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Cheri Brunvand-Summit County Recorder 3/28/2005 10:18 DF:

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE  
HOMESTEAD AT THREE PEAKS**

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE  
HOMESTEAD AT THREE PEAKS**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE HOMESTEAD AT THREE PEAKS (this "Declaration") is made this day of March 22, 2005 by Western Golf, Inc., a Colorado corporation ("Declarant"), whose address is 3201 East Third Avenue, Suite 200, Denver, CO 80206.

RECITALS

A. Declarant is the owner of the real estate in Summit County, Colorado described in Exhibit A attached hereto and incorporated herein (the "Real Estate"), upon which Declarant desires to create a planned community known as the "The Homestead at Three Peaks" (the "Community").

B. Declarant is also the owner of the real estate in Summit County, Colorado described in Exhibit B attached hereto and incorporated herein ("Annexable Real Estate"), which Annexable Real Estate Declarant has the right to add to Exhibit A.

C. Declarant has caused "The Homestead at Three Peaks Homeowners Association, Inc.," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado as an owners' association for the purpose of exercising the functions as herein set forth.

ARTICLE I

GENERAL

Section 1.1 Planned Community.

(a) Declarant intends to develop the Real Estate as a high quality, residential planned community in accordance with the terms and provisions of the Colorado Common Interest Ownership Act.

(b) This Declaration is executed (i) in furtherance of a common and general plan for the development of the Community; (ii) to protect and enhance the quality, value, aesthetics, desirability, and attractiveness of the Community; (iii) to set forth the Homestead at Three Peaks Homeowners Association, Inc.'s responsibilities and authority to govern and manage the Community; (iv) to define certain duties, powers, and rights of the owners of "Lots" (hereafter defined); and (v) to define certain duties, powers, and rights of Declarant.

Section 1.2 Submission of Real Estate. Declarant declares that all of the Real Estate now or hereafter described in Exhibit A shall be held, sold, and conveyed subject to those "Development Rights" and "Special Declarant Rights" (hereafter defined) and subject to the following easements, restrictions, covenants, and conditions included in this Declaration. Additionally, all of the Additional Real Estate described in Exhibit B shall be held and/or

conveyed subject to the rights of Declarant under Article XIV hereof and subject to the Development Rights and/or Special Declarant Rights set forth therein. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Real Estate.

Section 1.3 Covenants Running with Real Estate. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Real Estate.

Section 1.4 Binding Upon and Inure to the Successors. The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of Declarant, the Association, all "Owners" (hereafter defined), and their respective heirs, executors, administrators, personal representatives, successors, and assignees. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association, or other entity, in accordance with the provisions of the Act.

## ARTICLE II

### DEFINITIONS

Section 2.1 "Act" means the Colorado Common Interest Ownership Act, codified as amended at C.R.S. § 38-33.3-101 *et seq.*

Section 2.2 "Allocated Interests" means the number of votes and the share of the liability for the Common Expenses (expressed as a percentage) that are allocated to each Lot as set forth in Section 3.10 below.

Section 2.3 "Annexable Real Estate" means all of the real property legally described in Exhibit B attached hereto.

Section 2.4 "Articles of Incorporation" means the Articles of Incorporation of Homestead at Three Peaks Homeowners Association, Inc., filed with the Colorado Secretary of State, as they may be amended from time to time.

Section 2.5 "Assessment" means all assessments for Common Expenses levied by the Association against a Lot pursuant to this Declaration or the Act.

Section 2.6 "Association" means Homestead at Three Peaks Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors and assignees. The Association shall act by and through its Executive Board and officers, unless its Articles of Incorporation, Bylaws, or this Declaration specifically require otherwise.

Section 2.7 "Bylaws" means the bylaws of the Association, as they may be amended from time to time.

Section 2.8 "Common Elements" means those portions of the Real Estate conveyed to the Association by Declarant, and any other property, real or personal, owned from time to time by the Association. The term, "Common Element" is synonymous with the term, "common element" as defined at Section 103(5)(b) of the Act.

Section 2.9 "Common Expense" means any expenditure made, or liability incurred, by or on behalf of the Association, together with any allocations to reserves.

Section 2.10 "Community" means the Homestead at Three Peaks, a "planned community," as defined at Section 103(22) of the Act.

Section 2.11 "Declarant" means Western Golf, Inc., a Colorado corporation, and its successors and assignees, if such successors and assignees are designated by Declarant to serve as a declarant for any specified purposes or for all purposes under this Declaration, in a written instrument duly executed by Declarant and its designated successor or assignee and recorded in the Office of the Clerk and Recorder of Summit County, Colorado.

Section 2.12 "Declarant Control Period" shall have the meaning set forth in Section 4.3 below.

Section 2.13 "Declaration" means this Declaration of Covenants, Conditions, and Restrictions of the Homestead at Three Peaks, as it may be amended or supplemented from time to time.

Section 2.14 "Development Rights" means those rights set forth in Article XIV of this Declaration and all "development rights" set forth in Section 103(14) of the Act.

Section 2.15 "Eligible Holder" means those First Mortgagees or insurers or guarantors of First Mortgages who have made written request to the Association for notification of certain matters and actions in accordance with the provisions of Section 13.2.

Section 2.16 "Executive Board" means the board of directors of the Association.

Section 2.17 "First Mortgage" means a Security Interest in a Lot that has priority over all other Security Interests in the Lot.

Section 2.18 "First Mortgagee" means any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.19 "General Common Elements" means all of the Common Elements except the Limited Common Elements.

Section 2.20 "Home" means the residence, and any appurtenant improvements thereto, built upon a Lot.

Section 2.21 "Limited Common Elements" means those parts of the Common Elements that are either limited to and reserved for the exclusive use of the Owner or Owners of a



particular Lot or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Lots. Without limiting the foregoing, the Limited Common Elements include the driveway on a Lot and may include any fence on a Lot.

Section 2.22 "Lot" means the physical portion of the Community, designated for separate ownership and designated as a Lot on the Plat. The boundaries of Lots are shown on the Plat. The term "Lot," as used herein, also refers to a "unit" as that term is defined at Section 103(30) of the Act.

Section 2.23 "Master Association" means The Eagles Nest Homeowners Association, a Colorado nonprofit corporation.

Section 2.24 "Master Declaration" means the Declaration and Agreement Creating Covenants, Conditions, Restrictions and Easements recorded June 14, 1983 at Reception No. 257911 in the Office of the Clerk and Recorder of Summit County, Colorado, as subsequently amended.

Section 2.25 "Member" means each Owner of a Lot.

Section 2.26 "Mortgage Agencies" means and collectively refers to, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA), the Colorado Housing and Finance Authority (CHFA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity that performs (or may perform in the future) functions similar to those currently performed by any of such entities.

Section 2.27 "Owner" means any record owner (including a Declarant and including a contract vendor), whether one or more persons or entities, of a fee simple title interest to any Lot; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

Section 2.28 "Permittee" means any guests, contractors, agents, invitees, or licensees of an Owner or such Owner's tenant that are permitted by such Owner or his tenant within the Community.

Section 2.29 "Plat" means the land survey plat of The Homestead at Three Peaks Filing No. 1, a Resubdivision of Tract F, Eagles Nest Golf Course Filing No. 6, recorded or to be recorded in the Office of the Clerk and Recorder of Summit County, Colorado, as it may be supplemented or amended from time to time.

Section 2.30 "Real Estate" means the real property and all interests therein legally described in Exhibit A.

Section 2.31 "Security Interest" means an interest in real estate or personal property created by contract or conveyance that secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for

deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 2.32 "Special Declarant Rights" means those rights set forth in Article XIV of this Declaration and all "special declarant rights" set forth at Section 103(29) of the Act.

### ARTICLE III

#### COMMON ELEMENTS, LOTS, AND ALLOCATED INTERESTS

Section 3.1 Rights of Ingress and Egress. Declarant and every Owner, tenant, and their respective family members, guests, invitees, and licensees shall have a perpetual right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements appurtenant to such Owner's Lot, for the purpose of entering and exiting such Owner's Lot, the appurtenant driveway, and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Lot; provided, however, that such rights and easements shall be subject to the following:

(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, duties, and obligations contained in this Declaration;

(b) The right of the Association to suspend the voting rights and any and all rights of any Owner to the use of any recreational or other facilities for any period up to, but not exceeding, 60 days during which any Assessment against such Owner's Lot remains unpaid and for any period of time that the Association may deem to be appropriate for such Owner's infraction of this Declaration, the Articles of Incorporation, the Bylaws, or any written rule or regulation of the Association or any such infraction by such Owner's tenant, any member of such Owner's or tenant's family, or such Owner's or tenant's guests, licensees, or invitees;

(c) The right of the Association to adopt, from time to time, rules and regulations concerning the Lots, Common Elements, and/or any other property owned by the Association, and any facilities located thereon, as the Association may determine is necessary or prudent; and

(d) The right of Declarant, during the period of its Development Rights, and the right of the Association, at any time, to grant permits, licenses, and easements over the Common Elements for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Community.

Section 3.2 Conveyance of Common Elements. The Common Elements may not be conveyed or encumbered except as permitted under the Act. Notwithstanding the foregoing, the granting of permits, licenses, and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Community will not be deemed to be a conveyance. The Association may convey or grant a security interest in portions of the Common Elements only in

accordance with the provisions of Section 312 of the Act and Subsection 13.1(a)(3) of this Declaration.

Section 3.3 Limited Common Elements. Subject to the terms and provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to his Lot. When a Limited Common Element is appurtenant to more than one Lot, the Owners of the Lots to which it is appurtenant shall share the exclusive right to use and enjoy such Limited Common Element.

Section 3.4 Parking within the Common Elements. Except as set forth below, no vehicles may be parked in the Community except in a garage, the driveway of a Lot, or in designated parking spaces within the Common Elements including, without limitation, the Limited Common Elements appurtenant to each Lot. Unless the Association specifically authorizes storage by an Owner, there shall be no storage of snowmobiles, trailers, recreational vehicles, or vehicles deemed by the Executive Board to be too large for parking in a garage or designated parking spaces with the Common Elements. Temporary parking by an Owner's Permittees is allowed in the driveway of a Lot and in the Limited Common Element on the street in front of, and appurtenant to, such Owner's Lot for a period not to exceed 48 consecutive hours.

Section 3.5 Number of Lots. The number of Lots initially included in the Community is ten.

