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**DECLARATION**

of

**Covenants, Conditions, Restrictions and Easements**

for

**UNIVERSITY PARK**  
a planned community

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DECLARATION

of

Covenants, Conditions, Restrictions and Easements

for

UNIVERSITY PARK  
a planned community

This Declaration is made as of JANUARY 9, 1998, by Pulpit Rock Investments, LLC, a Colorado limited liability company ("Declarant") and is consented to by UP Phase I, LLC, a Colorado limited liability company, as the owner of the Community Area (defined below), in order to create a common interest community pursuant to the Colorado Common Interest Ownership Act.

ARTICLE I  
GENERAL

Section 1.1 Common Interest Community. The name of the common interest community created by this Declaration is "University Park." University Park is a planned community as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103 (22), Colorado Revised Statutes. All of University Park is located in El Paso County, Colorado.

Section 1.2 Property Affected. That certain real property in the City of Colorado Springs, El Paso County, Colorado described on the attached **Exhibit A**, together with all other real property that may hereafter be made subject to this Declaration is referred to in this Declaration as the "Community Area." Declarant reserves the right to add all or a portion of the real property described on **Exhibit B** to the Community Area pursuant to the terms of Article 8 of this Declaration (the "Expansion Property").

Section 1.3 Purposes of Declaration. This Declaration is executed and recorded (a) in furtherance of a common and general plan for those parcels of land which are now hereafter made a part of the Community Area; (b) to protect and enhance the quality, value, desirability and attractiveness of all property within the Community Area; (c) to provide for the Association to hold, maintain and manage certain common properties and amenities in the Community Area and to perform certain functions for the benefit of the Owners (as defined herein); (d) to define the duties, powers and rights of the Association; and (e) to define certain duties, powers and rights of Owners.

Section 1.4 General Scheme and Plan of Community Area. The Community Area created pursuant to this Declaration encompasses all of the property described in **Exhibit A**. This Declaration is acknowledged to be a master declaration which may govern all of University Park. It is the intent of the Declarant to add to the Community Area those portions of the Expansion

Property which Declarant may elect, in its sole discretion, to develop as part of University Park. Declarant hereby specifically reserves the right to add all or a portion of the Expansion Property to the Community Area, from time to time upon the consent of the Owner thereof, if applicable. For various portions of the Community Area, certain additional covenants and services may be required to address the differing types of residential products (including apartments, townhomes and condominiums) and commercial or recreational land uses that may currently or hereafter be developed and constructed within University Park and included within the Community Area. The various areas of development within University Park, as established from time to time by the Declarant based upon the zoning of the area or the product being constructed in the area, will be referred to in this Declaration as the "Villages." As such, Declarant reserves the right to record for the various Villages or groups of Villages, a specific set of covenants, including the formation of an association that is specifically for the applicable Village or group of Villages (the "Subassociation" or "Subassociations"), and to establish specific and varying Design Guidelines for each Village or groups of Villages. It is anticipated that any Subassociation which may be established for a Village may administer any additional services provided to the Owners of the applicable Village or Village group (the "Additional Service Lots"), including additional assessments to the Owners of the Additional Service Lots within the applicable Village or group for the additional services that are provided to such Owners that are not generally provided to all other Owners. Declarant reserves the right, rather than form a Subassociation to administer additional covenants and services to be provided to the various Villages or groups of Villages, to cause the Association formed pursuant to this Declaration to administer such additional covenants and services as may relate or be provided to a particular Village or group, in which event the Common Assessment payable by the Owners of the Additional Service Lots may be greater than the Common Assessment payable by the Owners of other Lots within the Community Area so that the Owners of the Additional Service Lots will pay through the increased Common Assessment the costs of providing the additional services provided to the Owners of the Additional Service Lots.

Section 1.5 Declaration. Declarant, for itself, its successors and assigns, hereby declares that the Community Area, and each part thereof, shall, on and after the date this Declaration is recorded, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions and other provisions set forth in this Declaration, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 14.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property within the Community Area and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all Owners and other Persons and entities having or acquiring any right, title or interest in any property which is part of the Community Area or any part or parcel thereof or any Improvement thereon, and their encumbrancers, claimants, heirs, personal representatives, successors and assigns.

ARTICLE 2  
DEFINITIONS

Unless otherwise expressly provided in this Declaration, the following words and phrases, whenever used in this Declaration, shall have the meanings specified in this Article 2.

Section 2.1 Architectural Committee. "Architectural Committee" shall mean any approving authority established pursuant to Section 3.1 of this Declaration.

Section 2.2 Assessment. "Assessment" shall mean a "Common Assessment," pursuant to Section 9.3, a "Special Assessment," pursuant to Section 9.8 or a "Site Assessment," pursuant to Section 9.9.

Section 2.3 Association. "Association" shall mean University Park Homeowner's Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

Section 2.4 Association Documents. "Association Documents" shall mean the various operative documents of the Association, whether recorded or adopted at this time or as the same have been or may be amended, modified, supplemented, or otherwise changed from time to time, all of which are incorporated herein by this reference, and shall include the following:

- (a) the Articles of Incorporation of the Association;
- (b) the Bylaws of the Association;
- (c) this Declaration, and all amendments and supplements to this Declaration;
- (d) any Plat or Supplemental Plat of the Community Area or any portion thereof;
- (e) any development plan for the Community Area or any portion thereof;
- (f) the Design Guidelines for each Village, as applicable;
- (g) the Rules and Regulations; and
- (h) Village Covenants for each Village as may be adopted by Declarant and as may be applicable and any related Subassociation documents.

Section 2.5 Association Properties. "Association Properties" or "Association Property" shall mean all real and personal property, together with any and all Improvements now or hereafter located thereon and appurtenances and rights thereto, now or hereafter owned by the Association or which the Association now or hereafter maintains, holds or uses for the common use and enjoyment of all of the Members as provided herein, including but not limited to all easement rights for the benefit

of the Association or any Association Property, other than landscaping easements located within the Lots which shall be maintained by the Lot Owner, and for other purposes as may be permitted by this Declaration. The Association Properties shall also include the tracts of land identified on the Plat or Supplemental Plat as Association Properties, or for which the Association shall be responsible for maintaining in some manner, which Declarant will hereafter convey or assign easements to the Association, as applicable, and which may consist of the following:

- (a) all streets and roads, if any, within or providing direct access to the Community Area that have not been publicly dedicated;
- (b) the entry monuments at each entrance to University Park and appurtenant land and facilities;
- (c) all University Park general signage as well as all specific Village signage;
- (d) any open space tract in the Community Area that will be Association Property; and
- (e) all decorative improvements which may be located within any public street within the Community Area and which the City of Colorado Springs, Colorado (the "City") does not accept for maintenance purposes.

It is hereby acknowledged that the Association will be required to accept title to all property and improvements which benefit University Park as determined by Declarant in its sole discretion or which may be identified from time to time as Association Property on any Plat or Supplemental Plat, regardless of the date on which title shall actually be conveyed to the Association by the owner thereof. It is also hereby acknowledged that all of University Park's parkway landscaping, landscaping along Rockhurst Boulevard, Saxon Lane and Mercer Drive, the general signage for all of University Park, including all Village signage are a benefit to University Park and all Lot Owners and may therefor be subject to designation as Association Property at the election of the Declarant. All of the Association Properties will be "common elements" as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103 (5).

Section 2.6 Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 2.7 Community Area. "Community Area" shall mean the real property described on **Exhibit A**, together with any and all Improvements now or hereafter on such real property and appurtenances and rights to such real property. If and when added by the Declarant, Community Area shall also mean and include such portions of the Expansion Property as shall be made subject to this Declaration from time to time as provided for in Section 8.8 hereof. The Community Area will not be expanded to include any property other than the Expansion Property without the written approval of a majority of the Owners in the Community Area.

Section 2.8 Declarant. "Declarant" shall mean Pulpit Rock Investments, LLC, a Colorado limited liability company, its successors and assigns. A Person shall be deemed a "successor and assign" of Pulpit Rock Investments, LLC, as Declarant, only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument. Notwithstanding the foregoing, a successor to Pulpit Rock Investments, LLC by consolidation or merger shall automatically be deemed a successor or assign of Pulpit Rock Investments, LLC as Declarant under this Declaration.

Section 2.9 Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for University Park, in its entirety, including all attached exhibits and all subsequent amendments.

Section 2.10 Design Guidelines. "Design Guidelines" shall mean the various guidelines adopted for various Villages or groups of Villages by the applicable Architectural Committee pursuant to Section 3.2 setting forth certain architectural, building and development standards and specifications regarding the location and design of Improvements, construction materials, lighting, landscaping, and other matters relating to Improvements on Lots. The Design Guidelines are incorporated in this Declaration by reference. Copies of the Design Guidelines are available from the Declarant, the Association or the Architectural Committee. The Design Guidelines may be changed by the applicable Architectural Committee from time to time as provided in Section 3.2.

Section 2.11 Dwelling Unit. "Dwelling Unit" shall mean an Improvement on a Lot which is intended or used for residential occupancy, including, without limitation, any individual single family detached home, patio home, townhome, condominium unit and apartment unit.

Section 2.12 Expansion Property. "Expansion Property" shall mean and refer to any part of that certain real property described on Exhibit B hereto, which may be annexed to the Community Area pursuant to Section 8.8 hereof, together with all appurtenances thereto and all improvements now or hereafter thereon.

Section 2.13 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.14 First Mortgagee. "First Mortgagee" shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such Person under such First Mortgage.

Section 2.15 Improvements. "Improvements" shall mean all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, basketball backboards and supporting structures, patio covers, awnings, painting or other finish material of any exterior surfaces or any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning and water softener fixtures. "Improvements" shall also mean an excavation or fill the volume of which exceeds two cubic yards, and 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.

Section 2.16 Landscape. "Landscape" shall mean the treatment of ground surface with live plant materials, wood chips, crushed stone, decorative rocks, mulch materials or other decorative surfacing materials approved by the applicable Architectural Committee. For purpose of this definition, the word "Landscape" shall include all other forms of the word Landscape, such as "Landscaped" and "Landscaping."

Section 2.17 Lot. "Lot" shall mean a physical portion of the Community Area which is designated for separate ownership or occupancy as shown on any Plat, Supplemental Plat or condominium map recorded in El Paso County pursuant to the ordinances of the City. Each Lot constitutes a "unit" as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103(30), Colorado Revised Statutes. The maximum number of Lots that may be created within the Community Area (including the properties described in Exhibits A and B) is 1157.

Section 2.18 Lot Lines. Front, side and rear "Lot Lines" shall be the same as defined in the zoning regulations of the City 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 street. A side Lot Line is any boundary line which meets and forms an angle with a street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street that affords the principal access to the Lot. All other Lot Lines are rear Lot Lines.

Section 2.19 Member. "Member" shall mean a member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot.

Section 2.20 Owner. "Owner" shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Lot, including sellers under executory contracts under Colorado law.

Section 2.21 Person. "Person" shall mean a natural person, a corporation, a limited liability company, a partnership (including general, limited and limited liability partnerships) or any other public or private entity recognized as being capable of owning real property under Colorado law.

Section 2.22 Plat. "Plat" shall mean the University Bluffs Filing No. 1 plat, the University Bluffs Filing No. 2 plat and the University Heights Filing No. 1 plat, all as recorded in the real estate records of El Paso County, Colorado, and all subsequent plats of all or a portion of the Community Area.

