



Boulder County Clerk, CO PROT CVNTS

R 351.00 D 0.00

1874326

Page: 1 of 70

11/24/1998 04:00P

110'

THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF THE
RESERVE AT UTE CREEK

THIS DOCUMENT WAS DRAFTED BY,
AND AFTER RECORDING, RETURN TO:
William A Love, Esq,
Wells, Love & Scoby LLC
225 Canyon Blvd.
Boulder, CO 80302
(303) 449-4400

Copyright © 1998
By William A Love
All Rights Reserved
11/13/98

Table of Contents

- PREAMBLE9
- ARTICLE ONE: DEFINITIONS 10
 - 1.1 ACT 10
 - 1.2 AGENCIES 10
 - 1.3 ALLOCATED INTERESTS 10
 - 1.4 ARTICLES..... 10
 - 1.5 ASSESSMENTS 10
 - 1.6 ASSESSMENT LIEN..... 10
 - 1.7 ASSOCIATION..... 10
 - 1.8 ASSOCIATION DOCUMENTS 10
 - 1.9 BOARD OF DIRECTORS or BOARD 11
 - 1.10 BYLAWS 11
 - 1.11 CITY 11
 - 1.12 COMMON AREAS 11
 - 1.13 COMMON AREAS/ASSOCIATION 11
 - 1.14 COMMON AREAS/CITY 11
 - 1.15 COMMON EXPENSE ASSESSMENTS 11
 - 1.16 COMMON EXPENSE ASSESSMENT LIABILITY..... 11
 - 1.17 COMMON EXPENSES..... 11
 - 1.18 COSTS OF ENFORCEMENT 11
 - 1.19 COUNTY 12
 - 1.20 DECLARANT 12
 - 1.21 DECLARATION 12
 - 1.22 DESIGN REVIEW COMMITTEE..... 12
 - 1.23 DESIGN REVIEW GUIDELINES..... 12
 - 1.24 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS..... 12
 - 1.25 DWELLING UNIT 12
 - 1.26 ELIGIBLE MORTGAGEE..... 12
 - 1.27 FIRST MORTGAGEE..... 12
 - 1.28 FIRST SECURITY INTEREST 12
 - 1.29 GUEST 12
 - 1.30 IMPROVEMENTS 13
 - 1.31 LOT..... 13
 - 1.32 LOTS THAT MAY BE CREATED 13

1.33 MANAGING AGENT	13
1.34 MEMBER.....	13
1.35 MODIFICATION REVIEW COMMITTEE.....	13
1.36 NOTICE AND HEARING.....	14
1.37 OWNER	14
1.38 PARTICIPATING BUILDER.....	14
1.39 PERIOD OF DECLARANT CONTROL	14
1.4 PERSON	14
1.41 PLANNED COMMUNITY	14
1.42 PLAT.....	14
1.43 RULES	14
1.44 SECURITY INTEREST	14
1.45 SPECIAL ASSESSMENT	14
1.46 SUPPLEMENTAL DECLARATION	14
1.47 TURNOVER DATE.....	14
1.48 VA AND/OR FHA APPROVAL	14
ARTICLE TWO: SCOPE OF THE DECLARATION.....	15
2.1 Property Subject to this Declaration.	15
2.2 Conveyances Subject to this Declaration.	15
2.3 Owner's Rights Subject to this Declaration.	15
2.4 First Phase, Number of Lots.....	15
2.5 Identification of Lots.....	15
2.6 Lot Boundaries.	15
ARTICLE THREE: THE COMMON AREAS.....	15
3.1 Common Areas Dedication.	15
3.2 Title to the Common Areas.	16
3.3 Duty to Accept the Common Areas Transferred by Declarant.....	16
3.4 Duty to Manage and Care for the Common Areas.....	16
3.5 Owner's Rights in the Common Areas/Association.	16
3.6 Delegation of Use.	17
ARTICLE FOUR: THE ASSOCIATION	17
4.1 Name.	17
4.2 Purposes and Powers.....	18
4.3 Board of Directors.	18
4.4 Articles and Bylaws.	18
4.5 Membership.....	18

4.6 Voting Rights.....	18
4.7 Declarant Control of the Association.....	18
4.8 Election by Owners.....	19
4.9 Delivery of Documents by Declarant.....	19
4.10 Budget.....	20
4.11 Association Agreements.....	21
4.12 Indemnification.....	21
4.13 Certain Rights and Obligations of the Association.....	21
4.14 Certain Rights and Obligations of the Declarant and Participating Builder.....	21
ARTICLE FIVE: ASSESSMENTS.....	22
5.1 Obligation.....	22
5.2 Purpose of the Common Expense Assessments.....	22
5.3 Date of Commencement of the Assessments.....	23
5.4 Levy of Assessments.....	23
5.5 Due Date.....	24
5.6 Remedies for Nonpayment of Assessments.....	25
5.7 The Assessment Lien.....	25
5.8 Assignment of Assessments.....	27
5.9 Surplus Funds.....	27
5.10 Working Capital Fund.....	27
5.11 Certificate of Status of Assessments.....	27
5.12 No Offsets.....	28
ARTICLE SIX: ARCHITECTURAL APPROVAL/DESIGN REVIEW.....	28
6.1 Approval of Improvements Required.....	28
6.2 Membership of the Committee.....	28
6.3 Address of the Committee.....	29
6.4 Submission of Plans/Design Review Fee.....	29
6.5 Delegation/Waiver.....	29
6.6 Criteria for Approval.....	30
6.7 Decision of the Committee.....	30
6.8 Appeal to the Board of Directors.....	31
6.9 Failure of Committee to Act on Plans.....	31
6.10 Prosecution of Work After Approval.....	31
6.11 Notice of Completion.....	31
6.12 Inspection of Work.....	32
6.13 Notice of Noncompliance.....	32

6.14 Failure of Committee to Act After Completion.....	32
6.15 Appeal to the Board of Directors of Finding of Noncompliance.....	32
6.16 Correction of Noncompliance.....	32
6.17 Meetings of the Committee.....	33
6.18 No Implied Waiver or Estoppel.....	33
6.19 Estoppel Certificates.....	33
6.20 Architectural Standards/Design Guidelines.....	33
6.21 Modification Review Committee.....	33
6.22 No Liability for Committee Action.....	34
ARTICLE SEVEN: LAND USE AND OTHER RESTRICTIONS.....	34
7.1 Limitations and Restrictions.....	34
7.2 Land Use.....	34
7.3 Building Locations, Height Restrictions and Lot Coverage.....	35
7.4 Temporary Structures.....	35
7.5 Restrictions on Garbage and Trash.....	35
7.6 Nuisances.....	35
7.7 No Annoying Lights, Sounds or Odors.....	36
7.8 No Hazardous Activities.....	36
7.9 No Unsightliness.....	36
7.10 Utilities.....	36
7.11 Restrictions on Signs and Advertising Devices.....	36
7.12 Compliance with Insurance Requirements.....	37
7.13 Compliance with Laws.....	37
7.14 Restoration in the Event of Damage or Destruction.....	37
7.15 Household Pets.....	37
7.16 Vehicular Parking, Storage and Maintenance.....	38
7.17 Owner Caused Damages.....	39
7.18 Antennas.....	39
7.19 Lease of a Dwelling Unit.....	39
7.20 Fences and Other Exterior Improvements.....	40
7.21 Rules.....	40
7.22 Waiver of Summary Abatement.....	40
7.23 Exemptions for the Declarant and Participating Builder.....	40
ARTICLE EIGHT: EASEMENTS.....	40
8.1 Utility Easements.....	40
8.2 Easements for the Board of Directors.....	40

8.3 Emergency Easements.	41
8.4 Recording Data Regarding Easements.....	41
8.5 Easements Deemed Appurtenant.	41
ARTICLE NINE: INSURANCE	41
9.1 Authority to Purchase/General Requirements.	41
9.2 Hazard Insurance.	42
9.3 Liability Insurance.	43
9.4 Fidelity Insurance.	44
9.5 Additional Insurance.	45
9.6 Payment of Insurance Premiums.	45
9.7 Separate Insurance.	45
9.8 Condemnation.....	46
ARTICLE TEN: RESTORATION UPON DAMAGE OR DESTRUCTION.....	46
10. Duty to Restore.	46
10.2 Use of Insurance Proceeds.....	46
ARTICLE ELEVEN: MAINTENANCE.....	46
11.1 Maintenance of the Common Areas.....	46
11.2 Maintenance of the Lots and Dwelling Units.	47
11.3 Maintenance of Drainage Pattern.....	47
11.4 Association Responsibility.	47
11.5 Board of Directors.	48
ARTICLE TWELVE: EXPANSION	48
12.1 Reservation of Right to Expand.....	48
12.2 Supplemental Declarations.....	48
12.3 Expansion of Definitions.....	48
12.4 Declaration Operative on New Properties.	49
12.5 Interests on Enlargement.	49
12.6 Taxes, Assessments and Other Liens.	49
12.7 Project Treated as a Whole.....	49
12.8 Termination of the Right of Expansion.	50
ARTICLE THIRTEEN: DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS	50
13.1 Reservation.....	50
13.2 Rights Transferable.....	51
13.3 Limitations.....	51
13.4 Interference with the Declarant Rights.....	51
13.5 Use by Declarant.....	51

13.6 Models, Sales Offices and Management Offices.....	51
13.7 Declarant's Easements.....	51
13.8 Participating Builder's Easements.....	52
13.9 Signs and Marketing.....	52
ARTICLE FOURTEEN: FIRST MORTGAGEE PROVISIONS.....	52
14.1 Notices of Action.....	52
14.2 Amendment to Documents/Special Approvals.....	52
14.3 Special FHLMC Provisions.....	54
14.4 Implied Approval.....	54
14.5 Books and Records.....	54
ARTICLE FIFTEEN: UTE CREEK GOLF COURSE.....	55
15.1 Ute Creek Golf Course.....	55
15.2 Potential Disturbances and Nuisances.....	55
15.3 Golf Course Operations.....	56
15.4 Golf Ball Easement.....	57
15.5 Golf Course Landscaping.....	58
15.6 Golf Course Access.....	58
15.7 Indemnity.....	58
ARTICLE SIXTEEN: DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION.....	58
16.1 Duration.....	58
16.2 Amendments by Owners.....	59
16.3 FHA/VA Approval.....	59
16.4 Consent of Eligible Mortgagees.....	60
16.5 Amendments by Declarant.....	60
16.6 Consent of Declarant Required.....	60
ARTICLE SEVENTEEN: GENERAL PROVISIONS.....	60
17.1 Right of Action.....	60
17.2 Successors and Assigns.....	60
17.3 Severability.....	61
17.4 No Waiver.....	61
17.5 Registration by Owner of Mailing Address.....	61
17.6 Conflict.....	61
17.7 Mergers.....	61
17.8 Arbitration/Attorney's Fees.....	61
17.9 Captions.....	62
17.10 Numbers and Genders.....	62

EXHIBIT A.....	63
EXHIBIT B.....	64
EXHIBIT C.....	65
EXHIBIT D.....	66
EXHIBIT E.....	67
1. Golf Course Play Easement.....	67
2. Damage by Errant Golf Balls.	68
3. Fencing Restrictions.	68
4. Duration and enforceability.....	68
5. Persons Entitled to Enforce Restrictions.	68
6. Notice to Property Owners Within the Planned Community.	68
7. Addition covenants, conditions and restrictions	69

**THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE RESERVE AT UTE CREEK**

PREAMBLE

THIS DECLARATION is made on the date hereinafter set forth, by BOSCH LAND COMPANY, INC, a Missouri corporation ("Declarant").

WHEREAS, Declarant is the owner of certain real property located in Longmont, Colorado, as more particularly described on Exhibits A, B and C attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Declarant intends to create a residential community on the Property together with other improvements thereon; and

WHEREAS, Declarant will convey the said Property, subject to the protective covenants, conditions and restrictions, as hereinafter set forth.