Section 3.6 Identification of Lots/Lot Descriptions. The identification of each Lot is shown on the Plat. Every contract for sale, deed, lease, Security Interest, will, or other legal instrument shall legally describe a Lot by its identifying Lot number, followed by the name of the Community, with reference to the Plat and subject to the easements and licenses of record including, without limitation, this Declaration and the Master Declaration. An illustrative description is as follows:

Lot \_\_\_\_, The Homestead at Three Peaks Filing No. 1, according to Plat thereof recorded March 26, 2004 at Reception No.750882 in the records of the Clerk and Recorder, County of Summit, State of Colorado, subject to . . . .

Reference to the Declaration, Plat, and/or any map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration, Plat, or any map without specific references thereto.

Section 3.7 Legal Effect of Description. Every contract, deed, lease, mortgage, deed of trust, will, and every other instrument affecting title to a Lot that legally describes said Lot substantially in the manner set forth in Section 3.6 hereof shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect the Lot, all other appurtenant properties and property rights, and incorporate all of the rights, limitations, and burdens incidental to ownership of a Lot as described in this Declaration. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Lot and the use of all the General Common Elements as well as all of the Limited Common Elements appurtenant to said Lot, all as more fully provided in this Declaration.

Section 3.8 Taxation. Each Lot shall be assessed separately for all taxes, assessments, and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority in accordance with Section 105 of the Act. For the purpose of such taxes and assessments, the valuation of the General Common Elements shall not be separately assessed, but shall be apportioned among the Lots in proportion to the Common Expenses liability appurtenant thereto and, to the extent feasible, the valuation of the Limited Common Elements shall be apportioned to the individual Lot or Lots to which such Limited Common Elements are allocated. The Common Elements and other property owned by the Association, if any, shall be appraised and valued pursuant to the provisions of Section 105 of the Act. The Association shall furnish to the Tax Assessor of Summit County, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.

Section 3.9 Allocated Interests. The share of Common Expense liability and votes in the Association allocated to each Lot are set as follows:

- (a) the percentage of liability for Common Expenses, equally; and
- (b) the number of votes in the Association, equally.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 4.1 Membership. Every Owner of a Lot shall be a Member and shall remain a Member for the period of his ownership of a Lot. Membership in the Association is appurtenant to ownership of a Lot and may not be separated therefrom. Each Lot shall be entitled to one vote to be exercised by the Owner or Owners thereof.

Section 4.2 Executive Board. The affairs of the Association shall be managed by the Executive Board which shall consist of the number of members set forth in the Articles of Incorporation, as amended or the Bylaws, as amended, from time to time. From the date of formation of the Association until the termination of the Declarant Control Period as provided below, Declarant shall have the right to appoint and remove the members of the Executive Board as set forth in Section 4.3 below and all officers of the Association.

Section 4.3 Declarant Control Period. The "Declarant Control Period" shall terminate upon the first to occur of (a) 60 days after conveyance of 75% of the Lots that are included in the Community (as the same may be expanded as provided herein) to Owners other than a Declarant; (b) two years after the last conveyance of a Lot by a Declarant in the ordinary course of business; and (c) two years after Declarant's right to add Lots to the Community was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Declarant Control Period, but, in that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board described in a recorded instrument executed by Declarant, be

approved by Declarant before they become effective. Not later than 60 days after conveyance of 25% of the Lots in the Community to Owners other than a Declarant, at least one member and not less than 25% of the members of the Executive Board will be elected by Owners other than a Declarant. Not later than 60 days after the conveyance of 50% of the Lots to Owners other than a Declarant, not less than 33.3% of the members of the Executive Board will be elected by Owners other than a Declarant. Not later than the termination of the Declarant Control Period, the Owners shall elect to the Executive Board no less than three members, a majority of whom must be Owners other than a Declarant or designated representatives of Owners other than a Declarant. Within 60 days after the Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in Section 303(9) of the Act.

## ARTICLE V

### THE ASSOCIATION

Section 5.1 Association Management and Maintenance Duties. Subject to the rights and obligations of Owners as set forth in this Declaration, the Association shall:

(a) Be responsible for the management, control, maintenance, repair, replacement, and improvement of the Common Elements including, but not limited to, the private road, the driveways, and other Limited Common Elements assigned or appurtenant to or providing exclusive service to individual Lots, and any property, such as storm sewer infrastructure, owned by the Association;

(b) Perform exterior maintenance, repair, and replacement to the exteriors of the Homes (including painting and sanding, as applicable, but excluding window-washing) and to other site improvements including, without limitation, the driveways, walkways, sidewalks, doorsteps, stoops, decks, porches, and patios appurtenant to the Lots;

(c) Maintain and replace, as needed, the landscaping (including irrigation systems) and any fencing appurtenant to each Lot including, without limitation, fertilization, trimming and mowing of lawns, plants, hedges, bushes, and trees;

(d) Maintain all grass, trees, shrubbery, flowers, and other landscaping, if any, constituting a part of the approved landscaping design; and

(e) Perform snow removal from the Common Elements and the driveways, walkways, and sidewalks appurtenant to the Lots, excluding doorsteps, stoops, decks, porches, patios, and roofs.

Section 5.2 Maintenance Standard. The Executive Board shall have the right to determine, in its reasonable discretion, (a) the materials and supplies to be used in conjunction with the foregoing maintenance responsibilities; provided that such materials shall, if economically feasible, be substantially similar to those materials used in conjunction with the original construction of the Home; (b) the time of day that such maintenance obligations shall be

performed; provided that such services will be performed at reasonable hours depending upon the nature of the service being performed; and (c) the amount, nature, and degree of maintenance, repair, or replacement reasonably necessary for a given Lot.

Section 5.3 Garbage Collection. Each Owner shall dispose of his garbage by placing it into containers of such dimensions and at such locations as the Association shall from time to time designate. The garbage shall be removed by a garbage collection service provided by the Association if the Master Association fails to cause such garbage collection service to be provided to the Owners.

Section 5.4 Common Expenses.

(a) The expenses, costs, and fees of such management, operation, maintenance, repair, replacement, and improvement incurred by the Association pursuant to Sections 5.1 through 5.3, if applicable, are Common Expenses that shall be recovered by the Association by the "Monthly Assessment" (hereafter defined) levied by the Association. The Association, in its reasonable discretion, may levy the costs and expenses associated with any of the following as an "Individual Purpose Assessment" (hereafter defined) against the Owner of the Lot involved: expenses of maintaining, repairing, and replacing all, decks, fixtures, equipment, utilities, and other Limited Common Elements that are appurtenant to such Owner's Lot or provide exclusive service to such Owner's Lot and any service lines from such equipment to the Lot. Except for the Owners' right to reject a budget as described in Section 6.3, the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

(b) Notwithstanding anything to the contrary contained in this Declaration, if the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, an Owner's tenant, or by any member of an Owner's or tenant's family or by an Owner's or tenant's Permittees, or as a result of any improvement constructed by or on behalf of an Owner in or upon the Common Elements, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be the personal obligation of such Owner; and, if not repaid to the Association within ten days after the Association gives notice to the Owner of the total amount of such expenses, costs, and fees, or any portions thereof, from time to time, then the failure to so repay shall automatically become a "Default Assessment" (hereafter defined) determined and levied against such Lot.

Section 5.5 Management Agreements and Other Contracts. The Association may have professional management of its business affairs. Any agreement for professional management of the Association's business or any other contract providing for services of a Declarant shall have a maximum term of three years, and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than 30 days' prior written notice.

Section 5.6 Access for Maintenance Purposes. Each Owner shall afford to the Association and the other Owners and their respective Permittees, access through such Owner's Lot reasonably necessary for maintenance, repair, and replacement of the Common Elements. If

Common Elements or any Lot is damaged or destroyed in connection with such access or such maintenance, repair, or replacement, the party causing or responsible for the damage or destruction is liable for the cost of prompt repair of such damage or destruction.

Section 5.7 Acquiring and Disposing of Real and Personal Property. The Association may acquire, lease, own, and hold for the use and benefit of all Owners, tangible and intangible personal property and real property (including the purchase or lease of a Lot that may be used as a manager's office and/or residence) for such uses and purposes as the Executive Board may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Executive Board in its reasonable discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

Section 5.8 Promulgation of Rules and Regulations. The Executive Board may promulgate and enforce, including, without limitation, enforcement by levying and collecting charges and fines for the violation thereof after affording an Owner a reasonable opportunity to be heard, reasonable rules and regulations governing the use of the Lots, Common Elements, and any other property owned by the Association, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

Section 5.9 Judicial Proceedings. The Association shall have no authority to initiate, maintain, or prosecute any legal or equitable proceeding except to enforce the provisions of this Declaration and to collect Assessments due and payable under Article VI hereof, unless the Owners approve such proceeding by a vote of at least 80% of all of the eligible votes in the Association cast in person, not by proxy, at a special meeting of the Association called for that purpose.

Section 5.10 New Additions to Common Elements. The Association shall have the right to construct new additions to the Common Elements. The Common Expenses for any such additions to the Common Elements shall be apportioned among all Lots as provided in Section 6.3 hereof.

Section 5.11 Contracts, Licenses, and Agreements. The Association, through the Executive Board, shall have the right to enter into, make, perform, or enforce contracts, leases, licenses, agreements, easements, and/or rights-of-way, for the use by Owners, other persons, their family members, guests, and invitees, of real property for pedestrian and vehicular access, ingress and egress to and from the Community, or any portion thereof, for vehicular parking, for on-site residential management, or for recreational use, all of which shall be terminable by either party with or without cause upon 30 days' prior written notice; and contracts, licenses, leases, or other agreements for the provision of cable or satellite television service to the Community, or any portion thereof. Any of such contracts, leases, licenses, agreements, rights-of-way, or easements shall be upon such terms and conditions as agreed to by the Executive Board, and may include provisions by which the Association covenants and agrees that it shall pay part or all of the costs and expenses of maintaining such real property, and the improvements thereto and thereon, providing such cable or satellite television service, or other amounts which the

Executive Board determines are necessary to secure such contracts, licenses, and agreements. The Association shall treat any such costs and expenses as Common Expenses.

## ARTICLE VI

### ASSESSMENTS

Section 6.1 Personal Obligation for Assessments. All Owners covenant and agree, and shall be personally obligated, to pay to the Association all of the following Assessments: (a) "Monthly Assessments" imposed by the Association to recover the Common Expenses anticipated by the annual budget and to meet the reserve requirements of the Association; (b) Special Assessments, pursuant to Section 6.8 below; (c) Individual Purpose Assessments, pursuant to Section 6.9 below; (d) other charges, costs, interest, fees, and Assessments, including without limitation Assessments relating to defaults, acts, errors, or omissions of an Owner or an Owner's Permittees ("Default Assessments"). All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all Assessments, charges, costs, interest, and fees attributable to their Lot. The payment of any and all Assessments is an independent covenant, with all Assessments payable in full, when due, without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The personal obligation for delinquent Assessments will not pass to an Owner's successor in title or interest unless assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the Assessments, charges, and fees provided for herein by nonuse of the Common Elements or the facilities contained therein or by abandonment or leasing of his Lot.