Section 2.23 Related User. "Related User" shall mean: (a) any Person who resides with an Owner within the Community Area; (b) a guest or invitee of an Owner; (c) an occupant, tenant or contract purchaser of any Dwelling Unit or other Improvement on a Lot; and (d) any family member, guest, employee, agent, representative, licensee, contractor, invitee or cohabitant of any of the foregoing Persons.

Section 2.24 Rules and Regulations. "Rules and Regulations" shall mean the rules and regulations adopted from time to time by the Board of Directors as provided in Section 6.11 of this Declaration.

Section 2.25 Supplemental Plat. "Supplemental Plat" shall mean a plat satisfying the requirements of Section 209 of the Colorado Common Interest Ownership Act, Section 38-33.3-209, Colorado Revised Statutes, recorded for any portion of the Community Area, currently existing or as expanded pursuant to the terms of Section 8.8 hereof. The term Supplemental Plat shall also include any plat meeting the requirements of Section 209 of the Colorado Common Interest Ownership Act which changes the boundaries of any Lot or Lots or which is recorded in conjunction with any amendment to this Declaration.

### ARTICLE 3 ARCHITECTURAL CONTROL AND CONSTRUCTION REQUIREMENTS

Section 3.1 Architectural Committee. Until Declarant has sold all of the Lots in the Community Area, or until such earlier time as Declarant elects to assign the right to appoint the Architectural Committee for all or a portion of the Villages to the Board, the Architectural Committee for each Village shall consist of not less than three members appointed by Declarant. After the right to appoint the Architectural Committee for a particular Village or group of Villages has been transferred to the Board, the Architectural Committee of that Village or group of Villages shall consist of at least three and not more than five individuals, all of whom shall be appointed by the Board of the Association. The members of the Architectural Committee of any Village or group of Villages need not be Members of the Association. Each Architectural Committee shall exercise the functions assigned to it by this Declaration, the applicable Design Guidelines, including reviewing and approving all plans for Improvements as provided in this Declaration, and any Village

specific protective covenants, which may be created by Declarant to supplement the terms of this Declaration as provided herein ("Village Covenants").

Section 3.2 Design Guidelines. The Architectural Committee for each Village or group of Villages, as applicable, shall have the authority to promulgate and adopt Design Guidelines for all Improvements in the applicable Village or applicable or group of Villages, which Design Guidelines may regulate, among other things, the following matters:

(a) Use:

- (1) permitted uses;
- (2) prohibited uses;
- (3) construction type and standards;
- (4) parking and other requirements associated with a designated use.

(b) Site Location:

- (1) Improvement location on a Lot;
- (2) orientation of a Dwelling Unit to Lot Lines;
- (3) site coverage;
- (4) setbacks;
- (5) disturbance of on-site vegetation.

(c) Architectural Design:

- (1) building heights and area requirements;
- (2) exterior materials and colors;
- (3) elevations;
- (4) roof lines;
- (5) exterior lighting.

- (d) Site Accessories:
  - (1) entrances to Lots and driveway layout;
  - (2) parking areas within Lots;
  - (3) fences and dog runs;
  - (4) placement and screening of satellite dishes;
  - (5) patios, accessory buildings or other Improvements;
  - (6) swimming pools and tennis courts;
  - (7) basketball backboards and other play equipment;
  - (8) signage limitations and requirements.
- (e) Landscape Design:
  - (1) plant materials;
  - (2) amount of Landscaping required;
  - (3) preservation of vegetation;
  - (4) maintenance guidelines.
- (f) Approval Processes:
  - (1) documentation required for review and approval (including scale);
  - (2) time periods for review and approval.

All Improvements, including those on the Association Properties shall be constructed or installed in compliance with the requirements of this Declaration and with the applicable Design Guidelines as they exist at the time of approval of plans pursuant to this Article 3. Each Architectural Committee shall have the right to modify or supplement its Design Guidelines from time to time; provided, however, any such modification shall require the prior written consent of Declarant so long as Declarant owns any Lot within the affected area and that no modification of the Design Guidelines may result in a provision that contradicts or conflicts with any express provision of this Declaration or that is contrary to the general intent or purposes of this Declaration.

Section 3.3 Approval Required. No Improvement shall be placed, erected, installed or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until the plans and specifications for such Improvements shall have been submitted to and approved in writing by the applicable Architectural Committee as provided in this Declaration and in any applicable Village Covenants. Matters which require Architectural Committee approval include but are not limited to:

- (a) the construction, installation, erection or expansion of any Main Building or any building, structure, or other Improvements;
- (b) the installation of Landscaping;
- (c) the demolition or destruction, by voluntary action, of any building, structure or other Improvements;
- (d) the grading, excavation, filling or similar disturbance to the surface of the land; and
- (e) any change or alteration of any previously approved Improvements, including any change of exterior appearance, finish material, color or texture.

Section 3.4 Plans Submissions. All plans, samples and other materials to be submitted to an Architectural Committee shall be submitted in duplicate. The required scale of various kinds of plans shall be set forth in the applicable Design Guidelines. The plot plan in this minimum scale shall show the location of all buildings, drives, and any other Improvements. Proposed new contours throughout the Lot and abutting street elevations on all sides shall 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.

Section 3.5 Approval Process. All action required or permitted to be taken by an Architectural Committee shall be in writing, and any such written statement shall establish the action of the Architectural Committee and shall protect any person relying on the statement. The procedure for submitting requests and obtaining approvals shall be as set forth in the applicable Design Guidelines. The Architectural Committee shall charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Committee for their services. Each Architectural Committee shall be entitled to retain one copy of all approved plans as part of its files and records. Approvals of all plans and specifications for an Improvement will automatically expire within one year after approval if construction is not commenced within one year after approval, and if approval so expires, the applicant must resubmit a request for approval of the Improvement.

Section 3.6 Approval Standards. All Improvements to be constructed or installed within the Community Area must comply with all Design Guidelines and this Declaration. In granting or withholding approval of matters submitted to it, the Architectural Committee shall consider the specific standards and specifications set forth in its Design Guidelines. The Architectural Committee shall have the right to disapprove any plans, specifications or details submitted to it if it determines that the proposed Improvement is not consistent with the Design Guidelines or any provision of this Declaration; if the plans and specifications submitted are incomplete; or if the Architectural Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interest, welfare or rights of all or any part of the Community Area, the Association or the Owners. If the Architectural Committee believes there may be questions of structural integrity, it may, as part of the approval requirements, require certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. The decisions of the Architectural Committee shall be final and binding unless they are clearly arbitrary and there is no evidence to support the Architectural Committee's decision.

Section 3.7 No Liability. Neither Declarant, the Board of Directors of the Association nor any Architectural Committee or any member of any such group shall be liable in damages or otherwise to anyone submitting plans to them for approval or requesting a variance, or to any Owner by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the plans, specifications or variance. Approval by the Architectural Committee shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Committee to comply with all codes, ordinances and regulations.

Section 3.8 Overhead Transmission Lines. Each Owner hereby acknowledges the existence of overhead high voltage electrical transmission wires that are adjacent to certain portions of the Community Area (the "Overhead Lines"). Each Owner further acknowledges that it is being given the opportunity to conduct its own investigation of the Community Area, including the effects, if any, of the Overhead Lines. Each Owner shall have full responsibility to conduct any such investigations of the Overhead Lines as that Owner, in its discretion, determines necessary or advisable. Owner shall not hereafter assert any claim against Declarant, the Association, any Architectural Committee or any member thereof at any time based on any facts or circumstances related to, directly or indirectly, or arising out of the existence, operation or maintenance of the Overhead Lines. The provisions of this Section 3.8 shall survive any closing of any portion of the Community Area. OWNER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, RELEASES DECLARANT, THE ASSOCIATION, ANY ARCHITECTURAL COMMITTEE OR ANY MEMBER THEREOF FROM ANY AND ALL LIABILITY WHATSOEVER WITH RESPECT TO THE FOREGOING MATTERS. The foregoing release is acknowledged to be a material inducement to Declarant agreeing to sell any Lot to an Owner.

Section 3.9 Hillside Overlay Zone. All of the land within the Community Area, as well as all of the University Park project, is currently designated as and located within a Hillside Overlay

Zone established by the City. All development and construction of Improvements on the Lots shall comply with the applicable laws, ordinances and regulations of any and all governmental or quasi-governmental entities having jurisdiction over the community.

Section 3.10 Hillside Considerations. Hillside areas may pose special construction and development challenges and some additional risk to homeowners. The Hillside Overlay Zone was established to focus special attention on the protection of hillside, slope stabilization and to maintain the natural environment. To that end, certain areas on the recorded Plats may be designated as areas of geological concern requiring soils tests, or preservation areas that may not be built on due to existing animal life, existing natural growth or geologic constraints such as natural drainage areas. In addition, specific height and color limitations are also imposed pursuant to the Hillside Overlay zone on the Community Area. Each Owner is advised to carefully review the development plan applicable to that Owner's Lot to determine any additional restrictions imposed with respect to the Lot.

Section 3.11 Designation and Use of the Preservation Area. Certain areas within the Community Area that are not suitable for development because of geological constraints, natural drainage areas or steep slopes, together with certain areas within Lots, may be designated on the Plat of the Community Area, a supplemental Plat or a recorded subdivision plat approved by the City as "Preservation Areas." The Preservation Area shall be used by each Lot Owner only in such a manner as is consistent with the preservation of the natural growth and, except for driveways, utilities and drainage structures as approved by the Architectural Committee, shall not be subjected to any kind of intensive or destructive use or any activity which might result in permanent damage to the existing natural growth. In amplification and not in limitation of this general restriction the following specific restrictions are imposed on the Preservation Area:

- (a) No planting or cultivation shall be permitted except planting and cultivation of plants native to the Pikes Peak region.
- (b) No alteration of ground conditions and no clearing of living growth shall be permitted except for the items described in Section 3.11 (a) above, driveways, utilities, and drainage structures as approved by the Architectural Committee and for the removal of plants infected with noxious insects or diseases as acknowledged by the Architectural Committee.
- (c) No structures or installations of any kind shall be permitted except for approved driveways, utilities, and drainage structures as approved by the Architectural Committee.
- (d) No vehicles or conveyances of any type shall be permitted within the Preservation Area except on approved driveways, utilities and drainage structures or except to preserve order or to protect, preserve or maintain the Preservation Area.

- (e) No activity tending to produce litter shall be permitted.
- (f) No obstruction of any kind of the natural flow of water through any drainage channels or Preservation Areas shall be allowed.
- (g) No activity tending to weaken or destroy the animal habitat or to interfere with game trails shall be permitted.
- (h) No fencing, except temporarily during construction when a temporary fence will help preserve and protect the Preservation Areas.

Section 3.12 Construction Type. All construction shall be new. No building previously used at another location nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot except as expressly provided in Section 3.15 for temporary construction, sales or administration buildings.

Section 3.13 Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement unless such building materials are stored in the garage on the Lot or otherwise enclosed and fully screened in a manner approved by the Architectural Committee.