NOW THEREFORE, Declarant hereby submits the real property described on Exhibits A and B, together with all rights, and appurtenances thereto and improvements thereon to the provisions of the Colorado Common Interest Ownership Act, as it may be amended from time to time. In the event the said Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

Declarant hereby declares that all of the said real property described on said Exhibits A and B shall be held and conveyed subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be for the protection of the value of the said real property, and for the benefit of any persons having any right, title or interest in the said real property. Said covenants, conditions and restrictions shall be deemed to run with the land and shall be a burden and a benefit to any persons acquiring such interest, their grantees, heirs, legal representatives, successors and assigns.

Copyright © 1998
By William A. Love
All Rights Reserved

ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ACT means the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, et seq., as it may be amended from time to time.

1.2 AGENCIES means and collectively refers to the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD/FHA), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

1.3 ALLOCATED INTERESTS means the Votes in the Association and the Common Expense Assessment Liability which are allocated to each of the Lots in the Planned Community. The formulas used to establish the Allocated Interests are as follows:

(a) Votes. The Owners of each Lot in the Planned Community shall be entitled to one vote for each Lot owned.

(b) Common Expense Assessment Liability. The Common Expense Assessment is levied upon all Lots on the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Lots then within the Planned Community.

1.4 ARTICLES means the Articles of Incorporation of the Association.

1.5 ASSESSMENTS mean the (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, and (d) Fines levied pursuant to this Declaration.

1.6 ASSESSMENT LIEN means the statutory lien on a Lot for any Assessment levied against that Lot together with all Costs of Enforcement as herein defined, All Costs of Enforcement are enforceable as Assessments.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

1.7 ASSOCIATION means THE RESERVE AT UTE CREEK HOMEOWNERS ASSOCIATION, a Colorado Corporation, not for profit, its successors and assigns. The Articles of Incorporation and Bylaws, along with this Declaration, shall govern the administration of the Planned Community, the Members of which shall be all of the Owners of the Lots within the Planned Community.

1.8 ASSOCIATION DOCUMENTS means this Declaration, the Plat, the Articles of Incorporation and Bylaws of the Association, the Design Review Guidelines, and the Rules and

Regulations, if any, as they may be amended from time to time.

1.9 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association.

The term Board of Directors as used herein is synonymous with the term Executive Board as the latter term is used in the Act.

1.10 BYLAWS means the Bylaws which are adopted by the Board of Directors for the regulation and management of the Association.

1.11 CITY means Longmont, Colorado.

1.12 COMMON AREAS means the Common Areas/City and Common Areas/Association, collectively.

The term Common Areas as used herein is synonymous with the term Common Elements as the latter term is used in the Act.

1.13 COMMON AREAS/ASSOCIATION means any real property (including all improvements thereon) owned and maintained by the Association, all of which is held for the common use and enjoyment of the Owners, the descriptions of which are more fully described in Exhibit B attached hereto.

1.14 COMMON AREAS/CITY means any real property (including all improvements thereon) owned by the City and maintained by the Association, all of which is held for the common use and enjoyment of the Owners and the general public, the descriptions of which are more fully described in Exhibit B attached hereto.

1.15 COMMON EXPENSE ASSESSMENTS means the funds required to be paid by each Owner in payment of such Owner's Common Expense Liability as more fully defined in Paragraph 5.2 hereof.

1.16 COMMON EXPENSE ASSESSMENT LIABILITY means the funds required to be paid by each Owner in payment of such Owner's Common Expense Liability as more fully defined in Paragraph 5.2 hereof.

1.17 COMMON EXPENSES means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves.

1.18 COSTS OF ENFORCEMENT means all fees, late charges, interest, expenses, including receiver's fees, and reasonable attorneys' fees and costs incurred by the Association (a) in connection with the collection of the Assessments and Fines, or (b) in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

1.19 COUNTY means Boulder County, Colorado.

1.20 DECLARANT means the BOSCH LAND COMPANY, INC, a Missouri corporation, or its successors as defined by §38-33.3-103(12) of the Act.

1.21 DECLARATION means this Declaration, the Plat and any supplements and amendments thereto recorded in the Office of the County Clerk and Recorder.

1.22 DESIGN REVIEW COMMITTEE ("Committee") means the Committee formed pursuant to ARTICLE SIX hereof to review and approve or disapprove plans for Improvements as defined herein as more fully provided for by this Declaration.

1.23 DESIGN REVIEW GUIDELINES means the DESIGN REVIEW GUIDELINES FOR THE RESERVE AT UTE CREEK, as amended and supplemented. These guidelines may be adopted by the Design Review Committee to implement and interpret the Design Review/Architectural Approval provisions of ARTICLE SIX of this Declaration.

1.24 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS means the rights as defined by §§38-33.3-103 (14) and (29) of the Act reserved by the Declarant under ARTICLE THIRTEEN hereof.

1.25 DWELLING UNIT means the residence constructed on each Lot within the Planned Community and any replacement thereof. Dwelling Unit shall include the Lot upon which such Dwelling Unit is constructed.

1.26 ELIGIBLE MORTGAGEE means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Lot encumbered by its First Security Interest, requesting that the Association notify them on any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.

1.27 FIRST MORTGAGEE means any Person which owns, holds, insures or is a guarantor of a Security Interest as herein defined, which is a First Security Interest encumbering a Lot within the Planned Community. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the Seller, whether such contract is recorded or not.

1.28 FIRST SECURITY INTEREST means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.29 GUEST means (a) any person who resides with an Owner within the Planned Community; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Dwelling Unit within the Planned Community, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract purchaser.

1.30 IMPROVEMENTS means:

(a) all exterior improvements, structures and any appurtenances thereto or components thereof of every type or kind;

(b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements;

(c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern;

(d) all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, private drives, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, cooling, heating and water softening equipment; and

(e) any change, alteration, modification, expansion, or addition to any previously approved Improvement, including any change of exterior appearance, finish material, color or texture.

1.31 LOT means each platted lot shown upon the Plat of the Planned Community which is subject to this Declaration, together with all appurtenances and improvements now or hereafter located thereon.

"Lot" shall include any Dwelling Unit constructed thereon as the term "Dwelling Unit" is herein defined;.

The term Lot as used herein is synonymous with the term Unit as the latter term is used in the Act.

1.32 LOTS THAT MAY BE CREATED means seventy Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including those Lots which may be included if all of the property provided for in Exhibit C hereof is annexed to the Planned Community and made subject to this Declaration.

1.33 MANAGING AGENT means any one or more persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

1.34 MEMBER means each Owner, as defined in Paragraph 1.36 hereof.

1.35 MODIFICATION REVIEW COMMITTEE means the Committee formed pursuant to ARTICLE SIX hereof to review and approve or disapprove the plans for any modification, addition or alteration made on or to existing Improvements as defined herein as more fully provided for in this Declaration,

1.36 NOTICE AND HEARING means a written notice and an opportunity for a hearing before the Board of Directors in the manner provided in the Bylaws,

1.37 OWNER means the record Owner of the fee simple title to any Lot which is subject to this Declaration.

1.38 PARTICIPATING BUILDER means and refers to a Person or Persons who acquires a portion of the Planned Community for purposes of improving such Lots in accordance with any development plans for resale to third party purchasers, and who is designated as such by an instrument duly recorded in the Office of the Clerk and Recorder.

1.39 PERIOD OF DECLARANT CONTROL means that period of time as defined in Paragraph 4.7 hereof.

1.4 PERSON means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1.41 PLANNED COMMUNITY means such real property and the improvements located thereon as more fully described on Exhibits A and B attached hereto.

1.42 PLAT means the final plat of the Spring Valley Phase Four, The Reserve at Ute Creek, a subdivision recorded in the records of the County Clerk and Recorder.

1.43 RULES means the Rules and Regulations adopted by the Board of Directors for the regulation and management of the Planned Community as amended from time to time.

1.44 SECURITY INTEREST means an interest in real estate or personal property created by contract which secures payment of an obligation. The term includes a lien created by a deed of trust, contract for deed, land sales contract and UCC-1.

1.45 SPECIAL ASSESSMENT means those Assessments defined in Paragraph 5.4(d) hereof.

1.46 SUPPLEMENTAL DECLARATION means a written instrument containing covenants, conditions and restrictions which is recorded, annexing in accordance with ARTICLE TWELVE hereof, a portion of the real property described on Exhibit C hereof to the Planned Community.

1.47 TURNOVER DATE means the date the Period of Declarant Control terminates as more fully set forth in Paragraph 4.7 hereof.

1.48 VA AND/OR FHA APPROVAL means that the Planned Community has been or is to be approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Lots within the Planned Community.

In the event additional real property is made subject to this Declaration in the manner provided for in ARTICLE TWELVE hereof, certain terms defined above shall be expanded to encompass said

property from the date such additional real property is made subject to this Declaration.

ARTICLE TWO: SCOPE OF THE DECLARATION

2.1 Property Subject to this Declaration.

Declarant, as the Owner of fee simple title to the Planned Community, by recording this Declaration does hereby subject the Planned Community to the provisions of this Declaration.

2.2 Conveyances Subject to this Declaration.

All covenants, conditions and restrictions which are granted or created by this Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having any interest in the Planned Community, their respective heirs, successors, personal representatives or assigns.

Any instrument recorded subsequent to this Declaration and purporting to establish and effect any interest in the Planned Community shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.3 Owner's Rights Subject to this Declaration.

Each Owner shall own his or her Lot in fee simple and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

2.4 First Phase, Number of Lots.

The number of Lots within the First Phase of the Planned Community is thirty-six. The Declarant reserves the right but not the obligation to create additional Lots by the expansion of the Planned Community in accordance with ARTICLE TWELVE hereof.

2.5 Identification of Lots.

The identification number of each Lot is shown on the Plat of the Planned Community.

2.6 Lot Boundaries.

The boundaries of each Lot are located as shown on the Plat of the Planned Community.

ARTICLE THREE: THE COMMON AREAS

3.1 Common Areas Dedication.

The Declarant, in recording the Plat of the Planned Community in the records of the County Clerk

and Recorder, has designated certain areas of the Planned Community as Common Areas, more fully described on the attached Exhibit B.

The Common Areas/Association are not dedicated for use by the general public, but are dedicated to the common use and enjoyment of only the Owners as more fully provided for in this Declaration.

The Common Areas/City are dedicated for common use and enjoyment of the Owners and by the general public.

Said Plat is hereby incorporated herein and made a part of this Declaration.

3.2 Title to the Common Areas.

The Declarant hereby covenants that it will convey to the Association and to the City, as the case may be, fee simple title to the Common Areas free and clear of all liens and encumbrances prior to the conveyance of the first Lot within the Planned Community to an Owner other than Declarant and Participating Builder.

3.3 Duty to Accept the Common Areas Transferred by Declarant.

The Association and the City shall accept title to their Common Areas and agrees to own and maintain any property, including all improvements located thereon, and personal property relating thereto, transferred by Declarant as Common Areas. Any property or interest in property transferred to the Association or to the City, as the case may be, by Declarant shall be transferred free and clear of all liens and encumbrances (other than the lien of real estate taxes not then due and payable) and Declarant shall furnish and pay for a title insurance policy reflecting same.

3.4 Duty to Manage and Care for the Common Areas.

The Association shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and the improvements located thereon and keep the same in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners or general public, as the case may be.

3.5 Owner's Rights in the Common Areas/Association.

Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Areas/Association, which shall be appurtenant to and shall pass with the title of the Lot to such Owner, subject to the Development Rights and Special Declarant Rights of the Declarant reserved herein and the following rights of the Board of Directors:

(a) To borrow money to improve the said Common Areas and to mortgage said Common Areas as security for any such loan; provided, however, that the Association may not subject any portion of the Common Areas to a security interest unless such is approved by Owners to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes

allocated to Lots not owned by the Declarant as more fully set forth in §38-33.3-312 of the Act.

(b) To convey or dedicate all or any part of the said Common Areas for such purposes and subject to such conditions as may be agreed to by the Owners to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Lots not owned by the Declarant as more fully set forth in §38-33.3-312 of the Act.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Paragraph as more fully set forth in §38-33.3-312 of the Act.

(c) To promulgate and adopt Rules and Regulations with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of a Owner for any period during which any Assessment remains unpaid and, for a period not to exceed sixty days, for any infraction of the Declaration, Bylaws or Rules and Regulations.

(e) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(f) To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of way, for the use of Common Areas by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate.