Section 6.2 Responsibility for Other Charges. In addition to the foregoing Assessments, charges, and fees, each Owner shall have the obligation to pay real property *ad valorem* taxes and special assessments imposed by Colorado governmental subdivisions against his Lot, as well as all charges for separately metered utilities servicing his Lot.

Section 6.3 Allocation of Common Expenses. Except as otherwise expressly provided in this Declaration, all Assessments (including Special Assessments but excluding Individual Purpose Assessments and Default Assessments as hereinafter provided) shall be allocated among the Lots in accordance with the Allocated Interests for each Lot set forth in Section 3.9 above.

#### Section 6.4 Monthly Assessments; Budgets.

(a) Until the Association makes an Assessment, Declarant shall pay all Common Expenses. The initial Assessments shall commence not later than 180 days after the first sale of a Lot to a purchaser other than Declarant. After any Assessment has been made by the Association, an Assessment shall be payable monthly ("Monthly Assessment") with the amount of the Monthly Assessment to be determined by the Executive Board from time to time based on a budget adopted from time to time by the Association (but no less frequently than annually).

(b) The Executive Board shall prepare each proposed budget, assuming the Association's books and records are maintained on an accrual basis, to provide for the payment



of all estimated expenses, costs, and fees for the duties described in Section 5.1 and Section 5.2, if applicable, of this Declaration and for other costs, fees, and expenses related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration, and improvement of the Community, the Common Elements, real or personal property owned by the Association, and any other obligations that may be undertaken by the Association. The amount of said advance budget may include, but shall not be limited to: expenses of management; premiums for insurance; landscaping and care of the Lots and Common Elements; common lighting and heating; maintenance, repair, replacement and renovation of the Common Elements; wages; charges for common utilities; taxes, legal fees, and accounting fees; management fees; costs, expenses, and liabilities incurred by the Executive Board on behalf of the Owners or otherwise arising under or by reason of this Declaration, the Articles of Incorporation, or the Bylaws; the creation of reasonable reserves and working capital and/or sinking funds; reimbursement for or payment of any operating deficit, loss, or unbudgeted expense incurred by the Association; and any and all other costs and expenses relating to the Common Elements, real or personal property owned by the Association, and/or any other obligations undertaken by the Association.

(c) Within 30 days after adoption of any proposed budget, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of Owners to consider ratification of the budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

Section 6.5 Reserves. The Association shall establish an adequate reserve fund for the maintenance, repair, and replacement of those Common Elements that must be periodically maintained, repaired, or replaced and for payment of insurance deductibles. Such reserves shall be included in the budget and funded through the Monthly Assessments.

Section 6.6 Date of Payment of Monthly Assessments. The Monthly Assessments shall be due and payable on the first day of each month, in advance, or on such other dates, and with such frequency (but no less frequently than annually), as may be set by the Executive Board from time to time.

Section 6.7 Rate of Assessment. Both Monthly Assessments and Special Assessments shall be fixed at such rates as will be sufficient to meet the budget of the Association, as provided in Sections 6.4 and 6.8 hereof.

Section 6.8 Special Assessments. In addition to the Monthly Assessments authorized above, the Executive Board may at any time, from time to time, determine, levy and assess a special assessment ("Special Assessment") for the purpose of defraying, in whole or in part, payments for any operating deficit, loss, or unbudgeted expense, and/or unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the Common Elements including, without limitation, any fixtures and personal property related thereto. Special Assessments shall be based on a budget

adopted in accordance with Section 6.4; provided that if necessary, the Association may adopt a new budget pursuant to Section 6.4 prior to levying a Special Assessment. Such Special Assessment(s) shall be due and payable as determined by the Executive Board, with at least 30 days' prior written notice provided to the Owners.

Section 6.9 Individual Purpose Assessments.

(a) In addition to the Monthly and Special Assessments, the Executive Board may at any time levy and collect Assessments against any one or more, but fewer than all, of the Lots, for any matters applicable only to such Lots. Such "Individual Purpose Assessments" may be levied against Lots to pay or reimburse the Association for any costs, expenses, fees, reserves, and other charges, incurred or reasonably anticipated to be incurred by the Association, for management, control, administration, maintenance, repair, replacement, and improvement, or any other purpose, or with respect to any matter pertaining to the Lot(s) against which such Individual Purpose Assessment is levied.

(b) The amounts determined, levied, and assessed pursuant to this Section 6.9 shall be due and payable as determined by the Executive Board provided that written notice setting forth the amount of such Individual Purpose Assessment for each Lot and the due date(s) for payment thereof shall be given to the Owners of the affected Lot not less than 30 days prior to the due date.

Section 6.10 Lien for Assessments.

(a) Under the Act and subject to its limitations, the Association has a statutory lien on a Lot for any Assessments levied against that Lot and for fines imposed against its Owner from the time each Assessment or fine becomes due, but not on the Community as a whole. In addition, fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to this Declaration or the Act 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, including the due date set by any valid Association acceleration of installment obligations.

(b) The statutory lien for Assessments is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of this Declaration or the Master Declaration; (ii) a lien of a First Mortgage that was recorded before the date on which the Assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot.

(c) Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a First Mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association pursuant to Section 6.4 that would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien of an action or a non-judicial foreclosure either to enforce or extinguish the statutory lien.

(d) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or Assessment is required;

however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner and his Lot as a Default Assessment.

**Section 6.11 Effect of Non-Payment of Assessments.**

(a) Any Assessments, charges, costs, or fees provided for in this Declaration, including, without limitation, any Default Assessment arising under any provision of this Declaration, that are not fully paid within ten days after the due date thereof, will bear interest from the due date at the rate of 21% per annum, or at such other rate as may be set by the Association from time to time (subject to any limits imposed by law), and the Association may assess a late charge thereon in addition to such interest. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges, costs, or fees, and may also proceed to foreclose its lien against such Owner's Lot in the manner of a mortgage upon such property. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges, costs, or fees may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor.

(b) If any such Assessment, charge, cost, or fee is not fully paid when due, and the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against an Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Lot, then all unpaid Assessments, charges and fees, any and all late charges and accrued interest under this Section 6.11, the Association's costs, expenses, and reasonable attorney's fees incurred in collection efforts, the Association's costs of suit, expenses, and reasonable attorney's and other professional fees incurred for any such action and/or foreclosure proceedings, and any other costs that may be authorized by a court of competent jurisdiction shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Lot. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, charges, costs, or fees that are not fully paid when due.

(c) The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey, or otherwise deal with the same. In any action brought by the Association (or counterclaim or cross-claim brought by the Association) to collect Assessments or to foreclose a lien for unpaid Assessments, the Association shall be entitled to have a receiver appointed for the Owner's Lot to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The receiver shall have the right to collect any rents paid in connection with the use of such Owner's Lot. The Court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments.

**Section 6.12 Successor's Liability for Assessments.** Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Lot shall not affect the

lien for Assessments, charges, costs, or fees levied hereunder, except that sale or transfer of a Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of Assessments, but not the personal obligation of the Owner for the payment of Assessments that became due after the recording of the First Mortgage and prior to any such sale or transfer or foreclosure, except to the extent the lien of the Association has priority over the First Mortgage under Section 6.10. Any such Assessments, charges, costs, or fees that are extinguished as provided herein may be reallocated and assessed to all Lots. A First Mortgagee may be personally liable for any unpaid Assessments, charges, costs, or fees, or portion thereof, accruing against a Lot prior to the time a First Mortgagee takes title to such Lot, but only to the extent that the lien of the Association has priority over the First Mortgage under Section 6.10 above. No sale, transfer, foreclosure, or any proceeding in lieu thereof shall relieve any Owner from liability for any Assessments, charges, costs or fees, or any portion thereof, accrued during the period of such Owner's ownership of the Lot. No Owner shall have personal liability for Assessments assessed with respect to a Lot that become due prior to the time he acquired title to such Lot.

Section 6.13 Homestead Waiver. The Association's lien on a Lot for Assessments, charges, costs, and fees shall be superior to any homestead exemption as is now or may hereafter be provided by state or federal law. The acceptance of a deed to a Lot shall constitute a waiver of the homestead exemption against all such Assessments, charges, costs, and fees.

Section 6.14 Working Capital. The Association requires each Owner, other than Declarant, to make a one-time, non-refundable payment to the Association in an amount an amount equal to 25% of the annual Common Assessment against that Owner's Lot. If required by the Association, the Working Capital shall be collected and held by the Association, as aforesaid, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of Common Assessments as the same become due. Upon the transfer of his Lot, an Owner shall be entitled to a credit from the transferee of the aforesaid Working Capital contribution. Notwithstanding the foregoing, no Mortgagee who becomes an Owner through foreclosure or acceptance of a deed in lieu thereof shall be required to make a payment to the Association for the Working Capital, and no Owner whose Lot has been foreclosed upon or transferred to a Mortgagee by a deed in lieu of foreclosure shall be entitled to a credit from the Mortgagee for any unused portion of the Working Capital. A Declarant shall not use the Working Capital to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

Section 6.15 First Mortgagees May Pay Assessments and Cure Defaults. If an Owner fails to pay any Assessment on his Lot within 30 days after the same is due, or if a default by any Owner of any provision of this Declaration, the Articles, or the Bylaws is not cured within 30 days after written notice thereof is given to such Owner, then any First Mortgagee may (but shall not be required to) pay such Assessment, together with any other amounts secured by the Association's lien created by this Article VI, and may (but shall not be required to) cure any such default.

Section 6.16 Statement Regarding Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security Interest or its designee 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 any unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within 14 business days after receipt of the request and is binding on the Association, Executive Board, and every Owner. If no statement is furnished to the Owner or holder of a Security Interest or their designee, 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 that were due as of the date of the request. The Executive Board may establish a reasonable fee to be paid in connection with the furnishing of a statement regarding Assessments, which fee shall be paid prior to the time such statement is provided to the party requesting the statement.

Section 6.17 Assignment of Assessments. The Executive Board, acting on behalf of the Association, shall have the unrestricted right to assign the Association's right to receive assessments, future assessments, and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is approved by a two-third (2/3) majority of the Executive Board.