Section 3.14 Construction Completion. The exterior of all Improvements must be completed within nine (9) months after the commencement of construction, and Landscaping and other Improvements which are approved by the Architectural Committee as part of the initial construction of the Improvements on a Lot outside of an Improvement must be completed within six (6) months after completion of the Improvements, except where such completion is impossible or would result in hardship due to strikes, fires, national emergency or natural calamities and except if the Architectural Committee approves a longer period of construction due to unusual circumstances. For purposes of this Section 3.14, "commencement of construction" of an Improvement to be occupied or used as a residence or commercially ("Main Building") is defined as the obtaining of necessary building permits and the excavation of earth for a foundation, and for all other Improvements is defined as the undertaking of any visible exterior work. If construction is not completed within the above time periods or such later time approved by the Architectural Committee, or if construction shall cease for a period of sixty days without permission of the Architectural Committee, the Architectural Committee will give the Owner of the Improvements involved written notice of such fact, and if construction on such Improvement is not diligently commenced within thirty days after such notice, the unfinished Improvement or unfinished portion thereof shall be deemed a nuisance and, at the Association's option, shall be removed forthwith by the Association and at the cost of the Owner.

Section 3.15 Construction or 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 Declarant or the Architectural Committee. Model homes may be used and exhibited only by Declarant or with the permission of the Declarant or the Architectural Committee. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for any such purpose.

Section 3.16 Control During Construction. During the period of construction of a Dwelling Unit or other Improvements on a Lot, the Owner of the Lot or his contractor shall control dirt and dust, keep surrounding streets reasonably clean and keep construction debris confined in a trash receptacle and shall abide by all of the construction requirements set forth in the Declaration.

Section 3.17 Natural Vegetation. No trees, surface boulders, scrub oak or other natural vegetation shall be removed from any Lot, except as permitted by the Design Guidelines or with the prior approval of the Architectural Committee and except as provided in Section 4.5.

Section 3.18 Drilling Structures. No derrick or other Improvement 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, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot. The foregoing is not intended to prohibit temporary drilling to obtain samples in connection with the investigation of soils or temporary drilling necessary in the construction of Improvements.

Section 3.19 Variance Requests. No variance request shall be submitted to the City by any Lot Owner unless such variance shall have been previously approved by the Architectural Committee as provided in this Declaration.

Section 3.20 Setbacks. The setback distances of Main Buildings and other Improvements from Lot Lines shall be determined in accordance with the Design Guidelines established by the Architectural Committee. All construction must also conform to the setback requirements of the applicable development plan, building code, zoning code and subdivision regulations of the City.

Section 3.21 Antennas. Except as provided below in this Section 3.21, no aerial, antenna, or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall any such aerial, antenna or other device be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for structures, other than FCC Protected Structures, as defined below, must be submitted to and approved by the Architectural Committee prior to installation. If the Architectural Committee disapproves such structure, the party requesting approval may modify its plans to eliminate the Architectural Committee's objections and resubmit them for approval. If any such aerial, antenna, satellite dish or other device is installed without the approval of the Architectural Committee, the Architectural Committee shall have the rights set forth in these Covenants. Notwithstanding the above, an antenna that is (i) designed to receive direct broadcast satellite service that is one meter

or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one meter or less in diameter or diagonal measurement, or (iii) that is designed to receive television broadcast signals, as defined by the Federal Communications Commission or the Telecommunications Act of 1996, as may be amended from time to time (collectively, "FCC Protected Structures"), shall be permitted so long as the means, method and location of such Antenna comply with the rules adopted from time to time by the Architectural Committee. No unreasonable delay or unreasonable increase in the cost or installation or maintenance of an FCC Protected Structure shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an FCC Protected Structure, other than for health and safety reasons.

Section 3.22 Rebuilding or Restoration. If any Main Building or other Improvement is destroyed in whole or in part by fire, windstorm or from any other cause or act of God, it must be rebuilt or all debris must be removed and the Lot restored to a slightly condition. Such rebuilding or restoration must be commenced within three (3) months after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed one year after the date the damage occurred or such longer period of time as may be approved by the Architectural Committee due to unusual circumstances. If restoration, rebuilding or removal is not completed within the above time periods or such later time approved by the Architectural Committee, or if the restoration, rebuilding or removal shall cease for a period of sixty days without permission of the Architectural Committee, the Architectural Committee will give the Owner of the Lot involved written notice of such fact, and if the restoration, rebuilding or removal of the Improvements is not diligently commenced within thirty (30) days after such notice, the damaged or destroyed Improvements shall be deemed a nuisance. The Association shall have the right thereafter, at its option, to enter upon the Lot involved and remove the damaged or destroyed Improvements at the expense of the Owner. Such an entry and removal shall not be deemed a trespass and the Owner shall be liable for all costs incurred in connection with the removal.

#### ARTICLE 4 LIVING ENVIRONMENT STANDARDS

Section 4.1 Building and Grounds Maintenance. Each Owner shall maintain the exterior of the Main Building and all other Improvements on the Lot of the Owner in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Each Owner shall keep all Landscaping properly maintained in accordance with the Design Guidelines. If the Owner fails to properly perform such maintenance, Declarant or the Association may, after giving thirty (30) days' written notice and at the Owners' expense, effect such repairs and maintenance as it deems necessary in its judgment to maintain the standards of the Community Area. Entry to effect such repairs and maintenance shall not be deemed a trespass, and the Owner shall be liable for all costs incurred in connection with the repairs and maintenance.

Section 4.2 Outside Storage. All maintenance equipment shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets.

Section 4.3 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 area. No offensive or hazardous activities may be carried on within any Lot or in any Improvement. No annoying lights, sounds or odors shall be permitted to emanate from any Lot or Improvement.

Section 4.4 Landscaping. Within six (6) months after completion of a Main Building or within any extension of that period granted by the Architectural Committee, all yards and open spaces shall be Landscaped and thereafter maintained and kept in a manner that is required by the Design Guidelines.

Section 4.5 Weeds. The entire area of every Lot on which no building has been constructed shall be kept free from plants and weeds infected with noxious insects or plant diseases and from weeds which, in the reasonable opinion of the Association or Declarant, constitute a nuisance or 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 Association or Declarant causes undue danger of fire.

Section 4.6 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 4.7 Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lots as fixed by the original finish grading except after first obtaining the prior consent and approval of the Architectural 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. Any construction, grading or swales should direct surface waters to a drainage easement or to the street. Surface waters should not be concentrated and directed differently than the historic direction of flow. Special attention should be paid to the revegetation of approved grades, cuts and fills to eliminate erosion.

Section 4.8 Animals. No animals except domesticated birds or fish and other small domestic animals permanently confined indoors, and except for domesticated dogs and cats as described below, may be maintained in or on any Lot and then only if kept as pets. Domesticated dogs and domesticated cats may be kept or maintained in or on any Lot within the Community Area only if kept as pets and the total number of which may not exceed four. No animal of any kind shall be permitted which in the opinion of the Association makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Community Area for any

commercial purposes. No dogs or other pets shall be chained or enclosed on a Lot outside of the Improvements for any extended period of time, except by means of underground electronic fences or other invisible barriers or fences. Dogs or pets may also be kept in a dog run or other similar enclosure. The location, materials, size and other specifications for the dog run shall be subject to approval by the Architectural Committee.

Section 4.9 Parking of Vehicles.

- (a) No motor vehicles owned, leased, rented or used by Owners, Related Users or any other Person shall be parked overnight on any street within the Community Area.
- (b) No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes, any towed trailer unit or truck shall be parked overnight on any street or upon any driveway located upon a Lot except in a completely enclosed building such as a garage, or unless screened in a manner approved by the Architectural Committee. Pickup trucks having a 3/4 ton or less manufacturer's rated capacity, with or without bed toppers, and passenger vans for the private use of the residents of a Dwelling Unit as primary transportation on a day-to-day basis, shall not be considered trucks for purposes of the foregoing restrictions.
- (c) No motor vehicles shall be driven or parked within the Association Properties, except in designated locations and except as authorized by the Association.

Section 4.10 Inoperative Vehicles. No unused, stripped down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot in such a manner as to be visible at ground level from any neighboring property or street, unless fully screened in a manner approved by the Architectural Committee. An unused vehicle shall be any vehicle which is not properly licensed as determined by the Association.

Section 4.11 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 a completely enclosed Improvement which screens the sight and sound of the activity from adjoining streets and from neighboring property.

Section 4.12 No Signs. No sign of any kind shall be displayed to public view on any Lot or on or from any Dwelling Unit except for signs permitted under the Design Guidelines or otherwise approved by the Architectural Committee.

Section 4.13 Outdoor Burning. There shall be no outdoor fires on any Lot or on the Association Properties, except fires in barbecue, braziers and outside fireplaces contained within facilities or receptacles intended for such purpose. Any outside facilities or receptacles intended for use as a fireplace or to contain fires shall be in compliance with the Design Guidelines and shall be subject to approval by the Architectural Committee. In no event shall any such facility or receptacle be used for burning of trash. Any such facilities or receptacles shall be subject to the Rules and Regulations, which may include limitations on the time and manner in which fires will be permitted and may permit the Association to impose total outside fire bans when deemed appropriate by the Association. No Owner shall permit any condition on such Owner's Lot which creates a fire hazard or is in violation of fire prevention regulations adopted by the City or any governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by the City or a governmental authority having jurisdiction and control over outside burning, such ban shall be observed within the Community Area.

ARTICLE 5  
ASSOCIATION OPERATION

Section 5.1 Association Structure. The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in the Association Documents. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs. The Board of Directors shall be elected by its Members; provided, however, that the Declarant shall have the sole right to appoint all of the members of the Board of Directors for the period of time provided in Section 5.5 (A) and to appoint a majority of the Members of the Board of Directors for the period of time provided in Sections 5.5 (B) and (C).

Section 5.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The Board shall consist of a minimum of three members until the expiration of the period of Declarant control set forth in Section 5.5 (C) and thereafter shall consist of at least seven (7) but not more than eleven (11) members, as determined by the Board. All members of the Board shall be representatives of Declarant or Members of the Association. The terms and qualification of the members of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws of the Association. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration or by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon all Members, Owners, Related Users and other Persons.

Section 5.3 Membership in Community Association. Each Owner shall be a Member of the Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one membership in the Association for each Lot owned by Declarant. 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 of the Owner's rights as an Owner and as Member of the Association to a contract purchaser or First Mortgagee, and may arrange for such Person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents, including the payment of Assessments. Under no circumstances will a Person renting a Dwelling Unit be entitled to vote or otherwise act on behalf of any Lot Owner. The rights acquired by any such contract purchaser or First Mortgagee shall be extinguished automatically upon termination of the First Mortgage or sales contract. The assignment of rights by an Owner pursuant to this section shall not be subject to any present or future statutory time limit for the duration of duly notarized proxy rights, but shall be in writing, and delivered to the Association before such Person shall be entitled to exercise any membership rights or privileges. All rights, title and privileges of membership shall be subject to the Association Documents.

Section 5.4 Voting Rights of Members. After expiration of the period of Declarant control as set forth in Section 5.5 (C), Members shall have the right to cast votes for the election of Board of Directors and on such other matters to be voted on by the Members as provided in the Association Documents. Each Lot used for single family detached residential purposes shall have one vote. Declarant hereby reserves the right (but shall not be obligated) to allocate to each Dwelling Unit or to the type of Main Building or Lot which may be added to this Declaration from time to time, different voting rights per Lot based upon different uses and products to be constructed thereon and such allocation of votes shall be set forth in the Expansion Documents provided for in Section 8.8 of this Declaration. No variation in votes shall be allocated within the same subdivision area and product type. If no vote is established in the applicable Expansion Documents, the vote will be deemed to be one vote per Lot. In all events, the vote allocated to each Lot may not be split if there is more than one Owner of the Lot, and if the Owners are unable to determine how to cast the applicable vote allocated to their Lot pursuant to the provisions of Section 38-33.3-310, Colorado Revised Statutes, then the Owners shall be deemed to have abstained. Voting rights and procedures may be further defined in the Articles and Bylaws of the Association. Notwithstanding the foregoing, Declarant shall have the reserved rights set forth in Section 5.5.