(g) To close or limit the use of the Common Areas temporarily while maintaining, repairing and making replacements in the Common Areas, or permanently if approved by Owners to which at least eighty percent of the votes in the Association are allocated.

(h) To make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(i) The rights granted to the Board of Directors in Paragraph 4.13 hereof.

3.6 Delegation of Use.

Any Owner may delegate his or her right of enjoyment to the Common Areas/Association and facilities to their Guests.

ARTICLE FOUR: THE ASSOCIATION

4.1 Name.

The name of the Association is THE RESERVE AT UTE CREEK HOMEOWNERS ASSOCIATION, and it is a Planned Community.

4.2 Purposes and Powers.

The Association, through its Board of Directors, shall perform functions and manage the Planned Community as provided in this Declaration so as to further the interests of the residents of the Planned Community and Members of the Association.

4.3 Board of Directors.

The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.4 Articles and Bylaws.

The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

4.5 Membership.

Members of the Association shall be every record owner of a Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Where more than one person holds interest in any Lot, all such persons shall be Members.

4.6 Voting Rights.

The Association shall have one class of voting membership. Owners shall be entitled to one vote for each Lot owned.

The vote for such Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them unless an objection or protest by any other holder of an interest of the Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves. Should the joint owners of a Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost.

4.7 Declarant Control of the Association.

Subject to provisions of Paragraph 4.8 hereof, there is a "Period of Declarant Control" during which Period the Declarant may appoint and remove any officer of the Association or any member of the Board of Directors. The Period of Declarant Control is a length of time expiring seven years after the filing of the Articles of Incorporation of the Association; provided, however, the Period of Declarant Control in any event terminates no later than either (a) sixty days after conveyance of

seventy-five percent of the Lots That May Be Created to Owners other than the Declarant; (b) two years after the last conveyance of a Lot by the Declarant in the ordinary course of business to Owners other than Declarant; or (c) two years after any right to add new Lots was last exercised.

A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

4.8 Election by Owners.

Not later than sixty days after conveyance of twenty-five percent of the Lots That May Be Created to Owners other than Declarant, at least one member and not less than twenty-five percent of the members of the Board of Directors must be elected by Owners other than the Declarant.

Not later than sixty days after conveyance of fifty percent of the Lots That May Be Created to Owners other than Declarant, not less than thirty-three and one-third percent of the members of the Board of Directors must be elected by Owners other than the Declarant.

Not later than the termination of the Period of Declarant Control as set forth in Paragraph 4.7 hereof, the Owners shall elect a Board of Directors consisting of three members, at least a majority of whom must be Owners other than the Declarant. The Board of Directors shall elect the officers of the Association. The Owners' Board of Directors shall take office upon termination of the Period of Declarant Control upon election.

4.9 Delivery of Documents by Declarant.

Within sixty days after the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver without charge to the Board of Directors all property of the Owners and of the Association relating to the Planned Community held by or controlled by the Declarant, including, without limitation, the following items:

(a) The original or a certified copy of the recorded Declaration, as amended, the Association's Article of Incorporation, together with a Certificate of Good Standing, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends in accordance with §38-33.3-303(9)(b) of the Act;

(c) The Association funds or control thereof;

(d) All of the tangible personal property that has been represented by the Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the Common Areas; a copy of any plans and specifications used in the construction of any

improvements in the Common Areas; and an inventory of these properties;

(e) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;

(f) Any other permits issued by governmental bodies applicable to the Planned Community and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

(g) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;

(h) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(i) Employment contracts in which the Association is a contracting party; and

(j) Any service contract in which the Association is a contracting party or in which the Association of the Owners have any obligation to pay a fee to the persons performing the services.

4.10 Budget.

(a) In accordance with §38-33.3-303 of the Act, the Board of Directors shall cause to be prepared, at least sixty days prior to the commencement of each calendar year, a Budget for such calendar year. Within thirty days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen days nor more than sixty days after delivery of the summary.

Unless at that meeting Owners to which at least sixty-seven percent of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(b) If the Board of Directors deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Paragraph 4.10(a) above, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen days, nor more than sixty days, after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least sixty-seven percent of the votes in the Association are allocated reject the amended Budget, the amended Budget shall be deemed ratified whether or not a quorum is present.

4.11 Association Agreements.

Any agreement for professional management of the Planned Community or any contract providing for services of the Declarant, may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice.

The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Period of Declarant Control unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after such conversion upon not more than thirty days' notice to the other party thereto.

4.12 Indemnification.

Each Officer, Director and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been an Officer, Director or committee member of the Association, or any settlements thereof; whether or not he or she is an Officer, Director or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law.

4.13 Certain Rights and Obligations of the Association.

(a) Contracts, Easements and Other Agreements: The Board of Directors shall have the right to enter into, grant, perform, enforce, cancel and vacate: contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use by Owners, their Guests, and other persons, concerning the Common Areas.

Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors, without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

(b) Other Association Functions: The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Members on a self-supporting, Special Assessment or Common Expense Assessment basis.

(c) Implied Rights: The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.14 Certain Rights and Obligations of the Declarant and Participating Builder.

So long as there are unsold Lots within the Planned Community owned by the Declarant and

Participating Builder, the Declarant and Participating Builder shall enjoy the same rights and assumes the same duties as they relate to each individual unsold Lot.

ARTICLE FIVE: ASSESSMENTS

5.1 Obligation.

Each Owner, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association

- (a) Common Expense Assessments,
- (b) Special Assessments,
- (c) Fines,
- (d) Individual Assessments, and

(e) Costs of Enforcement, which shall be a continuing lien upon the Lot against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Lot shall be jointly and personally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Lot

The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

The omission or failure of the Board of Directors to levy Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

No Owner may waive or otherwise escape liability for the Common Expense Assessment provided for herein by the non-use of the Common Areas or the abandonment of his or her Lot.

5.2 Purpose of the Common Expense Assessments.

The Common Expense Assessments levied by the Association upon all Owners shall be used exclusively for the purpose of

- (a) promoting, the health, safety and welfare of the Owners and Guests of the Planned Community and the Members of the Association,

- (b) providing for the improvements, repair, maintenance and reconstruction for the Common Areas;
- (c) providing hazard insurance for any insurable improvements located on the Common Areas;
- (d) providing liability insurance to cover incidents occurring on the Common Areas, and
- (e) satisfying any other purpose, reasonable, necessary or incidental to such purposes.

Such assessments shall include the establishment and maintenance of a Reserve Fund for those items which the Association has an ongoing duty to repair, maintain or reconstruct on a periodic basis, provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purposes of constructing capital improvements.

5.3 Date of Commencement of the Assessments.

The Common Expense Assessment shall commence as to all Lots no later than sixty days after the first Lot is conveyed to an Owner other than the Declarant or Participating Builder.

Until the commencement of the collection of the Common Expense Assessment, the Declarant and Participating Builder shall pay all of the expenses incurred and paid for by the Association on a pro rata basis based on the number of Lots owned with the Planned Community.

5.4 Levy of Assessments.

(a) Common Expense Assessments. Common Expense Assessments shall be levied on all Lots based upon a budget of the Association's cash requirements. The Common Expense Assessment shall be allocated among the Lots in accordance with that Lot's Common Expense Assessment Liability as set forth in Paragraph 1.3 hereof.

(b) Individual Assessments. The Board of Directors shall have the right to individually levy upon any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges levied under Paragraphs 6.16, 7.5, 7.14, 7.15, 7.16, 7.17, 9.2, 9.6, 10.2, 11.1, 11.2 and 11.4 hereof.

No Individual Assessment shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association.

Individual Assessments shall be collected as part of the Costs of Enforcement.

Individual Assessments may be levied at any time as required and are exempt from any voting requirements by the membership required by other assessments called for under the Declaration.

(c) Fines. The Board of Directors of the Association shall have the right to levy a Fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules and Regulations of the Association. No such Fine shall be levied until the Owner or Owners to be

charged have been given a Notice and Hearing as provided for in the Bylaws of the Association.

Fines may be levied in a reasonable amount as determined from time to time by the Board of Directors in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement. Fines may be levied at any time as required and are exempt from any voting requirements by the membership required for other assessments called for under the Declaration.

(d) Special Assessments. In addition to the other Assessments authorized herein, the Board of Directors, subject to the requirements set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to, the cost of any construction, reconstruction, improvement, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Association provided that any such Assessment shall have the approval of Owners to whom at least sixty-seven percent of the votes in the Association are allocated, who are voting in person or by proxy at a meeting duly called for this purpose.

Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance with Paragraph 1.3 hereof. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Owners not less than fourteen days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies to whom at least sixty percent of the votes in the Association are allocated shall constitute a quorum, If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

If the Planned Community has been or is to be approved by the Federal Housing Administration and/or Veterans Administration, then until the termination of the Period of Declarant Control all Special Assessments for capital improvements in addition to the approval of the Owners as required above will require the written consent of the Veterans Administration and/or the Federal Housing Administration.

5.5 Due Date.

Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

All other Assessments shall be levied on an annual basis and shall be due and payable in installments, in advance, in such frequency as the Board of Directors determines in its discretion from time to time, provided that the initial assessments shall be adjusted to reflect the time remaining in the first Association's fiscal year. Any Owner purchasing a Lot between annual due

dates shall pay a prorated share.

Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

Mortgagees are not required to collect assessments.

5.6 Remedies for Nonpayment of Assessments.

If any Assessment (to include Costs of Enforcement) is not fully paid within fifteen days after the same becomes due and payable, then:

(a) interest shall accrue at the default rate set by the Rules and Regulations of the Association on any amount of the Assessment in default accruing from the due date until date of payment, and the Board may assess a Late Fee in the Board's discretion;

(b) the Board may accelerate and declare immediately due and payable all unpaid installments of the Assessment otherwise due during the fiscal year during which such default occurred;

(c) the Board may bring an action at law in any court of competent jurisdiction against any Owner personally obligated to pay the same and obtain a judgment for the amounts due,

(d) the Board may proceed to foreclose its lien against the Lot pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments.

Failure to pay assessments does not constitute a default under an insured mortgage.

5.7 The Assessment Lien.

The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Board of Directors and for Costs of Enforcement levied against such Lot Owners when the Lot Owner fails to pay as required by the Declaration. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances on a Lot except the following:

(a) liens and encumbrances recorded prior to the recording of this Declaration; and

(b) liens for real estate taxes and any other governmental assessments or charges against the

Lot; and

(c) the lien of any loan evidenced by a first mortgage or deed of trust and any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not, except to the extent the Act grants priority for Assessments to the Association.

The Act does not affect the priority of mechanics' or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may prepare, and record in the Office of the County Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Lot shall not affect the lien for said Assessments except that sale or transfer of any Lot pursuant to foreclosure by any First Mortgagee, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.

Any First Mortgagee who acquires title to a Lot by virtue of foreclosing a first deed of trust or mortgage or by virtue of a deed in lieu of foreclosure will take the Lot free of any claims for unpaid Assessments and Costs of Enforcement against that Lot which have accrued prior to the time such First Mortgagee acquires title to the Lot, except to the extent the Act grants lien priority for Assessments of the Association.

In any action by an Association to collect Assessments and Costs of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage.

The Assessment Lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Lot for Assessments and Costs of Enforcement shall be superior to any

homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

5.8 Assignment of Assessments.

The Board of Directors shall have the unrestricted right to assign its right to receive Common Expense Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is approved in writing by Owners to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Lots not owned by the Declarant.

5.9 Surplus Funds.

Any surplus funds of the Association remaining at the close of the Association's fiscal year after payment of the Association's expenses and funding the Reserve Fund shall be retained by the Association as unallocated reserves and need not be credited to the Owners to reduce their future Assessment Liability.

5.10 Working Capital Fund.

At the closing of the initial sale of a Lot to an Owner other than the Declarant or Participating Builder, a one time non-refundable contribution shall be made by such Owner to the Working Capital Fund of the Association in an amount equal to two months' Common Expense Assessment. Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or Participating Builder of each Lot and shall, until used by the Association, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association to cover the costs of the initial period of the Association's operation, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services.

Such contribution to the Working Capital Fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the later sale or transfer of his or her Lot, an Owner shall be entitled to a credit from his or her transferee, but shall NOT BE ENTITLED to a credit from the Association for the aforesaid contribution.