## ARTICLE VII

### INSURANCE

Section 7.1 Insurance on Common Elements. Commencing not later than the time of the first conveyance of a Lot to a person other than a Declarant, the Association shall maintain the following types of insurance for the benefit of the Owners to the extent that such insurance is reasonably available, considering the availability, cost, and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a Common Expense. Notwithstanding any of the specific insurance requirements contained in this Article VII, the Association may also consider, in determining the types and amounts of insurance it needs to obtain, the then-existing requirements of the Mortgage Agencies with respect to their insurance, guaranty, or purchase of First Mortgages. Additional provisions governing the use of insurance proceeds are set forth in Article XI of this Declaration.

(a) A policy of property insurance covering all insurable improvements located within the Common Elements except for land, foundation, excavation, and other matters normally excluded from coverage, in an amount not less than the full insurable replacement cost of the insured property minus applicable deductibles at the time the insurance is purchased and at each renewal date. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement," an "Agreed Amount Endorsement" (if obtainable), a "Construction Code Endorsement" (if obtainable). Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, minus applicable deductibles at the time the insurance is purchased and at each renewal date, excluding land, excavation, foundations, and other items normally excluded from property insurance policies. The Association will also purchase endorsements, and/or coverage on personal property owned by the Association, including fixtures and building service equipment, furnishings, common personal property, and supplies. Such insurance shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as are customarily covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard "Special Cause of Loss Endorsement," where such is available.

(b) A comprehensive policy of public liability insurance covering the Community insuring the Association in an amount not less than \$1,000,000 covering bodily injury, including death to persons, personal injury, and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Community, legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-owned and hired automobiles. Such coverage may also include, if applicable, comprehensive automobile liability insurance, liability for property of others, water damage liability, contractual liability, worker's compensation insurance for employees of the Association, and such other risks as may customarily be required by private institutional mortgage investors with respect to planned communities similar in construction, location, and use. Such liability insurance shall insure the Executive Board, the Association, any management agent and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in its capacity as an Owner and, if applicable, member of the Executive Board. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. Such liability insurance shall cover claims of one or more insured parties against the other insured parties.

(c) A policy providing employee dishonesty coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the greater of (i) the estimated maximum of funds, including reserves, in the custody of the Association at any given time and (ii) three months' aggregate assessments on all Lots plus reserves. Such coverage shall meet the following requirements:

(1) all such coverage shall name the Association as an obligee;

(2) such coverage shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(3) such fidelity coverage or bonds must include a provision that calls for 30 days' prior written notice to the Association (or insurance trustee, if applicable) before the fidelity coverage or bonds can be canceled or substantially modified for any reason, and such notice must also be provided to each servicer of an Mortgage Agency-owned or Mortgage Agency-securitized First Mortgage;

(4) to allow a reduction in the cost of required fidelity coverage or bonds, the Association may implement any financial controls permitted by a Mortgage Agency

then insuring, guaranteeing, or purchasing First Mortgages, either by resolution of the Executive Board, amendment to the Bylaws, or as otherwise may be approved by the applicable Mortgage Agency.

(d) If the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association shall require the managing agent to purchase at its own expense, a policy of employee dishonesty coverage which fully complies with the provisions of Subsection 7.1(c), unless the Association names such managing agent as an insured employee under a policy of fidelity insurance or fidelity bonds in accordance with Subsection 7.1(c).

(e) A policy providing personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

(f) Worker's compensation, employer's liability, and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(g) If the Community improvements are located in an area identified by the Federal Emergency Management Agency as having special flood hazards, or designated as a Special Flood Hazard Area on a relevant Flood Insurance Rate Map, and flood insurance coverage is then available under the National Flood Insurance Administration Program ("NFIAP"), a "master" or "blanket" policy of flood insurance on the Common Elements and any other property of the Association covered by the required form of policy (herein "insurable property") in an amount deemed appropriate, but not less than the lesser of:

(1) the maximum coverage available under the NFIAP for the Common Elements and other insurable property within any portion of the Community located within a designated flood hazard area; or

(2) 100% of the insurable value of the Common Elements, including machinery and equipment that are part of the Common Elements and other insurable property of the Association located within a designated flood hazard area.

Any policy of flood insurance carried by the Association pursuant to this Subsection 7.1(g) shall be in a form that meets the criteria and maximum coverage set forth in the most current guidelines on the subject issued by the Federal Flood Insurance Administration. The maximum deductible amount for policies covering the Common Elements shall be the lesser of \$5,000 or one percent of the policy's face amount.

(h) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature, as it shall deem appropriate, to the extent that such coverage is reasonably available.

Section 7.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners and First Mortgagees, and each Owner

shall be an insured person under such policies with respect to liability arising out of such Owner's membership in the Association. The policy or policies shall recognize any applicable "Insurance Trust Agreement" and shall contain a standard non-contributory First Mortgagee's clause in favor of each First Mortgagee and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until 30 days' prior written notice thereof is given to the insured, to each First Mortgagee, and to each Mortgage Agency that guarantees or insures a First Mortgage on any Lot. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including First Mortgagees under the Declaration, upon request. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of the Association, an Owner, or an Owner's tenant. The policies shall also contain a waiver by the insurer of any right to claim by way of subrogation against the Owners, each person or entity who is a Declarant, the Association, and their respective officers, directors, and members and any of such parties' respective families, agents, employees, or tenants. The liability insurance policy provided for under Section 7.1(b) shall insure the Executive Board, the Association, any management agent, and their respective employees, agents, and all persons acting as agents. Each person or entity who is a Declarant shall be included as an additional insured in its capacity as an Owner and, if applicable, as a member of the Executive Board. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. Such liability insurance shall cover claims of one or more insured parties against the other insured parties.

Section 7.3 Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount that is greater than the lesser of \$10,000 or one percent of the face amount of the policy. Except as otherwise provided in this Section 7.3, any loss falling within the deductible portion of such policy shall be a Common Expense shared by all of the Owners. Notwithstanding the foregoing, after affording an Owner a reasonable opportunity to be heard, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner or Owners, and assess such loss as a Default Assessment against such negligent Owner or Owners and their Lot(s), in such proportion as the Association in its reasonable discretion may determine, and subject to all provisions of this Declaration applicable to such Assessments. If an Owner files a claim under any policy of insurance maintained by the Association, the Association shall assess, as an Individual Purpose Assessment levied to such Owner's Lot, any deductible charged to the Association as a result of said claim.

Section 7.4 Insurance Trustee. The Executive Board shall have authority to authorize an insurance trustee to assist and consult with it and/or to act as its agent and attorney-in-fact for one or more of the following purposes: (a) to purchase and maintain the insurance required under this Declaration; (b) to negotiate and compromise settlement of losses under any insurance; and (c) to collect the proceeds from any insurance, hold such proceeds in trust for the Owners and their First Mortgagees as their interest may appear, and dispose of such proceeds as provided in Article XI of this Declaration and the Act. The Association and any insurance trustee designated by the Executive Board shall have exclusive authority as agent and attorney-in-fact for the Owners to purchase and maintain all insurance required under this Article VII, to negotiate, settle, and compromise any claims under such insurance, to receive all proceeds from



such insurance and apply them as provided under this Declaration, to execute releases of liability in connection with the negotiation and settlement of claims, and to execute all documents and perform all acts that may be necessary or desirable to carry out the Association's and insurance trustee's rights and duties under this Declaration.

Section 7.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy that is in the name of the Association, there is other insurance in the name of any Owner, and such Owner's policy covers the same property or loss, or any portion thereof, that is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of such Owner and for reimbursement to the Association for the deductible under the Association's insurance policy; provided that if such amount(s) are not repaid to the Association within ten days after the Association gives notice to the Owner of the total of such amount(s), from time to time, then the failure to so repay shall automatically become a Default Assessment determined and levied against such Lot and Owner.

Section 7.6 Acceptable Insurance Companies. Any property insurance policy purchased by the Association must be written by an insurance carrier who has a current rating by Best's Insurance Reports (or a comparable rating by any successor or generally accepted substitute for Best's) of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee; or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (c) the policy includes any limiting clauses (other than insurance conditions) that could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 7.7 Insurance to be Maintained by Owners. Property Insurance coverage on each Lot and all items of personal property belonging to an Owner, and public liability coverage within each Lot and appurtenant Limited Common Elements shall be the sole and direct responsibility of the Owner(s) thereof. The Association, its Executive Board, and/or the managing agent of the Association shall have no responsibility for such insurance. Owners may carry other insurance for their benefit and at their expense, provided that no liability of the carriers issuing insurance obtained by the Association shall be affected or diminished by reason of any such additional insurance carried by any Owner.

Section 7.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the Common Elements for the purpose of determining the amount of insurance required pursuant to the provisions of this Article VII. Any First Mortgagee shall be furnished with a copy of such appraisal upon request.

Section 7.9 Notice of Cancellation. If any insurance that the Association is required to maintain under this Article VII is not reasonably available or is canceled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by U.S. mail to all Owners.

Section 7.10 Prohibition of Increases in Insurable Risks and Certain Activities. Without the prior written approval of the Association, nothing shall be done or kept in any Lot or in or on the Common Elements, or any part thereof, that would result in the cancellation of any insurance on the Common Elements, or any part thereof, or increase in the rate of any insurance on the Common Elements, or any part thereof, over such rates that the Association, but for such activity, would pay. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by the members of the Owner's family and/or such Owner's guests, invitees, or attendants that is in violation of this Section 7.10. At its own initiative or upon the written request of any Owner (and, if the Association determines that further action by it is proper), then, after affording an Owner a reasonable opportunity to be heard, the Association shall enforce the resulting indemnified amount as a Default Assessment determined and levied against the Owner's Lot.

## ARTICLE VIII

### MECHANIC'S LIENS

Section 8.1 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated in any Lot with the consent or at the request of the Owner thereof or his agent, contractor, or subcontractor shall be the basis for the filing of a lien against a Lot of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Lot of any other Owner, the Common Elements, or any part thereof, for labor performed and/or for materials furnished in work on the first Owner's Lot.

Section 8.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association shall enforce the indemnity provided by Section 8.1 hereof by collecting from the Owner of the Lot on which the labor was performed and/or materials furnished, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien. If the Owner of the Lot on which the labor was performed and/or materials furnished refuses or fails to so indemnify within seven days after the Association gives written notice to such Owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 8.2, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Lot.