Section 5.5 Declarant's Reserved Right to Appoint.

- (A) Notwithstanding any contrary provision, but subject to the requirements of Section 5.2 of this Declaration and Section 38-33.3-303(6), Colorado Revised Statutes, the Declarant hereby reserves the right to appoint all of the members of the Board of Directors, at all times subsequent to the date of recordation of this Declaration, which right shall terminate upon the occurrence of the first of the following events:

- (i) twenty (20) years after the date on which this Declaration is recorded;
- (ii) by written notice from Declarant to the President or Secretary of the Association of Declarant's intent to terminate its right to appoint all of the members of the Board of Directors;
- (iii) upon that date which is sixty days after 289 Lots have been conveyed to Owners other than Declarant; or
- (iv) two years after the last conveyance of a Lot by Declarant in the ordinary course of business.

After such time, not less than twenty-five percent (25%) of the Board shall be elected by the Members, other than Declarant, and Declarant reserves the right to appoint the remaining Board members.

- (B) Upon the first to occur of items (i), or (ii), in Section 5.5 (A) above, or upon the date which is sixty (60) days after 578 Lots have been conveyed to Lot Owners, other than Declarant, not less than 33.3% of the Board members will be elected by Owners other than Declarant and Declarant reserves the right to continue to appoint the remaining members of the Board.
- (C) Upon the first to occur of items (i) or (ii) in Section 5.5 (A) above, or upon the date which is sixty (60) days after 867 Lots have been conveyed to Lot Owners, other than Declarant, Declarant's right to appoint members to the Board of Directors of the Association shall terminate.

## ARTICLE 6 DUTIES AND POWERS OF ASSOCIATION

Section 6.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members. The Association, acting through the Board or representatives to whom the Board has delegated such powers, shall have the duties and powers given non-profit corporations, including without limitation those 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 Association Properties, and to improve and enhance the attractiveness, desirability and safety of the Community Area. The Association shall have and may exercise all powers enumerated in Section 38-33.3-302, Colorado Revised Statutes. Except as expressly otherwise provided in the Association Documents or by Colorado law, the Association shall act through the Board of Directors, without the vote or meeting of the Members, and the Board may exercise all rights, powers and interests of the Association, as described in this Article or elsewhere in the Association Documents.

Section 6.2 Duty to Accept Community Area and Facilities Transferred by Declarant. The Association shall accept title to any property, including without limitation any Improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Community Area interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable). but shall be subject to the terms of this Declaration. No representation, express or implied, is made that the Declarant will or will not transfer property to the Association, except as specifically provided in Section 7.2.

Section 6.3 Duty to Manage and Care for Community Area. To the extent owned by the Association, the Association shall manage, operate, care for, maintain and repair all Association Properties and keep the same in an attractive and desirable condition for the use and enjoyment of the Members; provided however, maintenance responsibilities for any Association Properties shall not commence until Assessments commence. In addition, the Association may operate, maintain and repair property other than Association Properties, if some or all of the Members will benefit thereby. It is the intent of this Declaration to grant the Association the power and right to maintain such non Association properties as the Board may determine from time to time to be in the interest of the Association and the Owners in general, in addition to (i) all Association maintenance obligations which are set forth in any Plat or Supplemental Plat of the Community Area, and (ii) all easements for the benefit of the Association. The foregoing items shall not be a limitation on the power and authority of the Association to maintain other items not specifically listed where such repair and maintenance of other items would be in the common interests of the Association and the Owners, as determined by the Board from time to time.

Section 6.4 Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Association Properties owned by the Association and all other 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 which may accrue with respect thereto, if the contest of such taxes is unsuccessful. The Association may maintain reserves for any taxes, interest and penalties which could be incurred as a result of an adverse ruling on any position taken by the Association.

Section 6.5 Duty to Maintain Insurance. The Association shall obtain and keep in full force and effect at all times insurance coverage in accordance with this Declaration and as required by Colorado law.

Section 6.6 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 6.7 Power to Provide Security. The Association shall have the right, but not the obligation, to provide for the security of the Owners by hiring a security patrol and performing any other functions relating to safety and security authorized by the Board or the Members.

Section 6.8 Power to Keep Trails Clean and Usable. The Association shall have the right, but not the obligation, to cause the trails which are located adjacent to the Community Area, even if such trails are owned by the City, to be maintained and kept clean in such a manner as may be authorized from time to time by the Board or the Members.

Section 6.9. Power to Acquire Community Area For the Common Benefit. The Association may acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The Association may construct or reconstruct Improvements on property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Community Area, whether or not owned by the Association.

Section 6.10. Duty to Appoint Architectural Committees. The Association through its Board shall appoint, following the period of Declarant control as set forth in Section 8.1 hereof, Architectural Committees for each area covered by separate Design Guidelines.

Section 6.11 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Lots. Any such Rules and Regulations shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Rules and Regulations shall be effective upon adoption by resolution of the Board of Directors. Written notice of the adoption, amendment or repeal or any Rule or Regulation shall be provided to all Members by the Association, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the copying cost. Each Owner, Related User, Member and other Person shall comply with such Rules and Regulations, and each Owner shall be responsible for ensuring that the Related Users of such Owner comply with the Rules and Regulations. 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 6.12 Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of the Association Documents and shall take such action as the Board deems necessary or desirable to cause compliance by each Member, other Person, and Related Users of each Member. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of the Association Documents by any one or more of the following means: (a) by entry upon any property within the Community Area after any notice and hearing required by the Bylaws (unless a bona fide emergency exists), without liability to the Owner or occupants thereof, for the purpose of enforcement of or causing compliance with the Association Documents; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of the Association Documents, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of the Association Documents; (d) by exclusion, after any notice and hearing required by the Bylaws, of any Member, Related User or other Person from use of any Association Properties for a period not to exceed sixty days as a penalty for any breach of the Association Documents by a Member, Related User or other Person; provided that such power to exclude use shall not include the power to deny access to the Lot of such Owner; (e) by suspension, after notice and hearing required by the Bylaws, of the voting rights of a Member during and for up to sixty days following any breach by such Member or a Related User of such Member of the Association Documents, unless the breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues; (f) by levying and collecting, after notice and hearing required by the Bylaws, unless the violation consists of failure to pay any Assessment, in which case notice and hearing shall not be required, a Site Assessment against any Member for breach by the Member or a Related User of such Member of the Association Documents; (g) by levying and collecting, after any notice and hearing required by the Bylaws, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member, Related User or other Person for breach by such Member, Related User or other Person of the Association Documents; (h) by performing any duty of any Member, Related User or other Person of correcting any violation or breach of the Association Documents and obtaining, upon demand, reimbursement for all expenses related thereto as a Site Assessment, and (i) by exercising any right or remedy permitted by law or in equity.

Section 6.13 Power and Duty to Enforce Association Documents. The Association shall have the power and duty to enforce the covenants, terms and provisions of the Association Documents.

Section 6.14 Power to Provide Special Services. The Association shall have the power to provide special services beyond this Declaration to a Member or group of Members and any services to any other Person. Any such service or services shall be provided pursuant to an agreement in writing, or through one or more amendments to this Declaration, which shall provide for payment to the Association by such Member or group of Members or other Persons of the costs and expenses which the Association estimates it will incur in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and

assigns or the Member or group of Members or other Persons, and may be collected in the same manner as a Site Assessment, or, if the written agreement so provides, in installments as part of the Common Assessments or may be collected in any manner permitted by law or statute or the Association Documents.

Section 6.15 Power to Operate and Charge for Facilities. The Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, including, with limitation, landscape maintenance and refuse collection, or any other similar or dissimilar function, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities, or services of the Association. Such charges or fees shall be as determined from time to time by the Board of Directors.

Section 6.16 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under Association Property for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, or other uses or services to some or all of the Members.

Section 6.17 Power to Employ Managers. The Association shall retain and pay for the services of a professional manager or managers to undertake the management functions for which the Association has responsibility under this Declaration. The Association shall not be permitted to be managed solely by the Owners. A contract or agreement with a manager shall be terminable by the Association for cause on no more than thirty days' prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety days' prior written notice. No such contract or agreement shall be for a term of more than one year. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, power and functions. In addition to a manager, the Association may employ and pay a consultant, which may be Declarant, an affiliate of Declarant, or a third party, to assist in operating and managing the Association after the Declarant's reserved rights under Article 8 terminate.

Section 6.18 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and to retain and pay for such 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 the Association Documents.

Section 6.19 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act and all powers contained in Section 38-33.3-302, Colorado Revised Statutes, subject to any limitations, restriction , or requirements expressly set forth in the Association Documents.

Section 6.20 Other Powers. The Association shall have the power, but not any duty, to sponsor or conduct various community activities or special events of a social or recreational nature, and to provide general informational services which may include, without limitation, community newsletter, radio broadcast, cable television services and similar services.

ARTICLE 7  
ASSOCIATION PROPERTIES

Section 7.1 Right of Association to Regulate Use. To the extent that the Association hereafter owns, holds or has property, the provisions of this Article 7 shall apply. The Association, acting through the Board, shall have the power to reasonably regulate use of Association Properties by Members to enhance further the overall rights of use and enjoyment of all Members, including without limitation, imposing limits on the times of use and numbers of guests permitted to use the Association Properties.

Section 7.2 Community Area that Must be Conveyed. The Declarant shall be obligated to convey to the Association the following properties and Improvements: (i) any tracts of land that are identified on the Plat or any Supplemental Plat as tracts for open space or trails that the Association will be required to own, and (ii) easement rights for any areas or Improvements that are identified on any Plat or Supplemental Plat as area or Improvements to be maintained by the Association. The properties to be conveyed to the Association shall be conveyed to the Association on or before the expiration of the period of Declarant control under Section 5.5 (C). Declarant shall not be required to convey separately to the Association any easements which are created for the benefit of the Association pursuant to any Plat or this Declaration. Declarant is not obligated to convey any other real property to the Association but shall have the right to if it so elects.

Section 7.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

Section 7.4 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or a Related User of such Owner of the Association Documents. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Site Assessment against a Member, Owner, Lot, Related User, or other Person to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of the Association Documents, including without limitation, the deductible on any insurance of the Association, interest, costs, expenses and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 7.5 Damage to Association Properties. In the event of damage to or destruction of all or a portion of the Association Properties due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such

reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, then the Association shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to this Declaration and shall proceed to make such repairs or reconstruction, unless Members, with at least sixty-six percent (66%) of the vote of the First Mortgagees (based upon one vote per mortgagee), agree not to repair and reconstruct such damage in accordance with the terms and provisions of this Declaration. No distributions of insurance proceeds shall be made to the Owners, unless made jointly payable to Owners and the First Mortgagees, if any. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction or replacement, the Association may use the excess for future maintenance, repair, and operation of and improvements to Association Properties.

Section 7.6 Association Powers in the Event of Condemnation.