The Declarant is prohibited from using the Working Capital Fund to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficits during the Declarant Control Period.

5.11 Certificate of Status of Assessments.

The Association shall furnish to an Owner or such Owner's First Mortgagee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's Registered Agent, a statement setting forth the amount of unpaid Assessments

currently levied against such Owner's Lot.

The statement shall be furnished within fourteen business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or First Mortgagee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Lot for unpaid Assessments which were due as of the date of the request.

5.12 No Offsets.

All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. The Declarant is exempt from the requirements of this Paragraph 5.12.

ARTICLE SIX: ARCHITECTURAL APPROVAL/DESIGN REVIEW

Each Improvement within the Planned Community must be constructed in accordance with the "Design Guidelines," if available, and approved in accordance with this ARTICLE SIX.

6.1 Approval of Improvements Required.

The approval by the Design Review Committee (the "Committee") shall be required prior to the commencement of the construction of improvements as defined in Paragraph 1.28 herein on any portion of the Planned Community, except original first built Improvements constructed by Declarant. This approval of the Committee is in addition to the review and approval by the City.

The jurisdiction for the approval over modifications, additions or alterations to an Improvement may be delegated to a Modification Review Committee by the Declarant in accordance with Paragraph 6.5 hereof.

A purchase of any Lot within the Planned Community does not grant any implied guarantee of approval of the improvement to be located thereon by the Committee.

The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee and the Modification Review Committee established hereunder.

6.2 Membership of the Committee.

The Committee shall consist of up to three members, the number and the members of which shall be determined by the Declarant in its sole discretion. The Declarant shall have the continuing right to appoint and reappoint the members of the Committee, which right shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event shall terminate without further act or deed upon the completion of construction of the last Dwelling Unit within the Planned Community. Thereafter, the Committee shall consist of three members, and the Board of Directors shall have the right to appoint the members of the Committee. Members of the Committee appointed by the Board of Directors must be Members of the Association.

Members of the Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

6.3 Address of the Committee.

The address of the Committee shall be that of the principal office of the Association.

6.4 Submission of Plans/Design Review Fee.

Prior to commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement ("Applicant") shall submit to the Committee, at its offices, or at such other place as the Committee may designate, such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Committee shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement.

The Committee may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed Improvement. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvements or that the fee shall be determined in any other manner, such as the estimated cost of the proposed Improvement. Said fee may be used to compensate any consultant as the Committee deems necessary to assist the Committee in the performance of its duties. Members of the Committee may be reimbursed for services rendered and for directly related out-of-pocket expenses.

The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement. Until receipt by the Committee of all required materials in connection with the proposed Improvement, the Committee may postpone review of any materials submitted for approval by a particular Applicant.

No Improvement of any kind shall be erected, altered, placed, or maintained within the Planned Community unless and until the final plans, elevations, and specifications therefor have received written approval by the Committee as herein provided.

6.5 Delegation/Waiver.

The Committee may at its discretion delegate to the Board of Directors or Modification Review Committee any of its powers granted to it by this Article by written notice to the Board of Directors indicating what powers and authority are granted to the Board or to the Modification Review Committee. Such delegation shall be effective from the date such notice is recorded.

The approval or consent of the Committee, any representative thereof, or the Board of Directors, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

6.6 Criteria for Approval.

The question of reasonableness and good faith is the standard applicable in reviewing plans for approval by the Committee. The Committee shall have the right to disapprove any proposed Improvement which is

- (a) not in accordance with the Design Guidelines, or
- (b) is not suitable or desirable in the Committee's opinion for aesthetic or other reasons.

In passing upon the Improvement the Committee shall have the right to take into consideration the suitability of the proposed Improvement and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the Improvement as planned on the outlook from the adjacent or neighboring property, and if it is in accordance with all of the provisions of this Declaration.

The Committee may disapprove the proposed Improvement if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials submitted be contrary to the spirit or intent of the Declaration. The Committee may condition its approval of any proposed Improvement upon the making of such changes thereon as the Committee may deem appropriate.

6.7 Decision of the Committee.

The decision of the Committee shall be made within thirty days after receipt by the Committee of all materials required by the Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Improvement, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee.

A majority vote of the Committee shall constitute the action of the Committee.

The Committee shall report in writing to the Board of Directors all final actions of the Committee

if requested by the Board of Directors.

The Committee shall not be required to keep the materials submitted beyond one year from date of approval.

6.8 Appeal to the Board of Directors.

If the Committee disapproves or imposes conditions on the approval of a proposed Improvement, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board of Directors and the Committee within ten days after notice of such disapproval or conditional approval is given to the Applicant.

The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant and the Committee and shall decide, with reasonable promptness, whether or not the proposed Improvement or the conditions imposed by the Committee shall be approved, disapproved or modified.

If the Committee approves a proposed Improvement, any Owner impacted by the Committee's decision may appeal the approval to the Board of Directors by giving written notice of such appeal to the Board of Directors, the Committee and the Applicant within ten days after such approval.

The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant, the appealing Owner and the Committee. The **Committee (BOD?)** shall decide with reasonable promptness, whether or not the proposed Improvement's approval shall be upheld. The decision of the Board of Directors shall be final and binding on the parties concerned.

6.9 Failure of Committee to Act on Plans.

Any request for approval of a proposed Improvement shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Committee within thirty days after the date of receipt by the Committee of all necessary materials as determined by the Committee.

6.10 Prosecution of Work After Approval.

After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement, any materials submitted to the Committee in connection with the proposed Improvement and any conditions imposed by the Committee. Failure to complete any proposed Improvement within eight months from the date of the commencement of construction shall constitute a violation of this Article.

6.11 Notice of Completion.

Upon completion of the Improvement, the Applicant shall give written Notice of Completion to the

Committee. Until the date of receipt of a Notice of Completion, the Committee shall not be deemed to have notice of completion of any Improvement.

6.12 Inspection of Work.

The Committee or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion; provided that the right of inspection shall terminate thirty days after the Committee receives a Notice of Completion from the Applicant.

6.13 Notice of Noncompliance.

If, as a result of inspections or otherwise, the Committee finds that any Improvement has been done without obtaining the approval of the Committee, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Committee, or was not completed within eight months from the date of the commencement of construction, the Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event within thirty days after the Committee has inspected the Improvement, but in no event no later than thirty days after the Committee's receipt of such Applicant's Notice of Completion. The Notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

6.14 Failure of Committee to Act After Completion.

If, for any reason other than the Applicant's act or neglect, the Committee fails to notify the Applicant of any noncompliance within thirty days after receipt by the Committee of written Notice of Completion from the Applicant, the Improvement shall be deemed to be in compliance if the Improvement was, in fact, completed as of the date of Notice of Completion.

6.15 Appeal to the Board of Directors of Finding of Noncompliance.

If the Committee gives any Notice of Noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Committee within ten days after receipt by the Applicant of the Notice of Noncompliance.

If, after a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Board of Directors and the Applicant within thirty days after delivery to the Applicant of a Notice of Noncompliance. In either event, the Board of Directors after Notice and Hearing shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof.

6.16 Correction of Noncompliance.

If the Board of Directors determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than thirty days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the

Board's ruling within such period, the Board may, at its option, record a "Notice of Noncompliance" against the Lot on which the noncompliance exists, or may remove the noncomplying Improvement or may otherwise remedy the noncompliance.

The Board may levy an Individual Assessment in accordance with Paragraph 5.4(b) hereof against the Owner of such Lot for such costs and expenses incurred. The right of the Board of Directors to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Board of Directors may have at law, in equity, or under this Declaration.

6.17 Meetings of the Committee.

The Committee shall meet from time to time as necessary to perform its duties hereunder.

6.18 No Implied Waiver or Estoppel.

No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors. Specifically, the approval by the Committee of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement or similar proposals, plans, specifications or other materials submitted with respect to any other Improvement.

6.19 Estoppel Certificates.

The Board of Directors shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

6.20 Architectural Standards/Design Guidelines.

The Committee may promulgate rules and regulations to interpret and implement the provisions of this Article. These rules and regulations shall be known as the "Design Review Guidelines" and shall contain, among other things, guidelines which will clarify the types of designs and materials that will be considered in design approval. The Applicant shall be responsible to apply for all permits and approvals required by the City. The Committee may review and revise the said Design Review Guidelines in its sole discretion so long as said guidelines are not discriminatory and are uniformly applied.

6.21 Modification Review Committee.

The Modification Review Committee shall consist of three members, all of whom shall be appointed in accordance with Paragraph 6.2 hereof. The Modification Review Committee shall have jurisdiction over modifications, additions or alterations made on or to existing Improvements if such jurisdiction shall be delegated to it in writing by the Committee.

The Modification Review Committee shall promulgate detailed Standards and Procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials and location of such modifications, additions or alterations shall be submitted to the Modification Review Committee for approval as to quality of workmanship and design and harmony in relation to the surrounding structures, topography and finish grade level.

No permission or approval shall be required to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Dwelling Unit.

In the event the Modification Review Committee fails to approve or to disapprove such plans or to request additional information reasonably required within thirty days after submission, the plans shall be deemed approved.

6.22 No Liability for Committee Action.

There shall be no liability imposed on the Design Review Committee or the Modification Review Committee, any member of said Committees, any authorized representative of said Committees, the Association, any member of the Board of Directors or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committees, if such party acted in good faith and without malice.

In reviewing any matter, the Committees shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters.

ARTICLE SEVEN: LAND USE AND OTHER RESTRICTIONS

7.1 Limitations and Restrictions.

All Lots and Common Areas shall be owned, used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions for Declarant as set forth in this Declaration.

The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

7.2 Land Use.

Each Owner shall be entitled to the exclusive ownership and possession of his or her Lot and Dwelling Unit. Subject to the Development and Special Declarant Rights reserved by the Declarant in ARTICLE THIRTEEN hereof, and the exemptions for the Declarant in accordance with Paragraph 7.23 hereof no Lot within the Planned Community shall be used for any purpose other

than single-family residential purposes as generally defined or for a home occupation so long as such occupation (a) is allowed by the local Zoning Codes, (b) employs no outside employees, and (c) has no signage and requiring a maximum of two parking spaces. Uses described as "day care" or "child care" facilities (licensed or unlicensed) are expressly prohibited except with the prior written permission of the Board of Directors.

No Improvement as herein defined, shall be erected on any part of the Planned Community which is not compatible with the character, quality and amenities associated with the neighborhood and approved in writing by the Committee in accordance with ARTICLE SIX hereof.

7.3 Building Locations, Height Restrictions and Lot Coverage.

The Committee shall approve the location, height and square footage of any Improvement placed on any Lot. No Improvement shall exceed the height as set forth in the City's Building Code.

Such approval must be obtained before commencement of any construction or alteration in accordance with ARTICLE SIX hereof.

7.4 Temporary Structures.

No temporary house trailer, tent, garage or outbuilding shall be placed or erected upon part of the Planned Community except with the prior written approval of the Committee obtained in each instance.

No Dwelling Unit located upon the Planned Community shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any Dwelling Unit when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth.

7.5 Restrictions on Garbage and Trash.

Each Owner shall keep all of his or her trash, garbage, or other refuse in a container in his or her garage. Each Owner shall provide for the regular removal of such Owner's trash and garbage. Each Owner shall keep his or her Lot at all times in a neat and clean condition, and grass and weeds shall be kept mowed. No trash, litter, garbage, grass, shrub or tree trimmings, scrap refuse or debris of any kind shall be permitted to remain exposed upon any Lot so it is visible from any neighboring Lot, Common Areas or from the street except that any container containing such material may be placed outside at proper times for garbage or trash pickup.

The Board of Directors shall have the right and duty, through its agents and employees, after Notice and Hearing, to enter upon any Lot and remove such unsightly objects and materials. The cost of such removal shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.4(b).

7.6 Nuisances.

No noxious or offensive activity shall be carried on upon the Planned Community or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or which is or may cause an unreasonable embarrassment, disturbance or annoyance to others, or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

7.7 No Annoying Lights, Sounds or Odors.

No light shall be emitted from any portion of the Planned Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Planned Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Planned Community except with the prior written approval of the Committee.