Section 8.3 Effect of Part Payment. If a lien attributable to labor performed and/or materials furnished on the Community, or any portion thereof, is recorded against two or more

Lots, the Owner(s) of any of the affected Lots may pay to the lienholder the amount of the lien attributable to such Owner's Lot, and the lienholder shall release such Lot from the lien. The amount required to be paid by any such Owner in order to obtain release of his Lot from any such lien shall be equal to the quotient of (a) the amount of the lien, divided by (b) the total number of Lots affected by the lien. Partial payment and release of any such lien with respect to any Lot(s) shall not prevent the lienholder from enforcing his rights against any Lot for which payment has not been received.

## ARTICLE IX

### EASEMENTS AND LICENSES

Section 9.1 Recorded Easements. In addition to all easements, licenses, and rights-of-way of record at or before the recording of this Declaration, the Real Estate, and all portions thereof, shall be subject to the Master Declaration and the easements, licenses, and rights-of-way as shown on the Plat or any supplement thereto, or any portion thereof, and as shown on any map of the Community. Further, the Real Estate, or portions thereof, is, now, or may hereafter be subject to the easements, licenses, and other recorded documents, or any of them, set forth on Exhibit C attached hereto and incorporated herein by this reference.

Section 9.2 Encroachments. Easements are hereby reserved for the Association and Declarant for the purpose of permitting encroachments of certain Common Elements along the front and sides of the Lots as may be reasonably necessary to complete installation, maintenance, repair, and/or restoration of the Common Elements including, without limitation, the private road through the Community and the access drive between Lots 6 and 7 that is intended as a turn-around for fire trucks and other vehicles.

Section 9.3 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties.

Section 9.4 Utilities. There is hereby created a blanket easement for the benefit of the Association upon, across, and through the Common Elements for the installation, replacement, repair, and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible for the Association to erect and maintain the facilities, equipment, and appurtenances on the Common Elements necessary to repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits, and meters. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority of Declarant shall cease and terminate upon the earliest of ten years after recordation of this Declaration in Summit County, Colorado, conveyance by a Declarant of all Lots to Owners other than a Declarant, or when Declarant elects to surrender such right, at which time said reserved

right shall vest in the Association. The easement provided for in this Section 9.4 shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Common Elements.

Section 9.5 Remodeling Easement. Each Owner shall have an easement in, upon, under, and across the Common Elements for the construction and installation of any additional plumbing or other additional services or utilities in the Common Elements in connection with the improvement or alteration of his Lot.

Section 9.6 Maintenance Easement. An easement is hereby granted to the Association and its officers, directors, agents, employees, and assignees upon, across, over, in, and under the Common Elements, and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions that the Association is obligated or permitted to perform pursuant to this Declaration, as the case may be, including the right of the Association to construct and maintain on the Common Elements maintenance and storage facilities for use by the Association.

Section 9.7 Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees, successors, and assignees to enter upon, across, over, in, and under any portion of the Real Estate for the purpose of changing, correcting, or otherwise modifying the grade or drainage improvements on the Real Estate to improve the drainage of water on the Real Estate.

Section 9.8 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within a Lot or may be conveniently accessible only through a Lot. The Owners of other Lots and the Association shall have the irrevocable right, to be exercised by the Association for itself and as agent of such Owners, to have access to each Lot and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements or any utility lines or pipes (whether or not Common Elements) located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Lot. Subject to the provisions of Sections 5.1, 5.3, and 6.8 hereof, damage to a Lot resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repairs within any Lot at the instance of the Association, shall be a Common Expense allocated in accordance with Section 6.2 or 6.8. Damage to a Lot resulting from the installation, movement, repair, emergency repair, removal, or replacement of any utility lines or pipes not servicing more than one Lot shall be the expense of the Owner whose Lot such utility lines and pipes serve and such expense may be reimbursed through an Individual Purpose Assessment. Non-emergency repairs shall be made only during regular business hours on business days after 24 hours' notice to the occupants of the Lot wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergencies, the occupants of the affected Lot shall be notified of impending entry as early as is reasonably possible.

Section 9.9 Declarant's Rights Incidental to Completion of the Community. Declarant, for itself and its successors and assignees, shall have and hereby reserves a right and easement of ingress and egress over, in, upon, under, and across the Common Elements including, without limitation, across all private streets and alleys. Declarant also reserves the

right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the completion of the Community, the sale of the Units, the exercise of the Development Rights and Special Declarant Rights set forth herein; provided, however, that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner or such Owner's family members, guests, or invitees, to or of such Owner's Lot or the Common Elements. The rights under this Section 9.9 shall terminate upon conveyance by Declarant of all Lots (after Declarant has added all Lots to the Community that it has a right to add pursuant to its Development Rights) to Owners other than a Declarant or 20 years after the recording of this Declaration, whichever occurs first.

Section 9.10 Easements Related to Golf Course Reservation for Encroachments. Every Lot is burdened with an easement (i) permitting golf balls hit from the golf course adjacent to the Community (the "Golf Course") to come upon the Lot accidentally, and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of the Lot to retrieve errant golf balls, provided however, that if the Lot is fenced or walled, the golfer shall seek the Owner's or occupant's permission before entry; and (ii) permitting over-spraying arising out of the watering of the Golf Course or applying herbicides, pesticides, or fertilizer to the Golf Course ("Over-spraying"). All Owners, by acceptance and delivery of a deed to a Lot, assume all risks associated with errant golf balls and Over-spraying, and all Owners agree and covenant not to make any claim or institute any action whatsoever against Declarant, the owner(s) of the Golf Course, the Association, or the Golf Course designer arising or resulting from any errant golf balls or Over-spraying, any damages that may be caused thereby, or for negligent design of the Golf Course or positioning of the Lot with respect thereto.

(b) Assumption of Risk; Waiver of Claims. Each Owner by its purchase of a Lot in the vicinity of the Golf Course hereby expressly assumes the risk of noise, personal injury, or property damage caused by maintenance and operation of the Golf Course, including, without limitation: (i) noise from maintenance equipment – it being specifically understood that such maintenance typically takes place around sunrise or sunset; (ii) noise caused by golfers; (iii) lawful use of pesticides, herbicides, and fertilizers in compliance with any declaration of restrictive covenants burdening the Golf Course; (d) view restrictions caused by maturation of trees and shrubbery or additional placement of berms; (e) reduction in privacy caused by golf traffic on the Golf Course or the removal or pruning of shrubbery or trees on the Golf Course; and (f) design of the Golf Course. Each Owner further agrees that neither Declarant, the Association, any of Declarant's affiliates or agents, nor any person or entity owning or managing the Golf Course shall be liable to any Owner or any other person claiming any loss or damage whatsoever including any loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of Owner's Lot to the Golf Course, except to the extent that the activity causing such damage or loss is illegal or in violation of this Declaration.

(c) Common Element Encroachments.

(1) Any owner of the Golf Course shall have the right from time to time upon 30 days' advance written notice to the Association to use the 20-foot building setback within that portion of the Common Elements contiguous to the Golf Course (the "Setback") as

an area for observation by tournament galleries. Temporary, above-ground utility lines may also be installed in the Setback for use solely in conjunction with tournaments and special events at the Golf Course. Such uses shall not interfere with or damage the primary use of the Setback, and the tournament galleries and/or utility lines shall be promptly removed by the Golf Course owner, and all damage repaired promptly by the Golf Course Owner at its sole cost and expense upon conclusion of each such tournament or special event.

(2) The Golf Course owner shall be liable to the Association for any and all un-repaired damage to the Common Elements and to both the Association and the individual Lot Owner(s) for any un-repaired damage to any Lot(s) that occurs in conjunction with the Golf Course uses of the Setback set forth in this Subsection 9.10(c). The Golf Course owner shall indemnify, defend, and hold the Association and all Owners harmless from any and all claims, damages, causes of action, liabilities, charges, costs, fees, and fines of any nature whatsoever arising out of, or in any manner related to, the uses set forth in this Subsection 9.10(c).

Section 9.11 Easements Deemed Created. All conveyances of Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

## ARTICLE X

### RESTRICTIVE COVENANTS

Section 10.1 Residential and Limited Non-Residential Use. Subject to the Master Declaration, Sections 9.9 and 10.3, and Article XIV hereof, Lots shall be used for residential purposes only, including uses that are customarily incidental thereto, and shall not be used at any time for business, commercial, or professional purposes. Notwithstanding the foregoing, an Owner may use his Lot for a professional or home occupation, as long as the applicable zoning ordinances permit such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Community is created thereby. Garages shall be used solely for parking motor vehicles and for storage incidental to residential use, provided such storage does not prevent the simultaneous parking of motor vehicles.

#### Section 10.2 Owner's Maintenance Obligations; Prohibition of Certain Activities.

(a) Each Owner shall be responsible for maintaining the interiors of his Home and for keeping the interior and exterior of the Home's windows clean.

(b) Except as provided in Section 5.1, each Owner shall be responsible for maintenance, repair, and replacement of his own Home and all personal property comprising or located on his Lot. If an Owner fails to perform any cleaning, maintenance, repair, or replacement that is his responsibility under this Declaration, and such failure has not been cured within 30 days after written notice has been given to such Owner by the Association, the Association may perform the cleaning, maintenance, repair, or replacement, and all charges

incurred by the Association in connection therewith, together with an administrative fee in the amount of 25% of such cost, shall be the personal obligation of the Owner and may be levied as a Default Assessment against such Owner and such Owner's Lot. The Association and its officers, contractors, and representatives shall have an easement for access to each Lot and the Common Elements for the purpose of exercising its rights under this Subsection 10.2(b).

(c) Except as provided in Section 5.1, each Owner shall be responsible for maintaining his Lot in a slightly, clean condition, free of debris and unsightly articles of any kind. The storage of gasoline and other flammable materials or noxious or hazardous wastes or materials of any kind within the Home or other storage space is strictly prohibited, except that gasoline and motor oil used as fuel for an Owner's snowmobiles or similar vehicles may be stored on such Owner's Lot in quantities not to exceed ten gallons in the aggregate.

(d) Nothing shall be done or kept on any Lot or in or on the Common Elements, or any part thereof, that would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Elements, or any part thereof, shall be committed by any Owner or Owner's tenant, or by any member of an Owner's or tenant's family, or by a guest, invitee, licensee, or contract purchaser of any Owner or Owner's tenant. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by his tenant or Permittees, that is in violation of this Section 10.2. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by it is proper), after affording an Owner a reasonable opportunity to be heard by the Executive Board, the amounts to be indemnified shall be and constitute a Default Assessment determined and levied against the Owner's Lot.