- (a) If proceedings are initiated by any government or agency thereof seeking to take the Association Properties or any interests therein or part thereof, including any Improvements, the Association shall give prompt notice thereof, including a description of the part of or interest in the Association Properties or Improvements thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the Association Properties, any part thereof, or any interest therein, and each Owner hereby appoints the Association as the Owner's attorney-in-fact for such purposes. Any award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.
- (b) If all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, any award or settlement shall be apportioned by the Association on such a fair and equitable basis as the Association determines to be appropriate in the circumstances, or as determined by judicial decree. If the allocation of the condemnation award is already established in the negotiations, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent that it is relevant and applicable.
- (c) If less than all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condemnation award shall first be applied by the Association to the rebuilding and replacement of those Improvements on the Association

Properties which are damaged or taken by the condemning public authority, if such rebuilding or replacement is reasonably practical, unless Members with at least sixty-seven percent of the First Mortgagees (based upon one vote for each First Mortgage held) agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be distributed by the Association on the same basis as indicated in subparagraph (b) of this section. No provision of this Declaration or any other document relating to the Association Properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee, pursuant to a First Mortgage, awarding distribution of insurance proceeds or condemnation awards for losses to or taking of Association Properties.

#### ARTICLE 8

#### DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

Section 8.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Association Properties for a period of twenty years after the date this Declaration is recorded in the real property records of El Paso County, Colorado, or until such earlier date when Declarant ceases to own any real property within the Community Area. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment. The rights and reservations set forth in this Article 8 are expressly subject to the provisions of Section 5.5 of this Declaration.

Section 8.2 Declarant's Development Rights. For the period stated in Section 8.1, Declarant shall have the following development rights:

- (a) Declarant shall have the right to record covenants affecting all or a portion of the Villages and to form separate Subassociations to provide the special services that are not generally provided to all other Owners, including the power to levy Assessments for such special services;
- (b) Declarant shall have the right to record covenants affecting all or a portion of the Villages and to form separate Architectural Committees for each Village and to empower it to establish Design Guidelines for each Village;
- (c) Subject to the limitation contained in Section 8.8, Declarant may create additional Lots within the Community Area; and

- (d) Declarant may create additional Association Properties within the Community Area or convert any of the Lots within the Community Area to Association Properties.

Other than the right of the Declarant to add the property described on **Exhibit B** to the Community Area, the Declarant shall not have the right to add other property to the Community Area, without the prior written consent of fifty percent (50%) of the Owners in all of the Community Area. All of the foregoing development rights shall be exercised by Declarant, if at all, in accordance with Section 38-33.3-210, Colorado Revised Statutes. All of the development rights set forth above may be exercised by Declarant with respect to all or any portion of the Community Area. No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of the Community Area may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them. If Declarant does exercise a development right in any portion of the Community Area, Declarant is not obligated to exercise that development right in all or any other portion of the remainder of real estate affected by the exercise of the development right or in all or any other portion of the remainder of the Community Area.

Section 8.3 Special Declarant Rights. For the period stated in Section 8.1, and as more particularly set forth in this Article 8 or elsewhere in this Declaration, Declarant shall have the following special Declarant rights:

- (a) to complete any Improvements shown on the Plat or any Supplemental Plat;
- (b) to exercise any development rights set forth in Section 8.2;
- (c) to maintain anywhere within the Community Area, for itself or any entity which Declarant elects, sales offices, management offices, signs advertising the Community Area and model homes;
- (d) to use easements through the Association Properties for the purpose of making improvements within the Community Area; and
- (e) to appoint or remove any officer of the Association or any member of the Board of Directors appointed by Declarant.

Section 8.4 Right to Construct Additional Improvements on Association Properties. Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional Improvements on Association Properties, at Declarant's initial cost, at any time and from time to time in accordance with this Declaration for the improvement and enhancement of the Association Properties and for the benefit of the Association and the Owners.

Section 8.5 Assessment Offsets. If any Person makes any Improvements to Association Property which has been approved by the Declarant or the Architectural Committee, the actual cost of such Improvement shall be available as an offset against the Common or Special Assessments which shall be owing from time to time by the applicable Person (the "Offsets"). Offsets will be transferable to Owners by the holder of the Offset providing a written notice to the Declarant and the Board stating the party to whom the Offsets are being transferred, the amount of the Offsets being transferred and the date on which the transfer will be effective. No cash refunds will be made for any unused Offsets. Any unused Offsets may be rolled over from year to year, as necessary.

Section 8.6 Declarant's Rights to Use Association Properties in Promotion and Marketing. Declarant shall have and hereby reserves the right to use the Association Properties and to use services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Community Area or nearby areas. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Association Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Community Area; may use vehicles and equipment on Association Properties for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Community Area to use Association Properties.

Section 8.7 Declarant's Rights to Complete Development of Community Area. No provision of this Declaration or any Village Covenants shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Community Area or nearby areas and to subdivide, resubdivide, or rezone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Community Area; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Community Area; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Community Area. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals, other than necessary governmental approvals, to excavate, cut, fill or grade any property owned by Declarant; to change any landscaping, grading, drainage, or vegetation; or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Community Area. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in the Association Documents, which rights are incorporated in this section by this reference.

Section 8.8 Expansion.

- (a) Right to Expand. Until the expiration of the period indicated in Section 8.1, Declarant reserves the right to expand the Community Area, without the approval of the Owners or First Mortgagees, except such VA or FHA approval as shall be required, if any, to include additional land and one or more additional buildings located upon all or any part of the Expansion Property; provided, however, that the total number of Lots in the Community Area, as expanded, shall not exceed 1157 Lots. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to expand the Community Area. Any expansion hereunder shall comply with C.R.S. 38-33.3-209 and 210.
- (b) Procedure for Expansion. Such expansion may be accomplished by the filing for record by Declarant with the Clerk and Recorder of the County, no later than the expiration of the period set forth in Section 8.1, an amendment or amendments to this Declaration containing a legal description of the land area to be added to the Community Area, together with any supplemental plats which may be required. Any such amendment or amendments to this Declaration shall also contain a listing of the total number of Lots then contained within the Community Area. The expansion may be accomplished in "phases" by successive amendments.
- (c) Effect of Expansion.
- (1) In the event of such expansion, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Community Area as so expanded; e.g., "Community Area" shall mean the real property described on **Exhibit A** hereto plus any additional real property added by any amendment to this Declaration; similarly, "Lots" shall include those areas located within the real property described on **Exhibit A** hereto, as well as those so designated on any amendment or supplemental plat relating to any real property which is annexed pursuant to this Section 8.8. References to this Declaration shall mean this Declaration as so amended.
- (2) Upon recording of the amendment or amendments to Declaration and any supplemental plat with the Clerk and Recorder of the County, the additional Lots shall be subject to the provisions of this Declaration.

- (3) Until the expansion of the Community Area is accomplished by recording the amendment(s) to this Declaration and supplemental plat(s), the Expansion Property and any improvements constructed thereon shall not be subject to this Declaration in any way whatsoever, including but not limited to consideration for the purpose of apportioning assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in this Declaration or otherwise shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant's, or its successors' or assigns' sole and complete right, title and interest to the Expansion Property and any improvements constructed thereon. The Declarant alone shall be liable for all expenses of the Expansion Property unless and until annexed hereunder, and shall be entitled to any income and proceeds therefrom. The Declarant's right to annex, and other development rights, may be exercised at different times and as to different portions of the Community Area or Expansion Property, and so no assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed. If the Declarant exercises any right to annex additional portions, the Declarant is not required to exercise any development rights to any and all portions of the remaining Community Area or Expansion Property.

Section 8.9 Declarant's Approval. Until Declarant no longer has the right to appoint a majority of the Board, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the look or use of Association Properties; mortgage the Association Properties; use Association Properties other than for the benefit of Members; levy any Special Assessment; change or repeal any rules of the Architectural Committee; make any substantial reduction or change in Association services; or make any amendment of Association Documents.

## ARTICLE 9 ASSESSMENTS

Section 9.1 Obligation for Assessments. Each Owner, for each Lot owned within the Community Area, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments which are described in the Association Documents and which shall be both a personal obligation of the Owner and a lien against his Lot as provided therein. Each Owner shall be jointly and severally liable to the Association for the payment of all Assessments attributable to them and/or their Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for

the payment of the Assessments provided for herein by non-use of the Association Properties or the facilities contained therein, by non-use of any service provided by the Association for all Owners, by abandonment or leasing of his Lot, or by asserting any claims against the Association. the Declarant or any other person or entity. In addition to the foregoing Assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot. All property dedicated to and accepted by a public or governmental authority and the Association Properties shall be exempt from Assessments hereunder.

Section 9.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Association Properties as more specifically provided herein.

Section 9.3 Common Assessments. The Common Assessments may include, but shall not be limited to, the following common expenses:

- (a) expenses of management of the Association and its activities;
- (b) taxes and special assessments upon the Association Properties, both real and personal property;
- (c) premiums for all insurance which the Association is required or permitted to maintain;
- (d) common services to Owners as approved by the Board;
- (e) landscaping and care of the Association Properties and any recreational or other Association facilities or improvements located thereon;
- (f) repairs and maintenance that are the responsibility of the Association, including, without limitation, the obligations described in this Section 9.3;
- (g) wages for Association employees and payments to Association contractors;
- (h) legal and accounting fees for the Association
- (i) any deficit remaining from a previous Assessment year;
- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of Association Property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by Special Assessments;

- (k) the creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies;
- (l) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration; and
- (m) the cost and expense of maintaining any private roads in the Community Area.

Common Assessments shall be paid annually as provided in Section 9.5.

Section 9.4 Declarant's Obligation. Until Assessments are first levied by the Association pursuant to this Article 9, Declarant shall pay all common expenses of the Association described in Section 9.3.

Section 9.5 Common Assessment Procedure.

- (a) Promptly after this Declaration is recorded, the Board of Directors may set the total annual Common Assessment for 1998 based upon an estimated budget for the Association for 1998. Declarant shall have, however, the right to commence Common Assessments at any time that Declarant shall elect in its sole discretion. Following commencement of Common Assessments, each Owner shall be responsible for paying his prorata share of such Common Assessment upon the earlier of (i) the Ownership of his Lot or (ii) thirty (30) days following receipt of notice of the Common Assessment. No later than thirty (30) days before the beginning of each year following the year in which Common Assessments are first assessed, the Board of Directors shall set the total annual Common Assessment based upon an advance budget of the Association's requirements for the following Assessment year. Until the expiration of the period of Declarant control described in Section 8.1 of this Declaration, the Board of Directors of the Association shall unilaterally establish the annual budget for the Association in the manner provided above. Following the period of Declarant control set forth in Section 8.1 of this Declaration, the budget shall be subject to the ratification process described in Section 9.5 (b).
- (b) Within thirty days after adoption of the Association's budget for each year, by the Board (but only following the period of Declarant control described in Section 8.1), the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less

than fourteen nor more than sixty days after mailing or other delivery of the budget summary. This notice mailed to the Owners shall include a ballot allowing an Owner to vote for or against approval of the budget by returning the ballot, marked and signed by the Owner, to the Board, by mail or otherwise, prior to or on the date on which the meeting is scheduled. Unless a majority of all Owners present and voting in person or by proxy at the meeting called to discuss the budget or voting by the mailed ballot returned to the Board prior to that meeting reject the budget, the budget is ratified, whether or not a quorum is present at the meeting. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

- (c) After approval of the budget in the applicable manner described in this Section 9.5, the Board shall cause to be prepared, delivered or mailed to each Owner, at least thirty days in advance of the date payment is due, a payment statement setting forth the annual Common Assessment. That annual Common Assessment shall be payable in advance in one annual installment due on the date specified in the notice unless the Board otherwise directs or changes to quarterly assessments. ~~All payments of Common Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Board.~~ Any Common Assessments owing by Declarant shall be subject to applicable Offsets as described in Section 8.5 of this Declaration. Common Assessments shall be applicable to all Lots, including those owned by Declarant. Declarant and other Owners of Lots at the time a Common Assessment is first levied shall become responsible for Common Assessments at that time. Each Owner who subsequently acquires a Lot shall become responsible for Common Assessments on a Lot as of the date the Lot is transferred to such Owner. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as established pursuant to the Bylaws of the Association. The Board may adopt Rules and Regulations requiring the Owner, at the time when Common Assessments first commence upon that Owner's Lot as provided in this section, to prepay the Common Assessments for the balance of the year and an additional period which shall not exceed an additional twelve months; such prepayment shall not relieve the Owner from any additional requirement to pay working capital pursuant to Section 9.18.