7.8 No Hazardous Activities.

No activity shall be conducted on any portion of the Planned Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Planned Community and no open fires shall be lighted or permitted on any portion of the Planned Community except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

7.9 No Unsightliness.

All equipment shall be enclosed within an approved structure, including all tractors, snow removal equipment and garden or maintenance equipment, except when actually in use.

No clotheslines, wood piles or storage areas shall be so located on any Lot as to be visible from neighboring Lots, Common Areas or from the street

No types of exterior refrigerating, cooling or heating apparatus shall be permitted unless approved by the Committee

7.10 Utilities.

All electric, television, radio and telephone line installations and connections from the Owner's property line to the Dwelling Unit shall be placed underground and have the prior approval of the Committee. All types of exterior refrigerating, cooling or heating apparatus must be approved by the Committee. All solar collector installations must be approved by the Committee prior to installation.

7.11 Restrictions on Signs and Advertising Devices.

No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained

anywhere within the Planned Community except such signs as may be approved in writing by the Committee which may include signs indicating protection by Security Systems and Neighborhood Watch Programs. One sign advertising a Lot for sale or for lease may be placed on such Lot or Dwelling Unit; provided however, that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Committee and shall comply with the local sign codes and with all other applicable statutes, ordinances and regulations.

Notwithstanding the foregoing, reasonable signs, advertising or billboards used by the Declarant in connection with development of or construction on the Lot, shall be permissible.

7.12 Compliance with Insurance Requirements.

Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on the Planned Community which may result in an increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

7.13 Compliance with Laws.

No unlawful use shall be permitted or conducted of any Lot. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Lots shall be observed.

7.14 Restoration in the Event of Damage or Destruction.

If due to casualty or for any other reason a Dwelling Unit located on a Lot shall be destroyed or so damaged that the Dwelling Unit is no longer habitable, then the Owner of such Lot shall, within a reasonable time not to exceed one hundred and twenty days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the Dwelling Unit or demolish the same.

Demolition of a Dwelling Unit shall include removal of any foundation slab, basement walls and floors, regrading the Lot to a level condition and the installation of such landscaping as may be required by the Committee pursuant to a plan submitted to the Committee by the Owner of said Lot.

If an Owner does not either commence repair, reconstruction or demolition activities within a reasonable time as provided hereinabove and diligently pursue the same in conformance with plans approved by the Committee, then the Association may, in its reasonable discretion, after providing the Notice and Hearing, enter upon the Lot for the purpose of demolishing the balance of the Dwelling Unit and landscape the Lot in conformance with approved plans. The cost related to such demolition and landscaping shall be levied against the Owner as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

7 15 Household Pets.

No animals, livestock, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Planned Community; except that dogs, cats or other customary

household pets may be kept thereon if they are not raised, bred or maintained for any commercial purpose, and are not kept in such number or in such manner as to create a nuisance or inconvenience to any residents of the Planned Community.

The Board of Directors shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Directors shall take such action or actions as it deems reasonably necessary to correct the violation to include after Notice and Hearing, directing permanent removal of the pet or pets from the Planned Community.

Household pets shall not be allowed to run at large within the Planned Community, but shall at all times be under the control of such pet's Owner and such pets shall not be allowed to litter the Common Areas. Dogs shall be on leashes while in the Common Areas.

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Planned Community or incurred by the Association in cleanup after such pets may be levied against such pet's Owner as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

No dog runs or animal pens of any kind shall be permitted on any Lot except with the prior written approval of the Committee.

7.16 Vehicular Parking, Storage and Maintenance.

No house trailer, camping trailer, horse trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than one ton, recreational vehicle or equipment, mobile home, or commercial vehicle may be parked or stored anywhere within the Planned Community so any portion of it is visible from neighboring Dwelling Units, Common Areas or from the street except in emergencies or as a temporary expedience. This applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles".

No emergency or temporary parking or storage shall continue for more than seventy-two hours. Parking is not allowed on landscaped or lawn areas.

No abandoned, unlicensed, wrecked or inoperable vehicles of any kind shall be stored or parked within the Planned Community except in garages or except in emergencies. Any "abandoned or inoperable vehicle" shall be defined as any of the vehicles listed above or any other kind of passenger vehicle which has not been driven under its own propulsion for a period of one week or longer, or which does not have installed within it an operable propulsion system; provided however, that any vehicle belonging to any Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town.

The Board of Directors shall have the right to remove and store a vehicle in violation of this Paragraph after Notice and Hearing, the expenses of which shall be levied against the Owner of the vehicle as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

Each Dwelling Unit within the Planned Community shall include an enclosed garage of a size sufficient to accommodate a minimum of two full sized automobiles.

Preventative vehicle maintenance only is allowed within the Planned Community.

Owners are encouraged to keep their garage doors closed except when in use.

7.17 Owner Caused Damages.

If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property within the Common Areas, such Owner shall be liable and responsible for the payment of same.

The amount of such loss or damage, together with costs of collection and reasonable attorney's fees, if necessary, may be collected by the Board of Directors from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 5.4(b) hereof.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 7.17 shall be made by the Board of Directors and shall be final.

7.18 Antennas.

No exterior radio antenna, television antenna or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot; except inside a residence or with the written approval of the Committee.

7.19 Lease of a Dwelling Unit.

With the exception of a First Mortgagee who has acquired title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure, an Owner shall have the right to lease his or her Dwelling Unit upon such terms and conditions as the Owner may deem advisable, subject to the following:

(a) any such lease or rental agreement must be in compliance with applicable local, state and federal laws.

- (b) no Owner may lease or rent
 - (i) less than his or her entire Dwelling Unit;
 - (ii) for transient or hotel purposes; or
 - (iii) for a term of less than thirty days;

(c) any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the Rules and Regulations of the Association;

(d) such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them to include, but not be limited to, eviction of the lessee from the Dwelling Unit.

(e) the Board of Directors shall be furnished with a copy of the lease or rental agreement upon its request.

7.20 Fences and Other Exterior Improvements.

No fences, mailboxes, porch and area lighting, property identification or other exterior improvements shall be constructed or maintained on any Lot unless approved by the Committee and except as were installed or permitted to be installed by the Declarant or Participating Builder in their initial construction of Dwelling Units.

7.21 Rules.

Every Owner and his or her Guests shall adhere strictly to the Rules as promulgated by the Board of Directors, as amended from time to time.

7.22 Waiver of Summary Abatement.

The Declarant and the Association waives the right to use summary abatement or similar means to enforce the restrictions herein contained. Judicial proceedings must be instituted before any items of construction can be altered or demolished.

7.23 Exemptions for the Declarant and Participating Builder.

So long as the Declarant and Participating Builder owns a Lot within the Planned Community, the Declarant and Participating Builder shall be exempt from the provisions of this ARTICLE SEVEN to the extent that it impedes Declarant's or Participating Builder's development, construction, marketing, sales, or leasing activities.

ARTICLE EIGHT: EASEMENTS

8.1 Utility Easements.

Easements for utilities over and across the Common Areas shall be those shown upon the Plat of the Planned Community, and such other easements as may be established pursuant to the provisions of this Declaration.

8.2 Easements for the Board of Directors.

Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents,

employees and contractors) to perform its obligations pursuant to this Declaration.

8.3 Emergency Easements.

A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Planned Community, to enter upon any part of the Planned Community in the performance of their duties.

8.4 Recording Data Regarding Easements.

Pursuant to §38-33.3-205(m) of the Act, the recording data for recorded easements and licenses appurtenant thereto, or included in the Planned Community or to which any portion of the Planned Community is or may become subject to are identified on the attached Exhibit D.

8.5 Easements Deemed Appurtenant.

The easements and rights herein created for an Owner shall be deemed appurtenant to the Lots owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

ARTICLE NINE: INSURANCE

9.1 Authority to Purchase/General Requirements.

All insurance policies relating to the Association and Common Areas within the Planned Community shall be purchased by the Board of Directors. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, or termination of; insurance coverages obtained on behalf of the Association.

The Board of Directors shall not obtain any policy where

- (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the Association, Owner or First Mortgagee, or
- (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or
- (c) the policy includes any limited clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

Each such policy shall provide that:

- a) The insurer to the extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members

of their households.

- b) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner or his or her Guests or of any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent cure the defect and neither shall have so cured such defect within forty-five days after such demand;
- c) Such policy, including any fidelity insurance of the Association referred to in Paragraph 9.4 hereof may not be canceled, or substantially modified by any party (including cancellation for nonpayment of premium) without at least thirty days' prior written notice to the Board of Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy;
- d) Such policy must provide that no assessment may be made against a First Mortgagee, its successors or assigns and that any assessment made against others shall not become a lien on a Lot or Dwelling Unit superior to the lien of a First Mortgagee;
- e) The Declarant and Participating Builder, so long as Declarant or Participating Builder shall own any Lot, shall be protected by all such policies as an Owner, if such coverage is available;

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "A" or better.

9.2 Hazard Insurance.

The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring all of the insurable improvements located on the Common Areas.

Such insurance shall at all times represent, among other things, all fixtures, installations or additions comprising a part of the individual Dwelling Units within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the Dwelling Unit initially installed or replacements thereof made in accordance with the original plans and specifications, or installed by or at the expense of the Owner. All references herein to a "BLANKET" type policy of property insurance, are intended to denote "SINGLE ENTITY" insurance coverage.

The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board of Directors shall consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes, showing that the insurance represents one hundred percent of the current replacement cost as defined above for all insurable improvements located on the Common Areas, together with any personal property owned by the Association.

Such policies shall also provide:

- a) The following endorsements or their equivalent: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Cost of Demolition Endorsement, Increased Cost of Construction Endorsement) Agreed Amount Endorsement, and Inflation Guard Endorsement, if available.
- b) That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees, unless otherwise required by law.

A certificate, together with proof of payment of premiums, shall be delivered by the insurer to any Owner and First Mortgagee requesting the same, at least thirty days prior to expiration of then current policy.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the Association. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors and provide that all claims are to be settled on a replacement cost basis.

The Association shall hold any insurance proceeds received in trust for the Owners and their First Mortgagees as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Areas. Owners and First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Areas have been repaired or restored. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the insurance proceeds.

The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, Ten Thousand Dollars or one percent of the face amount of the policy whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's Reserve Funds and be so designated.

The Board shall have the authority to levy, after Notice and Hearing, against Owners causing such loss for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

9.3 Liability Insurance.

The Board of Directors shall obtain and maintain comprehensive general liability (including eviction, libel, slander, false arrest and invasion of privacy) and property damage insurance

covering all of the Common Areas, public ways within the Planned Community and any other areas that are under the Association's responsibility insuring each officer, director, the Managing Agent and the Association.

Such coverage under this policy shall include, without limitation, the legal liability of the insureds for property damage, bodily injuries and deaths of persons that result from the operation, maintenance or use of the Common Areas and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to the Planned Community similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Workmen's Compensation and Employer's Liability Insurance, Comprehensive Automobile Liability Insurance, Severability of Interest Endorsement.

IN THE EVENT THE ASSOCIATION HOSTS A FUNCTION AND CHARGES FOR FOOD OR DRINK AND LIQUOR IS SERVED, THERE WILL BE NO HOST LIQUOR LIABILITY COVERAGE FOR THE ASSOCIATION. IF MONEY IS CHARGED, A LIQUOR LIABILITY POLICY WOULD BE NEEDED TO GIVE COVERAGE TO THE ASSOCIATION.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

Absolute liability is not imposed on Owners for damage to Common Areas or Lots within the Planned Community.

9.4 Fidelity Insurance.

The Association shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its management agent at any time while the policy is in force; provided, however, in any event the aggregate amount of such insurance shall not be less than a sum equal to three months' aggregate assessments on all Lots, plus Reserve Funds.

The policy must include a provision that calls for ten days' written notice to the Association before the policy can be canceled or substantially modified for any reason. The same notice must also be given to each servicer that services a Fannie Mae-owned or securitized mortgage in the Planned Community.

A management agent that handles funds for the Association should be covered by its own fidelity insurance policy which must provide the same coverage required of the Association.

9.5 Additional Insurance.

a) If the area where the Planned Community is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance for the Planned Community shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent of the Planned Community's current replacement cost or the maximum available.

