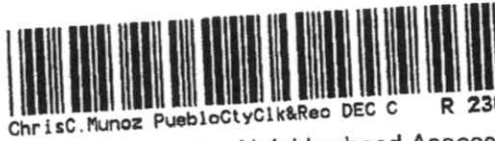
of any property within the Subdivision. The amount of the Common Assessment for any year, payable by the Owner of such Lot, shall be computed by dividing the total amount needed per the approved budget by the total lots that are owned by anyone other than the Declarant or Approved Builder, as of the first of the year. For special circumstances of higher density development, the Association may approve a variance in the Common Assessment amount for these lot owners.

Section 1112. Supplemental Common Assessments for Deficiencies. Subject to the provision of section 1110, if the Common Assessments prove inadequate for any reason, including nonpayment of any Owners' Assessments, the Executive Board may from time to time, levy a Supplemental Common Assessment for any of the Maintenance Funds. Such Supplemental Common Assessment shall be assessed against the Owner of each Lot in the same manner as Common Assessments are originally assessed each year by the Board with respect to the particular Maintenance Fund. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner, not less than thirty days prior to the effective date of such change.

Section 1113. Maximum Common Assessment. Except as otherwise provided herein, the Executive Board shall not levy a Common Assessment against a Lot in any calendar year that is greater than 115 percent of the respective Common Assessment assessed against such Lot in the preceding calendar year ("Maximum Common Assessment"), except with the approval of Members representing at least two-thirds of the votes of the Association entitled to vote.

Section 1114. Supplemental Common Assessments for Other Needs. If the Executive Board levies a Common Assessment in an amount less than the maximum Common Assessment for any calendar year, the Board, by majority vote, may thereafter levy one or more Supplemental Common Assessments during the calendar year, if it determines that the important and essential functions of the Association cannot be funded by the original Common Assessments. In no event shall the sum of the initial and Supplemental Common Assessments, as the case may be, for a calendar year exceed the maximum Common Assessment permitted for that year except as provided in Section 1113.

Section 1115. Approval of Increase in Maximum Common Assessment. If the Executive Board, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any one year or in any one year and subsequent years by the amount of the Maximum Common Assessment, it may call a meeting of Members entitled to vote requesting approval of a specified increase in the maximum Common Assessment for either one year or that year and one or more subsequent years. An increase in the maximum Common Assessment for any year or for any year and all subsequent years shall require the approval of Members representing two-thirds of the entire votes of the Association entitled to vote.



Section 1116. Neighborhood Assessments. Neighborhood Assessments for Neighborhood

expenses benefiting only units within a particular neighborhood or neighborhoods.

(a) Computation of Neighborhood Assessments. Before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners in accordance with Section 906, any additional costs shall be added to such budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood(s) benefited thereby and levied as a Neighborhood Assessment; provided however, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a Majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion of the benefit received.

The Board shall cause a summary of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least 60 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners of a Majority of the Units in the Neighborhood to which the neighborhood Assessment applies and, during the Declarant Control Period, by the Declarant. A meeting for the purpose of considering the budget shall be set for a date not less than 14 nor more than 60 days after delivery of the notice of assessments for the purpose of considering the budget. A quorum is not required for such meeting.

If the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a neighborhood budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 1117. No Disbursements to Abate Nuisances or Zoning Amendments. Nothing in this Declaration shall be construed to permit the Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Community or to dispute any change to the zoning or assessment of any property adjacent to or outside the boundaries of the Community.



Section 1118. Payment of Assessments (other than the Initial Common Assessment). Except for the Initial Common Assessment, Common Assessments and any Neighborhood Assessment shall be due and payable in advance to the Association by the assessed Member during the calendar year in monthly, quarterly or yearly installments, on or before the first day of each month, quarter or year during each calendar year, or in such other manner and on such other dates as the Executive Board may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments shall be given to each Member prior to January 1 of each year after the Initial Assessment.

Section 1119. Failure to Levy Assessment. Failure by the Executive Board to levy an Assessment for any year or failure to give notice as set forth in Section 1118 shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay assessments, or any installment thereof, for that or any subsequent year. If the Executive Board fails to levy an assessment for any year or fails to give notice as provided in Section 1118 the Common Assessment for the year for which the Executive Board failed to levy an Assessment or failed to give notice shall be the same as the previous year's Assessment. No abatement of the Common Assessments or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or Improvements to Association Properties or from any action taken to comply with any law or any determination of the Executive Board or for any other reason.

Section 1120. Special Assessments. In addition to any Common Assessments, the Executive Board may, subject to the provisions of this section, levy Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Common Assessments to construct or reconstruct, repair, or replace capital Improvements upon Association Properties, including necessary personal property related thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. The Board shall not levy Special assessments without the approval of the Members representing at least two-thirds of the Owners of Lots subject to the Special Assessment who are entitled to vote. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable. The Members shall pay any such Special Assessment in the manner so specified.