Section 9.6 Rate of Assessments. Common Assessments and Special Assessments shall be sufficient to meet the expected needs of the Association. Special Assessments shall be allocated among the Lots in the same manner as votes are allocated, so that each Owner is obligated to pay his applicable prorata share of the Special Assessment for each Lot owned. The rate for Special Assessments shall be determined by dividing the total Special Assessment payable for any

Assessment period, as determined by the ratified budget, by the number of votes allocated to all of the Lots then subject to this Declaration and then multiplying the resulting quotient by the number or percentage of votes allocated to each Lot. The resulting quotient shall be the amount of the Special Assessment payable with respect to each Lot, e.g., if the Special Assessment totals \$10,000.00 and there are 200 Lots subject to this Declaration with 100 of the Lots having one vote each and 100 of the Lots having 1/3 of a vote for each Lot, the formula would be implemented as follows:

$$\begin{aligned} & \$10,000 \div (100 + (100 \times 33.3\%)) = 75.02 \\ & 75.02 \times \text{the Lot's voting amount} \end{aligned}$$

In this example, each Lot which had been allocated one vote would pay \$75.02 of the Special Assessment per Lot for a total of \$7,502.00. Each Lot which had been allocated 1/3 of a vote would pay \$25 of the Special Assessment per Lot ( $75.02 \times .333$ ) for a total of \$2,500.00 for all 100 such Lots.

Common Assessments shall also be allocated in the same manner as votes are allocated.

Section 9.7 Failure to Fix Assessment. The failure by the Board of Directors to levy an Assessment for any period 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 Owner to pay Assessments for that or any subsequent period.

Section 9.8 Special Assessments. In addition to Common Assessments, the Board of Directors may, subject to the provisions of this section, levy Special Assessments for the purpose of raising funds to construct or reconstruct, repair or replace capital Improvements upon Association Properties, including personal property relating thereto; to add to the Association Properties; to provide for necessary facilities and equipment; to offer the services authorized in this Declaration; to correct any deficit or cost overrun; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments shall be imposed upon Lots in the manner provided in Section 9.6. No Special Assessment shall be assessed following the period of Declarant control set forth in Section 8.1, until it has been ratified by the Owners in accordance with a procedure substantially identical to the procedure set forth in Section 9.5(b). At any time that insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed Improvements on the Association Properties, or on any other property which the Association maintains, the Association may levy Special Assessments for the purpose of repair or reconstruction of such damaged or destroyed Improvements; all such Special Assessments shall be equal to the amount by which the costs of repair or reconstruction of Improvements exceeds the sum of insurance proceeds awarded for the damage or destruction, and shall be set in the same manner as other Special Assessments. The Association shall notify Owners 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, and the Owners shall pay any such Special Assessment in the manner so specified.

Section 9.9 Site Assessments. The Board of Directors may, subject to the provisions hereof, levy a Site Assessment against any Member, Owner, or Lot if the willful or negligent acts or omissions of the Member, Owner or a Related User cause any violation of the Association Documents or cause any loss or damage to the Association or Association Properties or cause any expenditure of funds in connection with the enforcement powers of the Association. Except for a default consisting solely of a failure to timely pay any Assessment, including, without limitation, Special Assessments or Common Assessments, which shall not require any notice and hearing, a Site Assessment shall be levied only after such notice and hearing as may be required by the Bylaws. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is owing. Imposition or non-imposition of Site Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies.

Section 9.10 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten days after it is due, the Member, Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys' fees, court costs, witness expenses, and all related expenses ("collection expenses"), and to pay a reasonable late charge to be determined by the Board. Any Assessment which is not paid within thirty (30) days after it is due shall bear interest from the due date at a rate determined by the Board, not to exceed the lower of twenty-one percent per annum, or the maximum percentage permitted by law, from the due date until paid.

Section 9.11 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board of Directors, in its discretion, determines.

Section 9.12 Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty days after its due date, the Board of Directors may mail a notice of default to the Owner and to each First Mortgagee of the Lot who has requested a copy of such notice. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty days from the date of mailing of the notice 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 the foreclosure of the lien for the Assessment against the Lot of the Owner. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all collection expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

Section 9.13 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. In the event of a default in payment of any Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and expenses of collection, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 9.15.

Section 9.14 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement against the defaulting Owner, including, without limitation, reasonable attorneys' fees.

Section 9.15 Lien to Enforce Assessments. The Association shall have a lien for Assessments (the "Lien") as provided in Section 38-33.3-316, Colorado Revised Statutes. In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this section. The Board may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which has accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The Lien shall have the priority provided by the Colorado Common Interest Ownership Act and shall be prior to any declaration of homestead rights recorded after the time that the Lot becomes part of the Community Area. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said Lien. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all collection expenses, court costs, recording costs and filing fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the cost of preparing and recorded the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same. The lien under this section shall be subject to the provisions and restrictions of Section 14.6 hereof.

Section 9.16 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Board of Directors, and upon the written request of any Member or Owner and any Person which has, or intends to acquire, any right, title or interest in the Lot of such Member or Owner, 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 which is not yet due and payable. Such statement shall, with respect to the Person whom it is issued, if relied thereupon in good faith and without actual knowledge to the contrary, be conclusive against the Association.

Section 9.17 No Offsets. Subject to the Offsets provided in Section 8.5, all Assessments shall be payable in the amounts specified in the levy thereof, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association Properties, or the non-use by an Owner of Association Properties or services provided by the Association or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

Section 9.18 Working Capital Fund. The Board may, at its option, require the first Owner following the Owner at the time the Lot is annexed into the Community Area, to make a nonrefundable contribution to the Association in an amount equal to an amount to be established from time to time by the Board of Directors, not to exceed an amount equal to the then maximum current annual vacant Lot Common Assessment in effect on the date of delivery of the deed conveying the Lot. All such contributions shall be maintained in a non-segregated working capital account for the use and benefit of the Association for, among other purposes, meeting unforeseen expenditures or purchasing additional equipment, property or services. The working capital contribution shall be in addition to the Assessment, and shall not relieve the Owners from paying all Assessments as they come due.

## ARTICLE 10 INSURANCE

Section 10.1 Insurance on Association Properties. The Association shall maintain insurance covering all insurable Association Properties. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article 10, the Association may also consider, in determining the type and amount of insurance it needs to obtain, the then-existing requirements of the Agencies.

- (a) A policy of property insurance covering all insurable Association Properties for broad form covered causes of loss, in an amount not less than 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, excavations, foundations and other items normally excluded from property policies. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:
- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
  - (2) such other risks as at the time are customarily covered with respect to associations having property similar in construction, location and use, including all periods normally covered by the standard "all risk" endorsement, where such is available.
- (b) A comprehensive policy of commercial general liability insurance covering all of the Association Properties, insuring the Association in an amount but not less than \$1,000,000.00 covering bodily injury, including death, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, with limitation, legal liability of the insureds for property damage, bodily injuries and deaths in connection with the operation, maintenance or use of the Association Properties. legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-owned and hired automobiles. Such coverage may also include, if applicable, comprehensive automobile insurance, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and insurance coverage of such other risks as are customarily required by private institutional mortgage investors with respect to associations having property similar in construction, location and use. This policy shall insure the Association, the Board of Directors, the Association's managing agent (if any), and their respective employees, agents and all persons acting as agents. Declarant shall be included as an additional insured in its capacity as an Owner of Lots. The Owners shall be included as additional insureds but only for claims and liabilities arising from the ownership, existence, use of management of the Association Properties. The insurance shall cover claims of one or more insured parties against other insured parties.

- (c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum of funds, including reserves, held by the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two months' aggregate Common Assessments on all Lots, plus the Association's reserve funds. Such fidelity coverage or bonds shall meet the following requirements:
- (1) all such fidelity coverage or bonds shall name the Association as an obligee;
  - (2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression.

In the event that the Association has delegated some or all of its responsibility for handling of funds to a manager, the Association may require the manager to purchase, at the manager's expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

- (d) In addition, the Association may obtain insurance against such other risks of similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association and the members of the Architectural Committee and other representatives.
- (e) Notwithstanding any other provision of the Association Documents, all insurance acquired by the Association shall satisfy the requirements of Section 38-33.3-313, Colorado Revised Statutes.

Section 10.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association, or its designee, as trustee and attorney-in-fact for all Owners, as the insured, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory First Mortgagee's clause in favor of each First Mortgagee, and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty days' prior written notice thereof is given to the insured and to each First Mortgagee, insurer or guarantor of a First Mortgage. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest including First Mortgagees, upon request and payment of a reasonable fee. Any

such Owner's policy shall also contain waivers of subrogation. Additionally, all policies shall contain waivers of any defense based on invalidity arising from any act or neglect of an Owner where such Owner is not under the control of the Association. Insurance obtained by the Association, to the extent reasonably feasible, and provided that Declarant reimburses the Association for any additional premium payable as a result, shall name Declarant as an additional insured and shall contain a waiver of subrogation rights against Declarant. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

Section 10.3 Deductibles. No policy or insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of \$10,000.00 or one percent of the face amount of the policy. Any deductible shall be payable by the Person responsible for the repair and maintenance of the damaged or destroyed property which is the subject of an insurance claim. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the parties sharing in such joint duty, or may be partly or wholly borne by the Association, at the election of the Board of Directors.

Section 10.4 Insurance Trustee. The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interests may appear.

Section 10.5 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current credit or financial rating, which meets any applicable requirements of the Agencies, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy if (a) the terms of the insurance company's charter, bylaws, or policy provide that contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) the terms of the carrier's charter, bylaws, or policy provide that loss payments are contingent upon action by the carrier's board of directors, policyholders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which would prevent a First Mortgagee or any Owner from collecting insurance proceeds.

Section 10.6 Other Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot, and hazard insurance coverage on the Improvements owned by each Owner shall be the responsibility of the Owner of such Lot.

Section 10.7 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that coverage provided by such policies adequately covers those risks insured by the Association.

Section 10.8 Owners' Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Association Property is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction may be collected as a Site Assessment as provided in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by law. A determination of the negligence or willful act or omission of any Owner's liability therefor, shall be determined by the Board of Directors at a hearing after any notice required by the Bylaws to be given to the Owner, but any determination by the Board of Directors shall be subject to judicial review as appropriate.

## ARTICLE 11 EASEMENTS

Section 11.1 Easement for Encroachments. If any portion of an Improvement encroaches upon the Association Property, including any future encroachments arising or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, the Board may grant a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restrictions imposed by the Board.