If the Planned Community at the time of the recording of this Declaration is identified as a Special Flood Hazard Area but becomes reclassified at a later date as such, the Board of Directors shall obtain flood insurance for the Planned Community in accordance with the above. Conversely flood insurance may be discontinued under certain conditions.

b) Adequate Directors and Officers liability insurance, if reasonably available, and if deemed consistent with good business practices, for errors and omissions on all Directors and Officers to be written in an amount which the Board of Directors deems adequate;

c) Worker's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter acquired by law;

d) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to the Planned Community.

9.6 Payment of Insurance Premiums.

The cost of the insurance obtained by the Association in accordance with this Article, except for premiums on fidelity insurance maintained by a Managing Agent for its officers, employees and agents shall be paid from Association funds and shall be collected from the Owners as part of the Common Expense Assessment as provided for in Paragraph 5.4(a) hereof.

In the event there are not sufficient funds generated from the Common Expense Assessment to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Paragraph 5.4(b) hereof and such assessment shall be exempt from any special voting requirements of the Membership. Such assessment shall be prorated among Owners in accordance with the Owners' Common Expense Liability set forth in Paragraph 1.3 hereof.

9.7 Separate Insurance.

No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance

coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Paragraph.

9.8 Condemnation.

If a part of the Common Areas are acquired by condemnation, that portion of any award attributable to the Common Areas taken must be paid to the Association.

ARTICLE TEN: RESTORATION UPON DAMAGE OR DESTRUCTION

10. Duty to Restore.

In the event of damage or destruction to any portion of the Common Areas which is covered by insurance carried by the Association, the insurance proceeds shall be applied by the Board of Directors to such reconstruction and repair.

The Common Areas must be repaired and restored in accordance with either (a) the original plans and specifications, or (b) other plans and specifications which have been approved by the Board of Directors.

10.2 Use of Insurance Proceeds.

If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage to the Common Areas, the Board of Directors shall levy an Individual Assessment in the aggregate amount of such insufficiency pursuant to Paragraph 5.4(b) hereof, and shall proceed to make such repairs or reconstruction. The amount of each Owner's Individual Assessment shall be such Owner's Common Expense Liability shall be determined in accordance with Paragraph 1.3 hereof.

If all of the damage to the Common Areas covered by the Association's insurance is not repaired or reconstructed, the insurance proceeds attributable to the damage shall be used to restore the damaged portion of the Common Areas to a condition compatible with the remainder of the Planned Community and the remainder of the proceeds shall be distributed to the Association.

ARTICLE ELEVEN: MAINTENANCE

11.1 Maintenance of the Common Areas.

The Association shall provide for the repair, maintenance and/or reconstruction of the Common Areas. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Areas in safe, attractive, clean, functional and good repair and may make

necessary or desirable alterations or improvements thereon.

In the event such repair, maintenance and/or replacement is resulting from the willful neglect or destruction by an Owner or such Owner's Guest, the Board of Directors shall have the right to charge the costs of such repair and/or replacement, to such Owner by an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

Determination with respect to whether or not a particular activity by occurrence shall constitute a violation of this Paragraph 11.1 shall be made by the Board of Directors and shall be final.

11.2 Maintenance of the Lots and Dwelling Units.

Each Owner shall be responsible for the maintenance, repair and reconstruction of the exterior of such Owner's Dwelling Unit and the maintenance and repair of his or her Lot.

In the event any Owner shall fail to maintain his or her Lot and/or Dwelling Unit in a manner satisfactory to the Board of Directors, the Board of Directors shall have the right and duty, after Notice and Hearing, to enter upon said Lot and repair, maintain, and/or reconstruct the Lot and/or Dwelling Unit. The cost of such maintenance, repair and/or reconstruction shall be chargeable to such Owner by an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

11.3 Maintenance of Drainage Pattern.

There shall be no interference with the established drainage pattern initially established by the Declarant over any portion of the Planned Community, except as approved in writing by the Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property is completed by the Declarant and shall include any established drainage pattern shown on the plans approved by the Committee. The established drainage pattern may include the drainage pattern from the Common Areas over any Lots within the Planned Community and from any Lot within the Planned Community over the Common Areas, or from any Lot over another Lot.

11.4 Association Responsibility.

The maintenance obligation on the part of the Association shall apply to such maintenance required by ordinary wear and tear and shall not apply to maintenance, repair and/or reconstruction resulting from willful neglect or destruction.

In the event such repair, maintenance and/or reconstruction is resulting from the willful neglect or destruction by an Owner or such Owner's Guests, the Board of Directors shall have the right, after Notice and Hearing, to charge the costs of such repair, maintenance and/or replacement, to such Owner by an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

Determination of whether such repair, maintenance and/or reconstruction is the obligation of the Association and the determination of when, the magnitude and the manner of the above described

maintenance, repair and/or reconstruction shall rest solely with the Board of Directors, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

11.5 Board of Directors.

Access to all of the Lots within the Planned Community to perform the said repair, maintenance and/or reconstruction by the Board of Directors, its agents and employees shall be made pursuant to the maintenance easement granted in accordance with Paragraph 8.2 hereof.

ARTICLE TWELVE: EXPANSION

12.1 Reservation of Right to Expand.

Declarant reserves the right (without in any way being bound) to enlarge the Planned Community in phases, without the necessity of the consent thereto or the joinder therein by the Owners or First Mortgagees, by submitting to the Planned Community from time to time a Supplemental Declaration adding any of the real property described on Exhibit C attached hereto.

If the Planned Community has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, any such addition, expansion or annexation must be according to a General Plan heretofore filed with and approved by the Federal Housing Administration or the Veterans Administration and such addition, expansion or annexation must be supported by the written consent of the Federal Housing Administration or the Veterans Administration, evidence of which may be recorded.

12.2 Supplemental Declarations.

Such expansion must be accomplished by the filing for record by the Declarant in the office of the County Clerk and Recorder, a supplement to this Declaration containing a legal description of the new real property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion so long as each subsequent phase is contiguous to the real property already subject to this Declaration.

All future improvements will be consistent with the initial improvements in structure type and quality of construction and must be substantially completed prior to being brought into the Planned Community.

12.3 Expansion of Definitions.

In the event of such expansion, the definitions used in this Declaration shall be expanded. For example, "Lot" and "Common Areas" shall mean the Lots and Common Areas described hereinabove plus any additional Lots and Common Areas added by a Supplemental Declaration or Declarations, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Planned Community as expanded

with additional references to the Supplemental Declaration.

12.4 Declaration Operative on New Properties.

The new real property shall be subject to all the terms and conditions of this Declaration as amended or supplemented, by recording by the Declarant in the Office of the County Clerk and Recorder a Supplemental Declaration.

12.5 Interests on Enlargement.

An Owner at the time of his or her purchase of a Lot which has been brought into the Planned Community by a Supplemental Declaration shall be a Member of the Association. Such Owner shall be entitled to the same non-exclusive use of the Common Areas and the same voting privileges as those Owners of the initial property brought into the Planned Community through this original Declaration and shall be subject to the same Assessments. The Assessments for that Phase shall commence for all Owners within that Phase including the Declarant upon the recording of the Supplemental Declaration and Supplemental Map for that Phase.

Whenever any additional property is brought into the Planned Community, the Common Expense Assessment Liability of each Owner in the Planned Community after such addition will change and will be reallocated by the Declarant in accordance with Paragraph 1.3 hereof.

The Supplemental Declaration recorded at the time of the expansion shall set forth the new percentage of the Common Expense Liability of the existing Lots and the newly added Lots.

12.6 Taxes, Assessments and Other Liens.

All taxes and other assessments relating to the real property described in Exhibit C covering any period of time prior to the addition of such property or any portion thereof to the Planned Community must be paid or otherwise provided for by the Declarant to the satisfaction of all First Mortgagees.

Liens arising out of the construction of improvements in later phases shall not extend into prior phases and shall not adversely affect the rights of Owners or the priority of first mortgages and deeds of trust on any Lot constructed in a prior phase.

12.7 Project Treated as a Whole.

For all purposes hereof, each of the Phases of the Planned Community after the recording of the Supplemental Declaration submitting each Phase to the Planned Community, shall be treated as a part of the Planned Community developed as a whole from the beginning, except to the extent expressly otherwise provided for herein.

It is the express purpose hereof to provide that from and after the date of the submission of a Phase of the Planned Community in accordance with the above, that such Phase shall be treated as though such Phase had been developed, owned, occupied and used by the Owners thereof as a single

undivided Project

12.8 Termination of the Right of Expansion.

The right of expansion shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such right of expansion shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 13.3 hereof.

ARTICLE THIRTEEN: DEVELOPMENT RIGHTS AND SPECIAL

DECLARANT RIGHTS

13.1 Reservation.

The Declarant reserves the following Development Rights and Special Declarant Rights ("Declarant Rights") which may be exercised, where applicable, anywhere within the Planned Community:

- a) To complete the improvements indicated on the Plat;
- b) To exercise any Declarant Rights reserved herein;
- c) To maintain business/sales offices, parking spaces, management offices, storage areas, nursery, construction yard, signs, advertising and model Dwelling Units;
- d) To maintain signs and advertising in the Common Areas to advertise the Planned Community;
- e) To use, and to permit others to use, easements through the Common Areas as may be reasonably necessary for construction within the Planned Community and for the purpose of discharging the Declarant's obligations under the Act and this Declaration;
- f) To enlarge, without in any way being bound, the Planned Community in phases from time to time, by adding to the Planned Community any of the real property described in Exhibit C attached hereto, in accordance with ARTICLE TWELVE hereof;
- g) To appoint or remove any officer of the Association or a member of the Board of Directors during of Period of Declarant Control subject to the provisions of Paragraph 4.7 of this Declaration;
- h) To amend the Declaration and/or the Plat in connection with the exercise of any Declarant Rights; and
- i) To exercise any other Declarant Right created by any other provisions of this Declaration.

13.2 Rights Transferable.

Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the Rights transferred and recorded in the records of the County Clerk and Recorder. Such instrument shall be executed by the transferor Declarant and the transferee,

13.3 Limitations.

The Declarant Rights shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such Rights shall terminate without further act or deed seven years after the date of the recording of this Declaration.

Not more than thirty-four additional Lots may be created under the Development Rights. Declarant shall not be obligated to expand the Planned Community beyond the number of Lots initially submitted to this Declaration.

13.4 Interference with the Declarant Rights.

Neither the Association, the Board of Directors nor any Owner may take any action or adopt any rule that will interfere with or diminish Declarant Rights without the prior written consent of the Declarant.

13.5 Use by Declarant.

The exercise of the Declarant Rights by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Lot by any Owner nor the access, enjoyment or use of the Common Areas; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

13.6 Models, Sales Offices and Management Offices.

Subject to the limitations set forth in Paragraph 13.3 hereof, the Declarant or Participating Builder, their duly authorized agents, representatives and employees, may maintain any Dwelling Unit owned by the Declarant or Participating Builder as a model Dwelling Unit, sales, leasing or management office, to include, but not be limited to, a sales trailer.

13.7 Declarant's Easements.

The Declarant reserves the right to perform warranty work, and repairs and construction work on Lots and Common Areas, to store materials in secure areas, and to control and have the right of access to work and repair until completion. All work shall be performed by the Declarant without the consent or approval of the Board of Directors.

The Declarant has an easement through the Common Areas as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising of the Declarant Rights, whether arising under the Act or reserved in this Article.

13.8 Participating Builder's Easements.

The Participating Builder reserves the right to perform warranty work, and repairs and construction work on Lots and Dwelling Units to store materials in secure areas, and to control and have the right of access to work and repair until completion.

13.9 Signs and Marketing.

The Declarant reserves the right for Declarant and Participating Builder to post signs on the Common Areas in order to promote sales of Lots and Dwelling Units so long as the Participating Builder's signs have the prior written approval of the Declarant. Declarant also reserves the right for Declarant and Participating Builder to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

ARTICLE FOURTEEN: FIRST MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first mortgages recorded against Lots within the Planned Community who qualify as an Eligible Mortgagee as defined by Paragraph 1.24 hereof. To the extent applicable, necessary, or proper, the provisions of this ARTICLE FOURTEEN apply to both this Declaration and to the Articles and Bylaws of the Association.