(e) No modifications may be made to any of the Common Elements by an Owner, other than Declarant, without the prior written consent of the Executive Board and the Master Association, if applicable. No modifications may be made to the exterior of a Home by an Owner, other than Declarant, without the prior written consent of the Executive Board. The Executive Board may require an Owner to submit drawings, plans, specifications, engineering reports, and other information as the Executive Board may reasonably deem to be appropriate, in connection with any request for Executive Board approval of a modification, which approval may be denied, granted, or granted with conditions in the reasonable discretion of the Executive Board.

Section 10.3 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for a Declarant and its employees, agents, and contractors to perform such reasonable activities and to maintain upon portions of the Community such facilities as Declarant deems reasonably necessary or incidental to the completion and sale of Lots and the exercise of Special Declarant Rights and Development Rights, specifically including without limiting the generality of the foregoing, maintaining business offices, storage spaces, signs, model units, sales offices, parking areas, construction trailers and offices, and lighting facilities. Declarant reserves the right to relocate any sales office, model, or management office to any other Lot then owned by a Declarant. The rights retained by Declarant in this Section 10.3 shall terminate upon conveyance by a Declarant of all

Lots to Owners other than a Declarant or 20 years after the recording of this Declaration, whichever occurs first.

Section 10.4 Household Pets. No animals, livestock, poultry, or insects of any kind shall be raised, bred, kept, or boarded in or on the Community, except that domesticated dogs, cats, birds, or fish may be kept on any Lot, subject to all governmental ordinances, laws, and regulations and subject to reasonable rules and regulations that may be adopted by the Executive Board with regard to pets, and provided that no pets may be kept for commercial purposes or be permitted to become a nuisance, as reasonably determined by the Executive Board. The Association shall have, and is hereby given, the right and authority to determine in its reasonable discretion that dogs, cats, or other household pets permitted herein are being kept in such number or in such manner as to be unreasonable or to create a nuisance to other Owners, or that an Owner is otherwise in violation of this Section 10.4, and to take such action or actions as it deems reasonably necessary to correct the same, including prohibiting the pet(s) from being kept on a Lot. An Owner's license to keep household pets granted under this Section is revocable by the Executive Board for violation of the terms hereof and shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s), as well as any costs incurred by the Association as a result of such pet(s), and any such amounts shall be and constitute a Default Assessment subject to and enforceable by the Association in accordance with this Declaration. Each Owner is responsible for cleaning up his pet's waste from his Lot, the Common Elements, and adjacent public ways. Each Owner must comply at all times with applicable ordinances, laws, and regulations governing pets. No animals shall be allowed to be tied or chained to any balconies, patios, porches, or other parts of the Community, and any animals so tied or chained may be removed by the Association or its agents.

Section 10.5 Use of Common Elements. Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Except for those improvements erected or installed by a Declarant in its completion of the Community, and except as provided in Sections 9.9 and 10.3 and Article XIV hereof, nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Executive Board. The Executive Board may require the Owner who requests the approval to submit plans for the alteration to the Executive Board for review, obtain insurance as reasonably required by the Executive Board, and post adequate surety. In reviewing any plans, the Executive Board may engage the services of architects, attorneys, and engineers, and the reasonable cost of such services will be paid by the Owner requesting approval.

Section 10.6 Exterior Changes. Except for those improvements erected, constructed, or installed by a Declarant in its completion of the Community, no exterior additions to, alterations, or decoration of any Home or appurtenant improvements, including but not limited to any structural alterations to any Lot or Common Element, nor any changes in walls or other structures, nor installation of awnings, or any exterior improvement of any type, or any interior improvements visible from the exterior shall be commenced, erected, placed, or maintained without the prior written approval of the Executive Board and subject to the applicable laws, ordinances, regulations, and restrictions, if any, limiting or precluding alteration of the exterior of any Home. The Executive Board may require the Owner who requests the approval to (a) submit plans for the alteration to the Executive Board for review, (b) obtain insurance as



reasonably required by the Executive Board, and (c) post adequate surety. In reviewing any plans, the Executive Board may engage the services of architects, attorneys, and engineers, and the reasonable cost of such services will be paid by the Owner requesting approval.

Section 10.7 Signs and Advertising. Except as hereinafter provided, no signs, including for sale or for rent signs, advertisements, billboards, unsightly objects, or nuisances of any kind shall be placed, erected, or permitted to remain in or on any Lot, nor shall any sign(s) be permitted in or on the Common Elements, without the prior written approval of the Association, not to be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by a Declarant in connection with its sale of Lots shall be permissible, provided that such use by a Declarant shall not interfere with the Owners' use and enjoyment of the Common Elements, their Lots, or their ingress and egress from a public way to the Common Elements or their Lots.

Section 10.8 Lease. The term "lease" as used herein shall include any agreement for the leasing or rental of a Lot and shall specifically include, without limitation, a month-to-month rental. The Owner of a Lot shall have the right to lease his Lot under the following conditions:

(a) All leases for a term of 30 days or more shall be in writing, and a copy of the lease or lease form shall be delivered to the Executive Board or the Association's managing agent (with the economic terms of such lease deleted by the Owner, if so desired) prior to the effective date of the lease.

(b) All leases shall provide that the terms of the lease and lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and rules and regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease. Any lessee that violates the provisions of this Declaration or rules and regulations adopted by the Executive Board shall be deemed in default, and the Association may bring an action to terminate such lease and the lessee's occupancy of the premises.

(c) Owners who rent their Homes for less than 30 days at a time need not do so pursuant to the terms of a written lease, but all oral leases shall be subject to the provisions of Subsection 10.8(b) above, and each such Owner shall remain fully responsible for the compliance of his lessee with this Declaration, the Articles of Incorporation, the Bylaws, and all rules and regulations of the Association.

Section 10.9 Nuisances. No nuisance shall be allowed on the Community, nor any use or practice that is the source of annoyance to residents or that interferes with the peaceful enjoyment or possession and proper use of the Community by its residents, as reasonably determined by the Executive Board including, without limitation, unreasonably noxious odors, unreasonably loud noise, and unreasonably bright lights. 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 Community without the prior written approval of the Executive Board. No firearms shall be discharged upon any portion of the Community, and no open fires shall be lighted or permitted on any portion of the Community. As used herein, the term "nuisance" shall not include any activities of a Declarant in regard to the

completion of the Community or any uses of Lot permitted in this Declaration. All parts of the Community shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no activities reasonably deemed by the Executive Board as offensive and no unlawful use shall be permitted or made of the Community or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

Section 10.10 Hazardous Activities. No activity shall be conducted, and no improvement shall be constructed, on any property within the Community that is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Community, and no open fires shall be lighted or permitted within the Community except within barbeque grills properly operated. No part of the Community may be used for storage of explosives, combustible material, or other volatile and/or incendiary materials or devices, except that gasoline and oil products used in snowmobiles and similar recreational vehicles, not to exceed ten gallons, may be stored by Owners in their Homes or garages on their Lots as provided in Section 10.2(c) above.

Section 10.11 Restrictions on Exterior Electronic Devices. Subject to applicable law, and subject to reasonable rules and regulations adopted by the Executive Board, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station, or similar device of any type ("Electronic Device") shall be erected, installed, or maintained on the Common Elements. Subject to applicable law, no more than one Electronic Device shall be permitted on a Lot. All costs associated with the installation or maintenance of any Electronic Device by an Owner, including costs of repair, replacement, improvement, and maintenance of the structure on which the Electronic Device is affixed, erected, and/or installed shall be the sole responsibility of that Owner.

## ARTICLE XI

### TERMINATION, DAMAGE, DESTRUCTION

Section 11.1 Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Community in the event of its termination, destruction, damage, or condemnation, including the repair, replacement, and improvement of any improvements, Lots, Common Elements, or other portions of the Community that have been destroyed, damaged, condemned, or become obsolete. Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from a Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place, and stead for the purpose of dealing with the Community upon its termination, damage, destruction, obsolescence, or condemnation as hereinafter provided. As attorney-in-fact, the Association by its president and secretary or assistant secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instruments with respect to the interest of

an Owner that are necessary and appropriate to exercise the powers herein granted. If the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within 30 days after either such event. At such meeting a new attorney-in-fact shall be appointed to deal with the Community upon its termination, destruction, damage, obsolescence, or condemnation. Such appointment must be approved by the Owners representing an aggregate of at least 67% of the eligible votes in the Association and at least 67% of the Eligible Holders (based upon one vote for each First Mortgage held).

#### Section 11.2 Termination of Community.

(a) The Community shall continue indefinitely unless and until it is terminated by the taking of all of the Lots by eminent domain or by agreement of the Owners holding at least 67% of the votes in the Association and Eligible Holders holding 67% of the First Mortgages (based on one vote for each First Mortgage held). The agreement of the Owners and Eligible Holders to terminate must be evidenced either by their execution of a termination agreement ("Termination Agreement") (or a ratification thereof) in the same manner as a deed, by the requisite number of Owners and Eligible Holders, or by the certificate of the secretary of the Association in lieu of the signature of each consenting Owner and Eligible Holder. The Termination Agreement must specify a date after which it will be void unless it is recorded before that date. The Termination Agreement may provide that all of the Common Elements and Lots must be sold following termination and the minimum terms of sale for any of the Real Estate to be sold following termination. If any of the Real Estate is to be sold following termination, title to that Real Estate, upon termination, vests in the Association as trustee for the holders of all of the interests in the Lots. The Termination Agreement and all ratifications thereof must be recorded in the Office of the Clerk and Recorder of the Summit County, and is effective only upon recordation.

(b) After the recording of the Termination Agreement, the Community will be sold, and the Association, on behalf of the Owners, may contract for such sale, but the contract is not binding on the Owners unless approved by the same vote of Owners and Eligible Holders required for approval of the Termination Agreement. After approval of the sale, the Association has all power necessary and appropriate to close the sale free and clear of the provisions contained in this Declaration, the Articles of Incorporation, and the Bylaws. Until the sale has concluded, and the proceeds have been distributed, the Association shall continue in existence with all the powers it had before termination. Proceeds of the sale must be distributed to the Owners and lienholders as their interest may appear, in accordance the provisions set forth below, taking into account the value of property owned or distributed that is not sold so as to preserve the proportionate interests of each Owner with respect to all property cumulatively. Unless otherwise specified in the Termination Agreement, until title to the Community has been transferred pursuant to a sale, each Owner and his successors-in-interest have an exclusive right to occupancy of a portion of the real estate that formally constituted the Lot. During the period of that occupancy, each Owner and the Owner's successors-in-interest remain liable for all Assessments and other obligations imposed upon the Owners by the Act or this Declaration. Following termination of the Community, the proceeds of any sale of real estate, together with any insurance proceeds (if the termination occurs in connection with a damage or destruction) and the assets of the Association shall be held by the Association as trustee for the Owners and the holders of liens on the Lots as their interest may appear.