Section 11.2 Association Easement. An easement to perform its maintenance or other rights or obligations pursuant to this Declaration or any Village Covenants is hereby granted to the Association, its officers, agents, employees and assigns, upon, across, over in and under the Community Area, together with the right to make such use of the Community Area as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

Section 11.3 Mailbox Easement. The Association hereby acknowledges the need to maintain any community mailboxes within the Community Area in a visually appealing condition. As such, an easement is hereby granted to the Association, its officers, agents, employees and assigns, upon across, over, in and under each Lot as may be necessary to carry out any maintenance and/or repair of community mailboxes within the Community Area.

Section 11.4 Utilities. Declarant hereby creates and reserves to itself until Declarant has sold the last Lot in the Community Area to an Owner other than Declarant, and, thereafter, to the Association the following easements:

- (a) perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to other over, under, in and across each of the utility easements of each Lot as shown on the Plat for 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; and
- (b) a blanket easement across, over and under the Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone and electricity.

If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The Association shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Community Area to the first Owner thereof, other than Declarant. The easement provided for in this section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Community Area.

Section 11.5 Easements Deemed Created. All conveyance of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 11, whether or not specific reference to such easements or to this Article appears in the instrument of such conveyance.

Section 11.6 Sign and Landscape Easements.

- (a) Pursuant to the Plats, certain portions of the Lots, including but not limited to Lots 37, 38, 39 and 47, all in University Heights Filing No. 1, and Lots 30, 43, 44, 53, 54, 66 and 84, all in University Bluffs Filing No. 2, are subject to a perpetual landscaping easement ("Landscape Easements") for the benefit of Declarant, the Association, their respective successors and assigns (the "Beneficiaries"). The Beneficiaries of the Landscape Easements shall each have the right, but not the obligation, to enter upon the Landscape Easements, or any portion thereof, for purposes of planting or installing landscaping plants, trees, materials or other landscaping features (collectively, the "Landscaping") therein and/or to maintain and repair the Landscaping Easements or any Landscaping located therein. Declarant or the Association's entry onto any Landscape Easement in order to install, maintain, repair or replace the Landscaping Easement or any Landscaping located thereon shall not be deemed a trespass. Except in cases of emergency, prior notice will be given to the applicable Owner of the Lot on which the Landscape Easement is located before any such entry and maintenance, repair or replacement by

Declarant or the Association in connection with the Landscape Easement or related Landscaping. Neither the Association nor the Declarant shall be liable for any loss, costs or damages to the Owners of the Lots, resulting from its performance of such maintenance, except for any such loss, cost or damage caused by the applicable party's gross negligence or willful misconduct. Notwithstanding the right of the Declarant, the Association or their respective successors and assigns to enter the Landscape Easement to install, maintain or repair the Landscape Easement and the landscaping which may be located within the Landscape Easement, the Beneficiaries of the Landscape Easement do not have any obligation to maintain or repair the Landscape Easements or the Landscaping. Each Owner of a Lot on which a Landscape Easement shall be located will be solely responsible for maintaining and repairing the Landscape Easement and all Landscaping located within the Landscape Easement, unless the Plat allocates maintenance responsibility of the Landscape Easements to a third party.

- (b) In addition to the Landscape Easements and pursuant to the Plats, certain portions of the Lots, including but not limited to Lots 1 and 47, each in University Heights Filing No. 1 and Lots 29, 30 and 84, each in University Bluffs Filing No. 2, are subject to a perpetual sign easement for the benefit of Declarant, the Association, their respective successors and assigns (the "Sign Easements"). The Sign Easements are located as indicated on the Plats. The Sign Easement within Lot 84, University Bluffs Filing No. 2 is located within the ten foot (10') area described as the "10' Landscape Esmt." The Sign Easements shall each be for the purpose of constructing, installing, maintaining, repairing and replacing University Park monument signs (the "Signs") and Landscaping within each Sign Easement. Declarant's entry onto any Sign Easement in order to install, maintain, repair or replace the Sign or Landscaping shall not be deemed a trespass. The Sign and Landscaping, if installed by Declarant, shall thereafter be maintained and kept in good repair by the Association. In order to maintain appropriate site visibility, nothing installed or maintained within any Sign Easement, other than the Sign, shall be permitted to exceed three feet in height at any time, nor shall anything located within any Sign Easement otherwise interfere with general site visibility. Except in cases of emergency, prior notice will be given to the applicable Owner of the Lot on which the Sign Easement is located before any such entry and maintenance, repair or replacement by Declarant or the Association in connection with either the Sign or the related Landscaping. Neither the Association nor the Declarant shall be liable for any loss, costs or damages to the Owners of the Lots, resulting from its performance of such maintenance, except for any such loss, cost or damage caused by the applicable party's gross negligence or willful misconduct.

Section 11.7 Easements of Record. In addition to the easements created in this Article 11 and on the Plat, the Community Area is subject to those easements and other matters currently of record in El Paso County, Colorado.

ARTICLE 12  
RESALE RESTRICTION  
AND  
DEVELOPER PURCHASE RIGHT

Section 12.1 Resale Restriction. Each Owner hereby grants to Declarant the right to purchase his or her Lot upon a proposed transfer of the Lot by the Owner to a third party (other than in connection with estate planning or probate transfers), prior to the construction of a Main Building thereon as set forth in Section 12.2.

Section 12.2 Repurchase Election. Upon an Owner's election to transfer the Lot to a third Person, other than in connection with estate planning and probate transfers, the Owner shall be obligated to give the Declarant prior written notice of each proposed transfer. On or before thirty (30) days following Declarant's receipt of the transfer notice from the Owner, Declarant shall have the right to notify the Owner in writing of its election to repurchase the Lot on the terms and conditions contained in this Article 12. If Declarant notifies the Owner of its election to purchase the Lot, such notice shall be referred to as "Exercise" and the terms and conditions contained in this Article 12 shall govern the purchase. If Declarant fails to timely notify the Owner in writing of its election to repurchase the Lot, Declarant will be deemed to have waived its purchase right in connection to the Lot in question and all future transfers of that Lot may be made without being subject to the Declarant's purchase right.

Section 12.3 Purchase Price. Subject to Declarant's election to purchase a Lot pursuant to the terms of Section 12.2, Declarant shall purchase the Lot in question for a "Purchase Price" in an amount equal to the price at which the Lot in question was initially purchased from the developer by the Owner or, in the case of an estate planning or probate transfer, the prior Owner.

Section 12.4 Closing. Closing of the purchase of a Lot pursuant to the terms of this Article 12, shall be at a time and place selected by the Declarant, but in no event later than thirty (30) days following Exercise. At closing:

- (a) The Owner will deliver its general warranty deed transferring title to the Lot in question (including all appurtenant easements, if any) to Declarant. The warranty deed will be subject only to matters set forth in the deed received by the Owner of the Lot from the developer, exclusive of any such matters which arose out of the Owner's activities with respect to the Lot. Prior to closing, the Owner will provide to Declarant a title insurance commitment issued by the title company that insured the Owner's acquisition of the Lot from the developer (the "Title Company") evidencing that the title to the Lot

complies with the provisions described above in this Section 12.4. Within thirty (30) days after the closing, the Owner will, at its expense, deliver to the Declarant a title insurance policy issued by the Title Company in the amount of the Purchase Price. The title policy will be subject only to the same exceptions described in the Title Commitment.

- (b) The Declarant will deliver to the Owner the Purchase Price by wire transfer or certified funds.
- (c) The Purchase Price will be adjusted for real property taxes prorated to the date of the closing of the Declarant's purchase based upon the most recently available assessment and mill levy. The Purchase Price will also be adjusted as of the closing date for all current Assessments.

Section 12.5 Expiration of Right. Declarant's right to re-purchase a Lot on the terms set forth in this Article 12 will expire as of the first to occur of the following events (i) five (5) years following the date on which the Owner acquired title to the Lot, or (ii) the date on which a Main Building is completed on the Lot.

Section 12.6 Land Benefitted. The purchase right described in this Article 12 will run with and burden the Lots, and is for the benefit of Declarant. The purchase right described in this Article 12 will be enforceable only by Declarant and its specific assigns as provided in this Declaration.

Section 12.7 Release of Purchase Right. Upon Declarant's failure to exercise its purchase right as provided herein or the expiration of the purchase right, and if requested by an Owner, Declarant shall, within ten (10) days following its receipt of a written request, execute and record in the real property records of El Paso County, Colorado, a written acknowledgment referring to this Article 12, stating the compliance with this Article 12 and the termination of Declarant's purchase right with respect to the specified Lot or Lots. The recording of such an acknowledgment will automatically release the applicable Lots from the purchase right described in this Article 12.

## ARTICLE 13 REMEDY OF VIOLATIONS

The Architectural Committee may give notice to the Owner of any Lot where a breach occurs or which is occupied by the Persons causing or responsible for the breach, which notice shall state the nature of the breach, and the intent of the Architectural Committee to invoke this section unless within a period stated in the notice, not less than five calendar days, the breach is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. The Association shall enforce these Covenants in the same manner and through the same procedures as are set forth herein and in the Declaration, including causing the breach to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. The cost so incurred

by the Association shall be paid by the Person responsible for the breach and if not paid within 30 days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of 18 percent per annum and plus cost of collection, shall be a lien on the ownership interest in the Lot (including improvements thereon) of each Person so notified and shall in all respects be the personal obligation of the Owner. The Association may bring an action at law for recovery of the costs so incurred by it, plus interest and cost of collection, including reasonable attorneys' fees, against the Owner personally obligated to pay and may bring an action to foreclose the lien against the Lot and improvements subject to the lien and there shall be added to the amount of such obligation the cost of preparing and filing the complaint in such action, and the judgment in any such action shall include interest as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. The foregoing specified rights and remedies shall not limit the right of any Lot Owner or the Declarant to enforce these Covenants as otherwise may be provided by law or equity.

#### ARTICLE 14 MISCELLANEOUS

Section 14.1 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty years after the date when this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten years each unless before the expiration of the initial twenty (20) years or before the end of any ten-year extension, there is recorded in the real estate records of El Paso County, Colorado, an instrument stating that extension is not desired, signed and acknowledged by the Owners and First Mortgagees of at least sixty seven percent of the Lots in the Community Area, in which event these Covenants shall terminate as of the end of the initial twenty year term or ten year extension, as applicable, terminated by agreement of the Owners with at least sixty-seven percent of the voting power of the Association, in the manner provided in Section 38-33.3-218, Colorado Revised Statutes.

Section 14.2 Amendment of Declaration by Declarant or the Association.

- (a) Until the first Lot subject to this Declaration has been conveyed by Declarant by recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.
- (b) Declarant may amend the Declaration in accordance with Section 8.2 as necessary to exercise any of the development rights set forth in Section 8.2.
- (c) The Association may amend the Declaration as permitted by the Colorado Common Interest Ownership Act.

Section 14.3 Amendment of Declaration by Members. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of the Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members with at least sixty-seven percent of the voting power of the Association, in accordance with the requirements of Section 38-33.3-217, Colorado Revised Statutes.

Section 14.4 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot in the Community Area has been conveyed by Declarant to the first Owner other than Declarant.

Section 14.5 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefor with the Association, shall be entitled to (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon request, receive a copy of financial statement, within ninety days following the end of any fiscal year of the Association; (d) receive written notice of all meeting of Members; (e) designate a representative to attend any meeting of Members; (f) receive written notice of abandonment or termination of the Association or of this Declaration; (g) receive notice of any amendment to this Declaration, the Articles of Incorporation or the Bylaws; (h) receive written notice of termination of any agreement for professional management of the Association of the Association Properties following a decision of the Association to assume self-management of the Association Properties; and (i) receive written notice of any damage to the Association Properties if the cost of reconstruction exceeds \$10,000.00, and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

Section 14.6 Priority of First Mortgage Over Assessments. Each First Mortgagee who recorded its First Mortgage before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title, other than allocation of any deficiency prorated among all Members of the Association. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, as the case may be.