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules; provided however, the Board shall give prior written notice to the Owners of Units in, or the Voting Delegate representing, the Neighborhood and an opportunity for such Owners or Voting Delegate to be

heard before levying any such assessment.



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Section 1121. Reimbursement Assessments. The Executive Board may, subject to the provisions hereof, levy an Assessment against any member if the willful or negligent failure of the Member or a Related User claiming through the Member to comply with this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations shall have resulted in the expenditure of funds by the Association to cause such compliance including, but not limited to, court costs and attorneys' fees. Such Assessment shall be known as a Reimbursement Assessment and shall be levied only after Notice and Hearing. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty days after notice to the Member of the decision of the Board that the Reimbursement Assessment is owing.

Section 1122. Late Charges and Interest. If any Common Assessment, Special Assessment, or Reimbursement Assessment or any installment thereof is not paid within thirty days after it is due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Executive Board. Any Assessment or installment of an Assessment that is not paid within thirty days after the date of any Notice of Default given under Section 1123 and prior to the Recordation of a Notice of Lien under section 1126 hereof shall bear interest from the date of Recordation of the Notice of Lien at the highest rate then established by statute in Colorado for interest on damages for personal injury or on judgments in other actions, whichever is higher, but not less than eight percent per annum simple interest.

Section 1123. Attribution of Payments. If any installment payment of a Common Assessment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in the following order of priority: (a) to the Administrative Functions Reserve Fund until that portion of the Common Assessment has been satisfied; and (b) to the Administrative Functions Operating Fund. In each of the foregoing cases, receipts shall be credited first to interest, attorneys' fees and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations, in accordance with the foregoing order of priority.

Section 1124. Notice of Default. If any Common Assessment, Special Assessment, or Reimbursement Assessment or any installment thereof is not paid within thirty days after its due date, the Executive Board may mail a notice of default ("Notice of Default") to the Owner and to each first Mortgagee of the Lot who has requested a copy of the notice. The notice shall specify: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty days from the date the notice is mailed to the Member, by which such default must be cured; and (d) that

failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current calendar year, if applicable, and the filing and foreclosure of the lien for the Assessment against the Lot of the Member. The notice shall further inform the Member of any right to cure the default and of any right to bring a court action to assert the non-existence of a default or any other defense of the member. If the delinquent Assessment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand, if applicable, and may enforce the collection of the Assessment and all charges and interest thereon in any manner authorized by law in this Declaration, subject to the protection afforded to Mortgagees under this Declaration.

Section 1125. Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special, or Reimbursement, the Executive Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

Section 1126. Lawsuit to Enforce Assessments. The Executive Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount the court may adjudge, against the defaulting Owner or Member.

Section 1127. Lien to Enforce Assessments. The Association shall have a lien on a Lot for any Assessment levied against that Lot, or fines imposed against its Owner, from the time the Assessment or fine become due. All fees, charges, late charges, attorneys' fees, fines and interest outstanding from such Owner shall be included in such lien. The lien created hereby shall be prior to any declaration of homestead rights Recorded after the time that the Lot becomes a part of the Community and shall have the priority attached to such lien under Colorado law. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. Unless paid or otherwise satisfied, the lien may be foreclosed in the manner for foreclosure of mortgages in the state of Colorado or in any other manner provided under Colorado law.

Section 1128. Estoppel Certificates. Upon the written request of any member and any Person with, or intending to acquire, any right, title, or interest in the Lot of such member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any



Assessment levied against such Lot that is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association and all persons for all purposes that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

Section 1129. No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or Executive Board is not properly exercising its duties and powers under this Declaration.

Section 1130. Real Estate Transfer Fee. There may be a transfer fee imposed by the Association, from time to time, in connection with the sale, long-term lease or other conveyance other than the transfer of a Lot from Declarant or from an Approved Builder.

**ARTICLE XII
GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS**

Section 1201. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account in construing the section.

Section 1202. Design Review Committee Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intendment or meaning of any of these Covenants, the Design Review Committee shall determine the proper construction of the provision in question and shall set forth in a written instrument duly acknowledged by the Design Review Committee and filed for record with the Clerk and Recorder of Pueblo County, the meaning, effect and application of the provision. This definition will thereafter be binding on all parties so long as it is not arbitrary or capricious. Matters of interpretation involving Declarant shall not be subject to this section 1202.

Section 1203. Covenants Run With the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any lot in the Subdivision.

Section 1204. Covenants are Cumulative. Each of these Covenants is cumulative and independent. Each provision of these Covenants may be construed separately without reference to any other provisions.