(c) The respective interests of the Owners are equal to the fair market values of their respective Lots and plus an equal share of the value of the Common Elements before termination, as determined by one or more independent MAI appraisers selected by the Association; except if the Community is destroyed by fire or other catastrophe, a post-destruction appraisal of fair market values shall be made. The decision of the independent appraisers shall be distributed to the Owners and becomes final unless disapproved within 30 days after distribution by Owners holding at least 25% of the total votes in the Association. The proportion of any Owner's interest in the Common Elements to that of all Owners is determined by dividing the fair market value of that Owner's Lot by the total fair market value of all Lots.

(d) The proceeds available for distribution to the holders of interests in Lots after a termination shall be allocated to each Lot in accordance with its interest as provided above, and each Lot's share of such proceeds shall be deposited into a separate account identified by the Lot designation and the name of the Owner and First Mortgagee thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of such account, without contribution from one account to another, toward payment of the liens encumbering the Lot represented by such separate account, in the following order: (i) for the payment of taxes and special assessment liens in favor of any governmental assessing entity; (ii) for the payment of any Assessments that take priority over the lien of a First Mortgage pursuant to Section 6.10 of this Declaration and the Act; (iii) for the payment of the lien of any First Mortgage; (iv) for the payment of unpaid Assessments, charges, and fees and all costs, expenses, and fees incurred by the Association, including customary expenses of sale; (v) for payment of junior liens and encumbrances in the order, and to the extent, of their priority; and (vi) the balance remaining, if any, shall be paid to the Owner(s) of the Lot.

### Section 11.3 Damage or Destruction.

(a) "Repair and Reconstruction" of the improvements, as used in the succeeding subsections, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Lot and the Common Elements having substantially the same boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Community's original architectural plan and scheme to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of Repair and Reconstruction in accordance with the provisions hereinafter set forth:

(b) Any loss covered by the property insurance policy maintained by the Association must be adjusted with the Association, and the insurance proceeds will be paid to the Association or an insurance trustee designated for such purpose and not to the holder of any Security Interest (a "lienholder"). The insurance trustee or the Association shall hold such insurance proceeds in trust for the Owners and lienholders as their interest may appear. Subject to the provisions of Subsection 11.3(c) below, the proceeds must be disbursed first to the repair or restoration of the damaged property. The Association, Owners, and lienholders shall not be entitled to receive payment of any portion of the proceeds, unless there is a surplus of proceeds after the property has been completely Repaired and Reconstructed, or the Community is terminated in accordance with Section 11.2. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for

deductibles, and such other matters of claims adjustment. The Association shall have full authority, right, and power as attorney-in-fact to cause the Repair and Reconstruction of the improvements. Assessments shall not be abated during the period of insurance adjustment and Repair and Reconstruction. In addition, to the extent that the Association settles claims for damages to any real property, the Association shall have authority to assess negligent Owners or their tenants causing such loss and benefiting from such Repair and Reconstruction all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of Repair and Reconstruction. If more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Owner a *pro rata* share of any deductible paid by the Association.

(c) Any portion of the Community for which insurance is required to be maintained by the Association under this Declaration must be Repaired and Reconstructed promptly by the Association unless (i) the Community is terminated in accordance with Section 11.2, in which case the provisions of that section apply; (ii) Repair and Reconstruction would be illegal under any state or local statute or ordinance governing health or safety; or (iii) the Owners who hold 80% of the votes in the Association vote not to rebuild, and every Owner of an assigned Limited Common Element that will not be rebuilt concurs.

(d) If the insurance proceeds are insufficient to Repair and Reconstruct the improvements, such damage or destruction shall be promptly Repaired and Reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a Special Assessment. Such Special Assessment shall be assessed against all Lots in accordance with Section 6.8 hereof, but without the requirement of complying with the budget approval process set forth in Section 6.4 above. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the Repair and Reconstruction of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the aforesaid Special Assessment. Notwithstanding the foregoing, the Association shall have authority to assess negligent Owners causing any loss all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of Repair and Reconstruction.

(e) Except with respect to Repair and Reconstruction costs for which any Owner is responsible by reason of his negligent act or otherwise, the cost of Repair and Reconstruction of any portion of the Common Elements in excess of insurance proceeds and reserves shall be a Common Expense. If all of the Common Elements are not Repaired and Reconstructed, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other persons will be distributees, the insurance proceeds attributable Limited Common Elements that are not rebuilt must be distributed to the Owners of the Lots to which those Limited Common Elements were appurtenant or to lienholders, as their interests may appear.

## ARTICLE XII

### AMENDMENT OF DECLARATION

#### Section 12.1 Amendment.

(a) Except for amendments that may be executed by a Declarant or by the Association under the provisions of this Declaration or the Act, and subject to the applicable requirements of Article XIII with respect to approval by Eligible Holders, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time, by vote or agreement of Owners of Units holding at least 67% of the votes in the Association, and Declarant, provided that Declarant's right to consent under this Section 12.1 shall expire on the first to occur of the conveyance by a Declarant of all Lots to Owners (other than a Declarant) or 20 years after the date this Declaration is recorded in the real property records Summit County, Colorado.

(b) Every amendment to the Declaration must be recorded in the Office of the Clerk and Recorder of Summit County, and is effective only upon recording. Except to the extent expressly permitted by this Declaration and Act, no amendment may create or increase any Special Declarant Rights, increase the number of Lots in the Community, or change the boundaries of any Lot or the Allocated Interests of a Lot, or the uses to which any Lot is restricted, in the absence of consent of the Owners holding at least 67% of the votes in the Association. Amendments to the Declaration required by this Article XII to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 12.2 Technical Amendment. To the extent allowed by the Act, Declarant hereby reserves and is granted the right and power to record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, technical amendments to this Declaration, Articles of Incorporation, and/or the Bylaws, at any time prior to the conveyance by a Declarant of all Lots to Owners (other than a Declarant) or 20 years after the date this Declaration is recorded in Summit County, Colorado, whichever occurs first, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of this Declaration.

Section 12.3 Special Amendment. To the extent allowed by the Act, Declarant hereby reserves and is granted the right and power to record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, special amendments to this Declaration, the Articles of Incorporation, and/or the Bylaws, at any time prior to the conveyance by a Declarant of all Lots to Owners (other than a Declarant) or 20 years after the date this Declaration is recorded in Summit County, Colorado, whichever occurs first, in order to comply with any requirements of any of the Mortgage Agencies or to induce any of the Mortgage Agencies to make, purchase, sell, insure, or guarantee one or more First Mortgages.

Section 12.4 Recording of Amendments. To be effective, all amendments to, or revocation or termination of, this Declaration must be recorded in the Office of the Clerk and Recorder of Summit County, Colorado, and must contain evidence of the required approval thereof. The recording of a certificate of the secretary of the Association shall satisfy the requirement of evidence of the required approval if it certifies that Owners representing the requisite percentage of the Lots, and Eligible Holders representing the requisite percentage of Eligible Holders, if required, have given notarized, written consent to the amendment. The secretary of the Association must further certify that originals of such written consents by Owners and Eligible Holders, along with the recorded amendment, are in the corporate records of the Association and available for inspection.

### ARTICLE XIII

#### FIRST MORTGAGEES

Section 13.1 Member and First Mortgagee Approval. Subject to Article XIV hereof and the other rights of Declarant reserved herein, but notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

(a) Unless it has obtained the prior written consent of Owners holding at least 67% of the votes in the Association and 67% of the Eligible Holders (based on one vote for each First Mortgage held):

(1) seek to abandon or terminate the Community, whether by act or omission, except:

(A) for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or

(B) for amendments to this Declaration, the Articles of Incorporation, or Bylaws made as a result of destruction, damage, or condemnation of the Real Estate or improvements thereon.

(2) except as permitted by Articles XI and XIV, change the *pro rata* interest or obligations of any individual Lot for the purpose of levying Assessments or charges or allocating distributions of property insurance proceeds or condemnation awards;

(3) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (excluding the granting of permits, licenses, and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Community), except in accordance with Section 3.2 above and upon at least 67% of the votes in the Association, including 67% of the votes allocated to Lots not owned by Declarant;

(4) partition or subdivide any Lot; or

(5) use property insurance proceeds for losses to any part of the Community (whether to Lots or Common Elements) for other than the repair, replacement, or reconstruction of such property in accordance with the procedures set forth in Section 11.3 hereof, except as may be provided by statute in the case of substantial loss to such Lots and/or Common Elements.

(b) Unless it has obtained the prior written consent of at least 67% of the total allocated votes in the Association, and 51% of the total allocated votes of the Eligible Holders (based upon one vote for each First Mortgage owned), add or amend any material provisions of this Declaration, the Articles of Incorporation, or the Bylaws that establish, provide for, govern, or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:

- (1) voting rights;
- (2) increases in Assessments that raise the previously-assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- (3) reductions in reserves for maintenance, repair, and replacement of the Common Elements;
- (4) responsibility for maintenance and repair of any portion of the Community;
- (5) reallocation of rights to use of the Common Elements, except as contemplated under Article XIV hereof;
- (6) convertibility of Lots into Common Elements or Common Elements into Lots;
- (7) expansion or contraction of the Community or the addition, annexation, or withdrawal of property to or from the Community;
- (8) insurance, including, but not limited to, fidelity bonds;
- (9) imposition of any restrictions on leasing of Lots;
- (10) imposition of any restriction on the right of any Owner to use his Lot or the Common Elements or to sell or transfer his Lot;
- (11) any decision by the Association to assume self-management of the Association, when professional management has previously been required by this Declaration or by any Eligible Holder or any insurer or guarantor of a First Mortgage;
- (12) any restoration or repair of the Community, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration, the Articles of Incorporation, and the Bylaws;



- (13) any action to terminate the legal status of the Community; or
- (14) any provisions that are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages.