14.1 Notices of Action.

An Eligible Mortgagee shall be entitled to timely written notice of:

a) any material condemnation loss or any casualty loss which affects a material portion of the Planned Community or any Lot in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;

b) any default in the performance by an individual Borrower of any obligation of the Declaration not cured within sixty days;

c) any lapse, cancellation, or material modification of any mandatory insurance policy or fidelity bond maintained by the Association;

d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.; and

e) any material judgment rendered against the Association.

14.2 Amendment to Documents/Special Approvals.

a) The consent of Owners to which at least sixty-seven percent of the votes in the Association

are allocated and the consent of fifty-one percent of the Eligible Mortgagees shall be required to add to or amend any material provisions of this Declaration or the Articles or Bylaws of the Association. A change to any of the following would be considered material.

(i) voting rights;

(ii) increase the Common Expense Assessment annually by more than 25% over the previously levied Common Expense Assessment, change the manner of the assessment liens, or the priority of the assessment liens;

(iii) reduction in the reserves for maintenance, repair and replacement of the Common Areas;

(iv) responsibility for maintenance and repairs;

(v) right to use the Common Areas;

(vi) convertibility of Lots into Common Areas or vice versa;

(vii) subject to the provisions of ARTICLE TWELVE hereof, expansion or contraction of the Planned Community, or the addition, annexation or withdrawal of property to or from the Planned Community;

(viii) hazard or fidelity insurance requirements;

(ix) imposition of any restrictions on the leasing of Lots;

(x) imposition of any restrictions on a Lot Owner's right to sell or transfer his or her Lot;

(xi) restoration or repair of the Planned Community (after damage or partial condemnation) in a manner other than that specified in the Project Documents;

(xii) any provision that expressly benefits mortgage holders, insurers or guarantors.

b) The Association may not take any of the following actions without the consent of Owners to which at least sixty-seven percent of the votes in the Association are allocated and the approval of at least fifty-one percent of the Eligible Mortgagees.

(i) Reconstruct or repair the Planned Community after damage due to an insurable hazard or a partial condemnation in a manner other than specified in the Project Documents.

(ii) Merge or consolidate the Planned Community with any other Planned Community or subject it to a Master Association. Such action shall also require the written approval from the Federal Housing Administration and/or the Veterans Administration if the Planned Community has been or is to be approved by such agencies.

(iii) Not repair or reconstruct, in the event of substantial destruction, any part of the Common Areas.

c) Any action to terminate the legal status of the Planned Community after substantial destruction or condemnation occurs must be agreed to by Owners to which at least sixty-seven percent of the votes in the Association are allocated, and by fifty-one percent of the Eligible Mortgagees.

d) Any action to terminate the legal status of the Planned Community for reasons other than substantial destruction or condemnation occurs must be agreed to by Owners to which at least sixty-seven percent of the votes in the Association are allocated, and by sixty-seven percent of the Eligible Mortgagees.

14.3 Special FHLMC Provisions.

Except as provided by statute in the case of a condemnation or a substantial loss to the Lots and/or Common Areas, unless at least two-thirds of the Eligible Mortgagees or Owners (other than the Declarant) have given their prior written approval, the Association may not:

a) by act or omission seek to abandon or terminate the Planned Community;

b) subject to the provisions of ARTICLE TWELVE hereof, change the pro rata interest or obligations of any Lot in order to levy assessments, allocate distribution of hazard insurance proceeds or condemnation awards;

c) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas by act or omission.

The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this Paragraph 14.3(c).

d) use hazard insurance proceeds for losses to any planned community property for other than the repair, replacement or reconstruction of the planned community property).

14.4 Implied Approval.

Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty days after said Eligible Mortgagee receives proper notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested.

14.5 Books and Records.

Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Association's Bylaws.

ARTICLE FIFTEEN: UTE CREEK GOLF COURSE

15.1 Ute Creek Golf Course.

The Planned Community is located adjacent to the Ute Creek Golf Course ("Golf Course") owned by the City. By accepting a deed to a Lot, an Owner acknowledges that:

a) no representations or warranties have been made by Declarant, the City or any other Person with regard to the ownership, operation, configuration of, or right to use the Golf Course, whether or not depicted on any plat or land use plan, sales brochure or other marketing material or display; and

b) the ownership of a Lot does not confer any ownership in, or right to use, the Golf Course; and

c) the ownership, operation, configuration of, or right to use the Golf Course may change at any time and from time to time for reasons including, without limitation,

(i) the purchase or assumption of operations of the Golf Course by an independent Person for use as a golf course or for other uses not connected with a golf course;

(ii) the establishment or conversion of the Golf Course's membership structure to an equity club or similar arrangement whereby the members of the golf course or an entity owned or controlled thereby become the owner and/or operator of the Golf Course; or

(iii) the conveyance of the Golf Course to another Person, and that no consent of any Owner shall be required to effectuate any such transfers; and

d) no Owner shall have an ownership interest in, or right to use the Golf Course solely by virtue of his, her or its ownership of any Lot.

15.2 Potential Disturbances and Nuisances.

a) By accepting a deed to a Lot, an Owner understands and agrees that:

(i) the Planned Community is adjacent to or near the Golf Course; and

(ii) the Golf Course clubhouse, parking lots and other related facilities may have exterior lighting and amplified exterior sound, to include but not be limited to broadcast announcements, and may be regularly used for entertainment and social events on various days of the week, including weekends, and during various times of the day, including early morning and late evening hours; and

(iii) golf course-related activities, including without limitation, regular course play may be

allowed during all daylight hours, seven days a week, and golf tournaments open to the public at large may be conducted at any time during the year; and

(iv) the Golf Course shall be open to the public and large numbers of people may be entering, exiting and using the Golf Course on various days of the week, including weekends, and during various times of the day, including early morning and late evening hours; and

(v) water hazards, the clubhouse, maintenance facilities and other installations located on the Golf Course may be attractive nuisances to children.

b) By accepting a deed to a Lot, an Owner acknowledges and agrees that:

(i) the location of the Planned Community in proximity to the Golf Course may result in nuisances or hazards to persons and property as a result of use of the Golf Course, Golf Course operations or any other Golf Course-related activities, Play on the Golf Course may result in damage or injury to persons or property as a result of golf balls leaving the Golf Course, including, without limitation, damage to windows and the exterior areas of a Dwelling Unit, damage to automobiles and other personal property of Owners or such Owner's Guests, whether outdoors or within the Dwelling Unit, and personal injury; and

(ii) each Owner and such Owner's Guests do knowingly and voluntarily assume all risks associated with such location, including, but not limited to, the risks of nuisance, inconvenience and disturbance, as well as property damage or personal injury arising from stray golf balls or actions or omissions incidental to the use of the Golf Course, golf course operations and any golf course-related activities; and

(iii) Declarant, the City and the owner of the Golf Course and their respective employees, agents, invitees, licensees, contractors, successors and assigns shall not be responsible or accountable for, and shall have no liability for any claims, causes of action, losses, damages, costs or expenses for any nuisance, inconvenience, disturbance or property damage or personal injury arising from stray golf balls or actions or omissions incidental to the use of the Golf Course, golf course operations or any golf course-related activities; and

(iv) Declarant, the City and the owner of the Golf Course shall have the right, in the nature of an easement or license, to subject all or any portion of the Planned Community to nuisances, inconveniences and disturbances arising from stray golf balls and/or incidents incidental to the maintenance, operation and/or use of the Golf Course and to the carrying out of golf course-related activities,

15 3 Golf Course Operations.

a) By accepting a deed to a Lot, an Owner acknowledges and agrees that the operation and maintenance of the Golf Course and its related facilities may require that maintenance personnel and other workers commence work relating to the operation and maintenance of the Golf Course as early as 5:00 a.m., on a daily basis, and that the operation, maintenance and use of the Golf Course and its related facilities will entail the operation and use of the following:

(i) noisy power equipment such as tractors and lawn mowers on various days of the week, including weekends, during various times of the day, including early morning and late evening hours; and

(ii) sprinkler and other irrigation systems during the day and at night; and

(iii) electric, gasoline or other power driven vehicles and equipment used by maintenance and operations personnel; and

(iv) application of pesticide and fertilizing chemicals; and

(v) garbage trucks, delivery trucks and other vehicles entering and exiting on various days of the week, including weekends, during various times of the day, including early morning and late evening hours.

b) In connection with the foregoing, by accepting a deed to a Lot, Owners agree, for themselves and their Guests, that:

(i) the Owner does knowingly and voluntarily assume all risks associated with such abovedescribed operation and maintenance, including, but not limited to, risks of nuisance, noise, disturbance, inconvenience, property damage and personal injury or sickness; and

(ii) Declarant and the owner of the Golf Course and related facilities and their respective employees, agents, invitees, licensees, contractors, and successors shall not be responsible or accountable for, and shall have no liability for any claims, causes of action, losses, damages, costs or expenses for any nuisance, inconvenience, disturbance or property damage or personal injury or sickness directly or indirectly related to, caused by, or associated with such golf course operation and related activities.

15.4 Golf Ball Easement.

There is hereby created a blanket easement in, over, above, across and upon the Lots within the Planned Community for the purposes of permitting the flight of golf balls through the air over each Lot and all other portions of the Planned Community and the entry of golf balls upon, on and/or across each Lot and all other portions of the Planned Community and any Dwelling Unit constructed or to be constructed thereon, as an incident to the use of a golf course.

Any golf balls entering upon and resting upon any Lot shall not become the property of the Owner of such Lot. Entry shall be permitted upon any Lot by any person for the retrieval of golf balls. Such retrieval shall be done in a reasonable manner and such person shall be liable for and shall repair any damage caused with such entry. Nothing herein contained shall be construed so as to limit the construction of Dwelling Units on any Lot. The easement created by this Paragraph 15.4 shall run with title to and burden each Lot within the Planned Community and shall be binding on all successive Owners of such each Lot (See Golf Course Play Easement on the attached Exhibit E).

15.5 Golf Course Landscaping.

Owners are advised that landscaping on the Golf Course may change from time to time. Trees or fences may be installed or removed. In the event trees and landscaping are planted or grow which affect Owner's views, the owner of the Golf Course shall have no obligation to prune or thin the trees or other landscaping.

The Golf Course owner may, in its sole and absolute discretion, change, from time to time, the location, configuration, size or elevation of tees, bunkers, fairways or greens. These changes may diminish, enhance or obstruct views from the Lots and no view is guaranteed.

15.6 Golf Course Access.

The Golf Course is owned by the City and ownership of a Lot in the Planned Community does not afford Owner and such Owner's Guests any privileges except those expressly granted in writing by the Golf Course owner. Access to the course by the Owners or their Guests is limited to the same access afforded golfers. There is no special right to use the Golf Course without going through the pro shop or the Golf Course "starter" for golf purposes or to use the course of purposes other than golf (including jogging, sunbathing, picnicking, skiing, sledding, skating or other such recreational activities).

Owners may not access the course directly from their Lots and no gates may be installed in any fence abutting the Golf Course. By granting title to a Lot being adjacent to the Golf Course, there is no intention on the part of the Declarant to create by grant or implication any access, ingress, egress or other easement from an Owner's Lot to the Golf Course,

15.7 Indemnity.

By accepting a deed to a Lot, each Owner agrees to indemnify and hold harmless the Declarant, the Participating Builder, the City, any owner or operator of all or any part of the Golf Course, their respective shareholders, members, partners, agents, officers, directors, employees, contractors, invitees, licensees, their heirs, personal representatives, successors and assigns of, from and against any and all losses, damages, costs or liabilities related to or arising in connection with any claims, actions, causes of action, liability, suits or demands of or by any of the Owners or their Guests for disturbance, inconvenience, noise, nuisances, personal injury, sickness or death or property damage, resulting from, or associated with, the use, maintenance and operation of the Golf Course or its related facilities.

ARTICLE SIXTEEN: DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION

16.1 Duration.

The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Paragraphs 14.2(c) or 14.2(d) herein.