Section 14.7 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Association Properties, and may pay any overdue premiums on hazard insurance policies for any Association Properties, or may secure new coverage if the insurance policy on and Association Properties lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 14.8 Evidence of Required Approvals. Whenever the validity of any amendment to or revocation of this Declaration is conditioned upon voting by a stated percentage of Members and approval by First Mortgagees or Agencies, or both, the recorded document implementing the amendment or revocation shall contain a certification by an officer or the Association that the approvals of the required percentages of Members, First Mortgagees and Agencies were obtained. The Association shall keep on file in its offices such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the officer's certificate on the recorded instrument shall be sufficient public notice of compliance.

Section 14.9 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

Section 14.10 Persons Entitled to Enforce Declaration. The Association, acting by authority of the Board, or any Member, shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or the other Association Documents. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents and at law or in equity.

Section 14.11 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 14.12 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 14.13 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

Section 14.14 Costs and Attorneys' Fees. In any action or proceeding under the Association Documents, the party which seeks to enforce the Association Documents and prevails, shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees.

Section 14.15 Limitation on Liability. The Association, the Board of Directors, the Architectural 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, and shall be indemnified by the Association to the fullest extent permissible by the laws of Colorado, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law, in accordance with the subject to the terms and limitations contained in the Bylaws.

Section 14.16 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community Area, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

Section 14.17 Liberal Interpretation. The provisions of the Association Documents shall be liberally construed as a whole to effectuate the purposes of the Association Documents. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

Section 14.18 Governing Law. The Association Documents shall be construed and governed under the laws of the State of Colorado.

Section 14.19 Severability. Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 14.20 Number and Gender. Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural, the singular and the use of any gender shall include all genders.

Section 14.21 Captions for Convenience. The titles, headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

Section 14.22 Mergers and Consolidation. The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community Area together with the covenants and restrictions established upon any other property, as one plan. Notwithstanding the foregoing, the Association and the association for the Village shall have the right to merge into one association upon a vote of the respective boards of directors of such associations.

Section 14.23 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws of the Association, this Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 14.24 Action in Writing. Notices, approval, consents, extensions, 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, applications or other action. Permission, consent or approval of Declarant under these Covenants is not effective unless in writing.

Section 14.25 Notice of Master Planned Community. Each Owner acknowledges that the Community Area is located within a Master Planned Community containing approximately 675 acres commonly known as University Park. University Park has a currently approved Master Plan. The Master Plan for University Park contemplates various land uses within the project and contemplates 1157 Lots within the University Park project at full build-out. Each Owner acknowledges that the Master Plan is a "concept plan" which estimates and reflects the best present day vision of the build-out of the University Park project based upon current market conditions and constitutes a general guideline for development of the University Park project. The Master Plan may be amended, in accordance with the applicable City ordinances, and each Owner acknowledges that no representations or warranties have been made concerning future land uses within the University Park project.

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective on the day and year first above written.

DECLARANT:

PULPIT ROCK INVESTMENTS, LLC,  
a Colorado limited liability company

By: ELITE PROPERTIES OF AMERICA,  
INC., a Colorado corporation, manager

By:   
Its: Vice PRES

ACCEPTANCE OF COVENANTS

UP Phase I, LLC, a Colorado limited liability company, as the Owner of all of the Community Area described in **Exhibit A** attached hereto, hereby consents to these Covenants and subjects all of the Community Areas to these Covenants, to the full extent provided in Section 1.5 of these Covenants.

UP PHASE I, LLC,  
a Colorado limited liability company

By: ELITE PROPERTIES OF AMERICA,  
INC., a Colorado corporation, manager

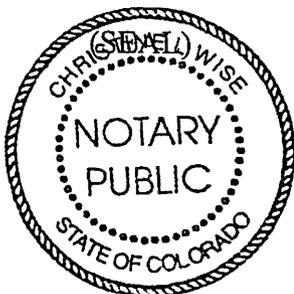
By:   
Its: Vice PRES

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 1998 by Douglas Stimple as Vice President of Elite Properties of America, Inc., as manager of Pulpit Rock Investments, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: My Commission Expires 12/02/2001



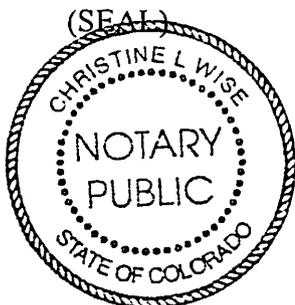
Christine L. Wise  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 1998 by Douglas Stimple as Vice President of Elite Properties of America, Inc., as manager of UP Phase I, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: My Commission Expires 12/02/2001



Christine L. Wise  
Notary Public

**EXHIBIT A  
TO  
DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

Legal Description of Community Area

Lots 5 through 31, inclusive, University Bluffs Filing No. 1;

Lots 2 through 84, inclusive, University Bluffs Filing No. 2; and

Lots 1 through 47, inclusive, University Heights Filing No. 1,

all in El Paso County, Colorado.

**EXHIBIT "B"**  
**TO**  
**DECLARATION OF**  
**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

**Legal Description of Expansion Property**

Lots 1 - 4, inclusive, in University Bluffs Filing No. 1, City of Colorado Springs, County of El Paso, State of Colorado; plus

Lot 1 in University Bluffs Filing No. 2, City of Colorado Springs, County of El Paso, State of Colorado; plus

All of that certain real property located in El Paso County, Colorado and being located within the property encompassed by the Master Plan for University Park, legally described as follows:

A TRACT OF LAND BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 17, A PORTION OF THE EAST HALF OF SECTION 20, A PORTION OF THE WEST HALF OF SECTION 21, A PORTION OF THE SOUTHEAST QUARTER OF SECTION 21, A PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, AND A PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 13 SOUTH, RANGE 66 WEST OF THE SIXTH-PRINCIPAL MERIDIAN, CITY OF COLORADO SPRINGS, EL PASO COUNTY, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS:**

THE EAST LINE OF THE WEST HALF OF SECTION 20, TOWNSHIP 13 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE NORTH END BY A RECOVERED NAIL AND WASHER IN A 5" CONCRETE PIER PER RECORDED MONUMENT RECORD AND AT THE SOUTH END BY RECOVERED 3/4" IRON PIPE WHICH IS THE PERPETUATION OF THE "OLD WOODEN POST ACCEPTED QUARTER CORNER" AS SHOWN ON SURVEY MAP ATTACHED TO "APPLICATION FOR ESTABLISHING DISPUTED BOUNDARY", RECORDED IN BOOK 1635 AT PAGE 37 OF THE EL PASO COUNTY, COLORADO RECORDS, SAID LINE IS ASSUMED TO BEAR N 00 DEGREES 26 MINUTES 33 SECONDS, W, HAVING A DISTANCE OF 5297.18 FEET.

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION

17, SAID POINT BEING THE POINT OF BEGINNING, SAID POINT BEING A RECOVERED STONE PER MONUMENT RECORD; THENCE N 89 DEGREES 39 MINUTES 44 SECONDS E ON THE NORTH LINE OF SAID SECTION 21, A DISTANCE OF 1321.60 FEET TO THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 21, BEING MONUMENTED BY A RECOVERED YELLOW PLASTIC SURVEYOR'S CAP ON A NO. 4 REBAR WITH UNREADABLE MARKINGS; THENCE S 00 DEGREES 07 MINUTES 05 SECONDS E ON THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 21 AND ON THE WESTERLY LINE OF GARDEN RANCH ESTATES, AS RECORDED IN PLAT BOOK W-2 AT PAGE 32, RECORDS OF EL PASO COUNTY, COLORADO, A DISTANCE OF 2655.70 FEET TO THE SOUTHWEST CORNER OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 21, SAID POINT BEING A RECOVERED YELLOW PLASTIC SURVEYOR'S CAP STAMPED K&W LS 3854; THENCE N 89 DEGREES 24 MINUTES 53 SECONDS E ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 21 AND ON THE BOUNDARY LINE OF SAID GARDEN RANCH ESTATES, A DISTANCE OF 1324.02 FEET; THENCE S 00 DEGREES 11 MINUTES 17 SECONDS E ON THE WESTERLY BOUNDARY LINE OF SAID GARDEN RANCH ESTATES, A DISTANCE OF 497.16 FEET TO AN ANGLE POINT ON SAID BOUNDARY LINE, SAID POINT BEING A RECOVERED YELLOW PLASTIC SURVEYOR'S CAP STAMPED K&W LS 3854; THENCE S 30 DEGREES 26 MINUTES 11 SECONDS E ON THE BOUNDARY LINE OF SAID GARDEN RANCH ESTATES, A DISTANCE OF 1730.72 FEET TO THE NORTHWESTERLY RIGHT OF WAY LINE OF UNION BOULEVARD; THENCE ON SAID NORTHWESTERLY LINE OF UNION BOULEVARD, THE FOLLOWING THREE (3) COURSES:

1. S 43 DEGREES 29 MINUTES 20 SECONDS W, A DISTANCE OF 637.34 FEET TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE TO THE LEFT, HAVING A DELTA OF 13 DEGREES 17 MINUTES 29 SECONDS, A RADIUS OF 1059.93 FEET, A DISTANCE OF 245.88 FEET TO A POINT OF TANGENT, SAID POINT BEING MONUMENTED BY A RECOVERED NO. 4 REBAR AND YELLOW PLASTIC-SURVEYOR'S CAP STAMPED WPW 11997;
3. S 30 DEGREES 11 MINUTES 51 SECONDS W, A DISTANCE OF 562.42 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, SAID POINT BEING MONUMENTED BY A RECOVERED NO. 5 REBAR AND 1 1/2" ALUMINUM SURVEYOR'S CAP STAMPED JR DEV RLS 10377;

THENCE N 00 DEGREES 18 MINUTES 46 SECONDS E ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 450.46 FEET TO THE SOUTHEAST CORNER OF THE WEST HALF OF SAID SECTION 21, BEING MONUMENTED BY A 3 1/2" ALUMINUM MONUMENT STAMPED JR DEVELOPERS RLS 10377; THENCE S 89 DEGREES 50 MINUTES 54 SECONDS W ON THE SOUTH LINE OF THE WEST HALF OF SECTION 21, A DISTANCE OF 2656.55 FEET TO THE SOUTHWEST CORNER OF SECTION 21, SAID POINT BEING MONUMENTED BY A RECOVERED 3/4" IRON PIPE; THENCE S 89 DEGREES 43 MINUTES 25 SECONDS W ON THE SOUTH LINE OF THE EAST HALF OF SAID SECTION 20, A DISTANCE OF 477.29 FEET TO THE NORTHEAST CORNER OF THE TRACT OF LAND DESCRIBED IN BOOK 1853 AT PAGE 366 OF THE SAID RECORDS, SAID TRACT LOCATION IS BASED ON LINEAL DIMENSIONS ALONG THE NORTH LINE OF SECTION 29; THENCE ON THE BOUNDARY LINE OF THE LAST MENTIONED TRACT OF LAND, THE FOLLOWING THREE (3) COURSES:

1. S 00 DEGREES 08 MINUTES 40 SECONDS E, A DISTANCE OF 60.00 FEET;

Ex. B

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