Section 1205. Waivers. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Section 1206. Enforcement. The Association and their agents shall have the right to enter upon any lot in the Subdivision when necessary and shall not be deemed a trespass for the purposes of:

(a) inspection of property to determine compliance with Covenants;

(b) to deliver notification of breach of Covenants; or

(c) upon the failure by an Owner to cure a breach within thirty days of written notification, the Declarant or Association at their option, may make repairs or perform maintenance or otherwise undertake action to cure the breach to restore the appearance of the property involved to a reasonable attractive condition or otherwise bring such property into compliance with the Covenants. In the event Association elects to perform maintenance pursuant to this section 1206, Association will submit to the Owner or persons responsible for the property upon which or for whose benefit such maintenance was performed, a written statement of the costs incurred by the Association in performing the maintenance. These costs shall be paid to the Association within thirty days after receipt of such notice. If Association's costs have not been paid after expiration of this thirty-day period, Association may thereafter record a lien against the Lot (including improvements thereon) for all costs (including reasonable attorneys' fees) incurred by Association in performing the maintenance and in collecting such costs and foreclosing upon the lien. This lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded. This lien may thereafter be foreclosed upon in the manner provided by Colorado law for foreclosing upon mechanics liens. This lien shall provide all sums expended by Association in foreclosing the lien and collecting the amounts due Association (including reasonable attorneys' fees) shall be additional indebtedness secured by the lien. These Covenants are for the benefit of the Owners, jointly and severally, and of the Association and may also be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, the Association, or any combination of the two. Until seven years after these Covenants are filed of record, or when Declarant owns no property within the Subdivision, whichever is later, Association may also enforce these Covenants in any of the manners



permitted above. All costs, including reasonable attorneys' fees, incurred by the Association in connection with any successful enforcement proceeding initiated by the Association or, during the period it is permitted to enforce these Covenants, incurred by Association, shall be paid by the party determined to have violated the Covenants. Any party exercising its right to enforce these Covenants shall not be required to post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. The rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others.

Section 1207. Duration of Restrictions. The restrictions and other provisions set forth in these Covenants shall remain in force until the year 2015 and shall be automatically renewed for successive periods of ten years unless before the year 2015 or before the end of any ten-year extension, there is filed for record with the Clerk and Recorder of Pueblo County an instrument stating that extension is not desired, signed and acknowledged by the Owners of a majority of the Lots in the Subdivision.

Section 1208. Amendment and Extensions. From time to time any one section of these Covenants (except section 209 and Article V) may be amended or a new section may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least two-thirds of the Lots in the Subdivision and filed for record with the Clerk and Recorder of Pueblo County. No amendment shall be made to limit or terminate the responsibility of the Association to maintain all Common Areas, Maintenance Areas, areas maintained by the Declarant and all other maintenance responsibilities for any areas located within the Subdivision as set forth in this Declaration.

Section 1209. Partial Amendments. These Covenants may be amended for only a portion of the Subdivision by a written instrument executed by Declarant and one hundred percent of the then Owners of such portion of the Subdivision if:

- (a) the portion of the Subdivision affected by such amendment contains at least twenty contiguous Lots;
- (b) no improvements have been erected on any such Lots; and
- (c) Declarant reasonably determines that the amendments will not materially adversely affect the general living environment contemplated by these Covenants for the remaining Lots.

Section 1210. Additional Areas. From time to time until December 31, 2010, Declarant may include additional areas within the real estate subject to these Covenants, so long as the Veterans Administration and/or Federal Housing Administration approve such addition. Such additions shall be effected by filing with the Clerk and Recorder of Pueblo County, Colorado, a supplemental declaration,



together with a map and legal description designating the additional area to be included. All areas so added shall be subject to all these Covenants, and any references to the Subdivision in these Covenants shall automatically include such additional areas upon recording the supplemental declaration. Declarant may also impose additional restrictions on areas so added. All areas so added shall be contiguous to the Subdivision, and the total number of residential Building Sites in the land subject to these Covenants shall not exceed three hundred.

Section 1211. Severability. If any of these Covenants shall be held invalid or become unenforceable, the other covenants shall not be affected or impaired but shall remain in full force and effect.

Section 1212. Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, application or other action.

Section 1213. Notices. Any writing described in section 1213, including but not limited to any communication from the Design Review Committee to an Owner, shall be sufficiently served if delivered by mail or otherwise: (a) to the dwelling situate on the Lot owned by that Owner; or (b) if there is no dwelling, then to the address furnished by the Owner to the Design Review Committee and if the Owner has not furnished an address, then to the most recent address of which the Design Review Committee has a record.

Section 1214. Costs and Attorney Fees. In any action or proceeding under this Declaration, including enforcement of covenants or any other provision of this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees.

Section 1215. Limitation on Liability. The Association Executive Board, Design Review Committee, Declarant and any member, agent or employee of any of the same shall not be liable to any person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

Section 1216. No Representations or Warranties. No representations or warranties or any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community or any improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the Subdivision sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