16.2 Amendments by Owners.

Except as permitted in Paragraph 17.5 hereof, and except in cases of amendments which may be executed by the Declarant pursuant to ARTICLE TWELVE and Paragraph 16.5 hereof, and except as restricted by Paragraphs 14.2, 14.3 and 16.6 hereof, this Declaration may be amended by a written agreement by Owners to which at least sixty-seven percent of the votes in the Association are allocated; provided, however, except as provided in ARTICLE TWELVE hereof, an amendment may not: (a) decrease or increase Special Declarant Rights; (b) increase the number of Lots; (c) change the use to which a Lot is restricted; or (d) change the Allocated interests of a Lot, except by the unanimous consent of the Owners.

Any such amendment shall be effective upon the recording of the amendment together with a notarized Certificate of the Secretary of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. The Secretary shall further certify that originals of such written consents by Owners and Eligible Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in the Office of the County Clerk and Recorder.

All signatures shall be irrevocable even upon death or conveyance of the Lot, except that if an amendment is not recorded within three years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association. Signatures need not be notarized.

Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one year from the date of the recording of the said amendment, unless fraud or willful negligence is asserted and proven.

16.3 FHA/VA Approval.

If the Planned Community has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, then until the termination of the Period of Declarant Control hereof, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: annexation of additional properties, amendment of this Declaration and the assessment of a Special Assessment

16.4 Consent of Eligible Mortgagees.

Amendments may be subject to the consent requirements of Eligible Mortgagees as more fully set forth in ARTICLE FOURTEEN hereof.

16.5 Amendments by Declarant.

Declarant reserves the right to amend, without the consent of Owners or Eligible Mortgagees, this Declaration, the Association's Articles of Incorporation or Bylaws, any time within the limitations set forth in Paragraph 13.3 hereof, as follows:

- a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
- b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages.
- c) To comply with any requirements of the Act.

16.6 Consent of Declarant Required.

Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment

The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 13.3 hereof.

ARTICLE SEVENTEEN: GENERAL PROVISIONS

17.1 Right of Action.

The Association and any aggrieved Owner shall have an appropriate right of action against an Owner for such Owner's failure to comply with this Declaration, the Articles of Incorporation and Bylaws of the Association, the Rules and Regulations of the Association or with decisions of the Board of Directors which are made pursuant thereto. Owners shall have a similar right of action against the Association.

17.2 Successors and Assigns.

This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner and their heirs, personal representatives, successors and assigns.

17.3 Severability.

Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

17.4 No Waiver.

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

17.5 Registration by Owner of Mailing Address.

Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address.

All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to Bosch Land Company, Inc., c/o David Boschert, 3223 Arapahoe Ave., #123, Boulder, CO 80303, Registered Agent for the Association until the Registered Agent is changed by a notice duly filed with the Office of the Secretary of State of Colorado (Change of Registered Agent).

17.6 Conflict.

The Project Documents are intended to comply with the requirements of the Act and the Colorado Nonprofit Corporation Act. If there is any conflict between the Project Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Project Documents, this Declaration shall control.

17.7 Mergers.

The Planned Community may be merged or consolidated with another planned community of the same form of ownership by complying with § 38-33.3-221 of the Act.

17.8 Arbitration/Attorney's Fees.

Except for matters requiring injunctive relief and matters concerning the collection of Assessments, all matters regarding the interpretation, application and enforcement of this Declaration shall be resolved by binding arbitration in accordance with the Colorado Arbitration proceeding consistent with the Rules of the American Arbitration Association. The parties to such dispute shall agree

upon a single arbitrator who shall be an experienced professional property manager of a homeowners association. In the event the parties are unable to agree upon an arbitrator within 30 days after written notice, the presiding judge of the County's District Court shall appoint an arbitrator qualified as set forth above upon application of a party. The arbitrator shall be required to follow substantive law in reaching a decision under this Paragraph. Judgment upon the determination of the arbitrator shall be entered and enforced by the County's District Court. The arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.

In any proceeding to enjoin any violation of this Declaration, the party or parties against whom judgment is entered shall pay the attorney's fees and costs of the party or parties for whom judgment is entered.

17.9 Captions.

The captions and headings in this Declaration are for Convenience only, and shall not be considered in construing any provision of this Declaration.

17.10 Numbers and Genders.

Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 16 day of November, 1998.

By: BOSCH LAND COMPANY, INC
A Missouri Corporation [Signature]
David Boschert, Vice-President

STATE OF COLORADO)
) SS.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 16th day of November 1998 by David Boschert as Vice-President of Bosch Land Company, Inc., a Missouri corporation.

My commission expires: 10/25/2000

WITNESS my hand and official seal.
HELEN E. KAMIN
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires October 25, 2000

[Signature]
Notary Public

EXHIBIT A

TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RESERVE AT UTE CREEK

LEGAL DESCRIPTION OF THE REAL PROPERTY SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RESERVE AT UTE CREEK (FIRST PHASE)

Lots 1 through 10, Block 1,
Lots 1 through 4 and Lots 19 through 26, Block 2,
Lots 1 through 14, Block 3,
Spring Valley Phase Four, The Reserve at Ute Creek, a subdivision of the County of Boulder, State of Colorado.

EXHIBIT B

TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RESERVE AT UTE CREEK

LEGAL DESCRIPTION OF THE COMMON AREAS/ASSOCIATION SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RESERVE AT UTE CREEK (FIRST PHASE)

Outlots D, E, F, H, J, K, M, N, R, S, Q,
Spring Valley Phase Four, The Reserve at Ute Creek, a subdivision of the County of Boulder, State of Colorado.

LEGAL DESCRIPTION OF THE COMMON AREAS/CITY SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RESERVE AT UTE CREEK (FIRST PHASE)

Outlots A and C,
Spring Valley Phase Four, The Reserve at Ute Creek, a subdivision of the County of Boulder, State of Colorado.

EXHIBIT C

TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RESERVE AT UTE CREEK

LEGAL DESCRIPTION OF THE REAL PROPERTY WHICH MAY BE SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RESERVE AT UTE CREEK IN LATER PHASES

Lots 11 through 22, Block 1,
Lots 5 through 18, Block 2,
Lots 15 through 22, Block 3,
Outlots G, L, O, P,
Spring Valley Phase Four, The Reserve at Ute Creek, a subdivision of the County of Boulder, State of Colorado.

EXHIBIT D

TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RESERVE AT UTE CREEK

THE RECORDING DATA FOR RECORDED EASEMENTS AND LICENSES WHICH THE PLANNED COMMUNITY IS OR MAY BECOME SUBJECT TO:

1. All easements as contained in ARTICLE EIGHT hereof.
2. Easement for electric line and incidental purposes granted by instrument recorded on Film 771 as Reception No. 18153.
3. Right of way for sanitary sewer line as granted by instrument recorded on Film 2122 as Reception No. 1602306 and as shown on the Plat for Spring Valley Golf Course.
4. Right of way for an apparent existing but unrecorded sanitary sewer line as shown on Survey by Nolte and Associates dated January 7, 1998.
5. Right of way for an existing irrigation ditch over the southerly boundary line of the Planned Community as shown on Survey by Nolte and Associates dated January 7, 1998.

All recordings are in the records of the County Clerk and Recorder's Office, Boulder County, Colorado.



1874326
Page: 68 of 78
11/24/1998 04:00P

Boulder County Clerk, CO PROT CVNTS R 351.00 D 0.00

EXHIBIT E

TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE
RESERVE AT UTE CREEK

GOLF COURSE PLAY EASEMENT

THIS GOLF COURSE PLAY EASEMENT AGREEMENT ("Easement") is entered into as of this _____ day of _____, 1998, by and between _____ ("Purchaser"), and BOSCH LAND COMPANY, INC., a Missouri corporation ("Bosch Land").

RECITALS

WHEREAS, Bosch Land is the owner of Lot _____, Spring Valley Phase Four, The Reserve at Ute Creek, Boulder County, CO; and

WHEREAS, Purchaser is desirous of purchasing said Lot; and

WHEREAS, Bosch Land and Purchaser desire to provide for the creation for certain easements, covenants and restrictions, which encumber said Lot in order to ensure the operation for the Ute Creek Golf Course ("Golf Course"), adjacent to said Lot.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the parties hereby agree as follows:

1. Golf Course Play Easement.

There is hereby reserved and granted to the City of Longmont, owner of the Golf Course, a nonexclusive easement over and across the said Lot for the following purposes:

1.1 retrieval of golf balls, including the right to enter on the said Lot for that purpose, provided the right to retrieve golf balls shall only extend to the nonenclosed portions of the Lot, and the person retrieving the golf balls shall do so in a reasonable manner and will repair any damage caused by said entry; and

1.2 flight of golf balls over, across, and upon said Lot; and

1.3 doing of every act reasonable necessary and incident to the playing of golf on the Golf Course; and

1.4 creation of noise related to the normal maintenance and operation of the Golf Course,

including but not limited to, the operation of mowing, sprinkling and spraying equipment. Such noise may occur from early morning until late evening; and

1.5 an easement for the overspray of herbicides, fungicides, pesticides, fertilizers, and water over portions of the said Lot.

2. Damage by Errant Golf Balls.

Purchaser, and each subsequent owner of the said Lot, hereby acknowledges and agrees that the existence of the Golf Course is beneficial and a highly desirable amenity; however, Purchaser acknowledges and agrees that a Lot located adjacent to the Golf Course is subject to the risk of damage or injury due to errant golf balls. Purchaser, and each subsequent owner of the said Lot, hereby assumes the risk of damage and injury and hereby releases Bosch Land from any and all liability for damage or injury caused by errant golf balls in, on or around the said Lot, except in an instance of intentional conduct or gross negligence by Bosch Land.

3. Fencing Restrictions.

The Bosch Land will construct fences between the Lot and the Golf Course as part of the original construction of the Dwelling Unit. Purchaser, and each subsequent owner of said Lot, shall not construct a fence located along the boundary line between the Lot and the Golf Course, which is violative of any covenants or fencing criteria encumbering the said Lot as regulated by The Reserve at Ute Creek Homeowners Association or any governing body having jurisdiction over the Golf Course. Criteria and specifications regarding type, size, configuration, and materials, acceptable for perimeter fences located along the Golf Course will be adopted and enforced against all Owners of the Lots adjacent to the Golf Course.

4. Duration and enforceability.

The easements and restrictions set forth in this Easement shall constitute covenants running with the land for so long as the Golf Course is used as a golf course, burdening the said Lot and benefitting the Golf Course, and shall be binding upon Purchaser, his heirs, personal representatives, successors and assigns.

5. Persons Entitled to Enforce Restrictions.

Purchaser, the City of Longmont, Bosch Land, their heirs, personal representatives, successors and assigns, including The Reserve at Ute Creek Homeowners Association, shall have the right to enforce the restrictions contained herein. 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 provisions of this Easement.

6. Notice to Property Owners Within the Planned Community.

NO OWNER OF A LOT WITHIN THE PLANNED COMMUNITY SHALL HAVE ANY RIGHTS IN OR TO THE GOLF COURSE OR OTHER AMENITIES LOCATED ON THE

GOLF COURSE, OR ANY RECREATIONAL ACTIVITIES OCCURRING THEREON, INCLUDING, BUT NOT LIMITED TO, A VISUAL OR SIGHT EASEMENT OVER AND ACROSS ANY PORTION OF THE GOLF COURSE PROPERTY, RIGHTS OR MEMBERSHIP IN OR TO THE GOLF COURSE, OR RIGHT OF ACCESS TO OR ACROSS THE GOLF COURSE, UNLESS SUCH RIGHT OR RIGHTS HAVE BEEN GRANTED IN WRITING BY THE OWNER OF THE GOLF COURSE. RIGHTS TO USE THE RECREATIONAL FACILITIES LOCATED ON THE GOLF COURSE PROPERTY SHALL BE ON SUCH TERMS AND CONDITIONS AS MAY BE PROMULGATED, FROM TIME TO TIME BY THE OWNER OF THE GOLF COURSE,

7. Addition covenants, conditions and restrictions are contained in ARTICLE FIFTEEN of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RESERVE AT UTE CREEK.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

BOSCH LAND COMPANY, INC.
A Colorado Corporation

By: David Boschert, Vice-President

PURCHASER:

STATE OF COLORADO)
) SS.
COUNTY OF BOULDER)

The foregoing instrument was subscribed and sworn to before me this ____day of _____, 1998 by David Boschert as Vice-President of Bosch Land Company, Inc., a Colorado corporation.

My commission expires: _____

WITNESS my hand and official seal.

Notary Public