Section 13.2 Notice of Action. Upon written request to the Association, stating its name, address, and the Lot number on which it holds (or insures or guarantees) a First Mortgage, a First Mortgagee, insurer, or guarantor of a First Mortgage which has submitted such written request (referred to herein as an "Eligible Holder") shall be entitled to timely written notice of:

- (a) Any condemnation loss or casualty loss that affects either a material portion of the Community or any Lot subject to a First Mortgage held, insured, or guaranteed by such Eligible Holder;

- (b) Any delinquency in the payment of Assessments or charges owed to the Association by the Owner of the Lot subject to a First Mortgage held, insured, or guaranteed by such Eligible Holder or any default by such Owner in any obligation under the Declaration, Articles of Incorporation, or Bylaws if the Executive Board has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of 60 days;

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

- (d) Any proposed action that would require the consent of a specified percentage of Eligible Holders as provided in this Article XIII.

Section 13.3 Notice of Objection. Unless an Eligible Holder or an insurer or guarantor of a First Mortgagee entitled to consent to certain amendments or actions as provided in this Article XIII provides the secretary of the Association with written notice of its objection, if any, to the proposed amendment or action within 30 days after it is given notice of the proposal by certified or registered mail, return receipt requested, the Eligible Holder or other party will be deemed conclusively to have approved of the proposed amendment or action, and the secretary of the Association may so state in any document.

Section 13.4 Association Books and Records, Financial Statements, Audit. The Association shall maintain copies of this Declaration, the Articles of the Incorporation, the Bylaws, and any rules and regulations relating to the Community together with all amendments to any such documents, as well as the Association's books, records, and financial statements available for inspection by the Owners, by prospective purchasers of Lots, and by holders, insurers, and guarantors of First Mortgages that are secured by Lots. The Association shall make available to prospective purchasers of Lots current copies of this Declaration and the Articles of Incorporation, the Bylaws, any rules and regulations of the Community, and the most recent annual financial statement prepared by the Association. The documents will be made available by advance arrangement during regular business hours. The Association shall not be required to prepare audited statements, unless requested in writing to do so by an Eligible Holder. If there is no audited statement available for the immediately preceding fiscal year, the Association will prepare and furnish one within 120 days after the end of the Association's fiscal year-end or after receipt of the request (if an audited financial statement was not available and the request is made

more than 120 days after the Association's fiscal year-end for the prior fiscal year) to any Mortgage Agency or Eligible Holder that has an interest or prospective interest in a Lot after the Association receives a request therefor from such Mortgage Agency or Eligible Holder.

#### ARTICLE XIV

##### DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 14.1 Development Rights. In addition to the rights reserved in Sections 9.9 and 10.3 above, Declarant hereby reserves the following Development Rights, which Development Rights are appurtenant to, benefit, and burden all of the Real Estate that is subject to this Declaration:

(a) The right to create or construct additional Homes, Common Elements, and Limited Common Elements and to convert Lots and Homes into Common Elements.

(b) The right to withdraw all or any part of the Common Elements from the provisions of this Declaration.

(c) The right to withdraw Lots from the provisions of this Declaration if such Lots are owned by Declarant.

(d) The right to enlarge or expand the size of the Lots; the right to reduce or diminish the size of the Lots, the right to reduce or diminish the Common Elements, the right to relocate boundaries between adjoining or otherwise contiguous Lots, the right to enlarge the Common Elements, and the right to complete or make improvements, to the extent that such expansion rights are not prohibited by the Master Declaration and as may be approved by the governmental authorities having jurisdiction over the Community.

Section 14.2 Special Declarant Rights. In addition to the rights reserved in Section 9.9 and 10.3 above, Declarant hereby reserves the following Special Declarant Rights, which Special Declarant Rights are appurtenant to, benefit, and burden, all of the Real Estate that is subject to this Declaration: (a) maintain sales offices, management offices, and models on the Lots owned by Declarant or on the Common Elements; (b) maintain signs and advertising in the Community to advertise the Community or other communities developed or managed by, or affiliated with the Declarant; (c) enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulations of parking and/or recreational facilities and/or Common Elements that may or may not be a part of the Community; (d) merge or consolidate the Community with another "common interest community" as that term is defined in the Act; (e) appoint or remove any officer of the Association or any member of the Executive Board during the Declarant Control Period; (f) exercise any additional reserved right created by any other provision of this Declaration; and (g) exercise any "development rights" reserved or allowed in the Act.

Section 14.3 Additional Rights Reserved by Declarant. Declarant hereby reserves the following additional rights, which additional reserved rights are appurtenant to, benefit, and burden, all of the Real Estate that is subject to this Declaration:

(a) The right to repair any portion of the Community, the right to perform construction work, and the right to store materials on Lots owned by Declarant and in Common Elements, the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a First Mortgage. Declarant and its assignees have such easements through the Common Elements as may be reasonably necessary for exercising reserved rights assigned under this Declaration. Declarant also has a reserved easement for access and utilities to any properties which Declarant may have the right to add, even if not added to the Community. Such easements include the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the real estate;

(b) The right to allocate areas that constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the Owners of the Lots to which those specified areas shall become appurtenant. The Declarant may allocate or assign Limited Common Elements (i) by making such an allocation in a recorded instrument, or (ii) in the deed to the Lot to which such Limited Common Element shall be appurtenant, or (iii) by recording an appropriate amendment or supplement to this Declaration. Such allocations by the Declarant may be made as a matter of reserved right.

(c) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary;

(d) The right to amend the Declaration in connection with the exercise of any Development Right.

(e) The right to establish, from time to time, by dedication or otherwise, public streets and utility and other easements for purposes including but not limited to public or private access, paths, walkways, skyways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions.

(f) Declarant or its assignees may exercise any reserved rights on all or any portion of the Real Estate in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights.

Section 14.4 Term of Reservation of Reserved Rights. If any right reserved herein by Declarant for the benefit of Declarant is a "Development Right" or a "Special Declarant Right" as such terms are defined herein or in the Act, then such right shall expire in accordance with the provisions reserving the right in question, or if no such expiration is identified, then such right shall expire 20 years from the date this Declaration is recorded. Any such unexpired rights may be transferred by Declarant to any person by an instrument executed by Declarant and its transferee, describing the rights transferred and recorded in the Office of the Clerk and Recorder for Summit County in compliance with Section 304 of the Act.

## ARTICLE XV

### MISCELLANEOUS

Section 15.1 Period of the Community. The Community created by this Declaration shall continue as a "planned community" pursuant to the Act until this Declaration is terminated in any manner provided in this Declaration or by law.

Section 15.2 Supplemental to Law. The provisions of this Declaration shall be in addition and supplemental to the Act, as it may be amended from time to time, and to all other applicable provisions of law.

Section 15.3 Conveyance of Lots. All Lots, whether or not the instrument of conveyance or assignment refers to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

Section 15.4 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges, and other provisions contained in this Declaration, as amended, may be by any proceeding at law or in equity ("Judicial Proceeding") against any person(s) or the Association violating or attempting to violate any such provision. The Association, Declarant, or any aggrieved Owner shall have the right to institute, maintain, and/or prosecute any Judicial Proceeding in any court of competent jurisdiction, or if all parties to a dispute agree, by binding arbitration. In any Judicial Proceeding, the prevailing party shall recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court or arbitrator. The Association, upon an affirmative vote of the majority of the Executive Board, shall also have the right to levy and collect charges for the violation of any provision of this Declaration and any rules and regulations promulgated hereunder, which charges shall be a perpetual lien in favor of the Association against each Unit, as more fully provided in Article VI hereof. Failure of the Association, Declarant, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 15.5 Notices, Registration of Mailing Address. Each Owner and each First Mortgagee shall register its mailing address with the Association. Notices or demands intended to be served upon the Association, any such Owner or First Mortgagee shall be delivered by messenger or sent by first class mail, postage prepaid, addressed to the Association at its address set forth below (or such other address of which it gives notice) or to such other person or entity addressed in the name of such person or entity, at such registered address. If any Owner fails to so notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. The initial address of the Association is c/o Western Golf, Inc., 3201 East Third Avenue, Suite 200, Denver, CO 80206.

Section 15.6 Non-Waiver. Failure by a Declarant, the Association, any Owner, First Mortgagee, or any other person or entity to enforce any covenant, condition, restriction,

casement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 15.7 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

Section 15.8 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 15.9 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision hereof.

Section 15.10 Conflicts in Documents. In case of any conflict between this Declaration and the Master Declaration, the Articles of Incorporation, or the Bylaws, the Master Declaration shall control. In case of any conflict between this Declaration, the Articles of Incorporation, and the Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 15.11 Rule Against Perpetuities. Unless exempted from the application of the rule against perpetuities under the provisions of the Act or other applicable law, any interest in property granted under this Declaration shall vest, if at all, within the period measured by the life of the survivor of the grandchildren of George H.W. Bush, former President of the United States of America, who are living on the date of recording of this Declaration in the office of the Clerk and Recorder of Summit County, Colorado, plus 21 years.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set its hand and seal this 22nd day of March, 2005.

**DECLARANT:**

WESTERN GOLF, INC.,  
a Colorado corporation

By:

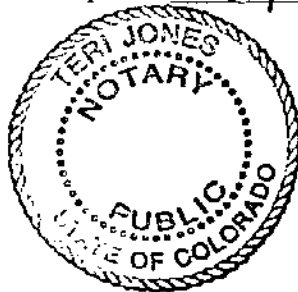
  
Brian N. Novak, Vice President

STATE OF COLORADO           )  
CITY AND                        )  
COUNTY OF DENVER         ) ss.

The above and foregoing Declaration of Covenants, Conditions, and Restrictions of the Homestead at Three Peaks was acknowledged before me this 22nd day of March, 2005, by Brian N. Novak, as Vice President of Western Golf, Inc., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: 10/23/08



  
Notary Public

**EXHIBIT A  
TO  
THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF THE  
HOMESTEAD AT THREE PEAKS**

Legal Description of the Property

Tracts A and B, The Homestead at Three Peaks, according to the Plat thereof recorded March 26, 2004 at Reception No. 750882, County of Summit, State of Colorado.

**EXHIBIT B  
TO  
THE DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS  
OF THE  
HOMESTEAD AT THREE PEAKS**

Annexable Real Estate

Lots 1 through 10, The Homestead at Three Peaks, according to the Plat thereof recorded March 26, 2004 at Reception No. 750882, County of Summit, State of Colorado.



**EXHIBIT C  
TO  
THE DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS  
OF THE  
HOMESTEAD AT THREE PEAKS**

Easements and Licenses

1. Any and all taxes and assessments.
2. Right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, and a right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent recorded February 4, 1913 in Book 100 at Page 110, Patent recorded March 4, 1920 in Book 105 at Page 220 and in Patent recorded June 16, 1934 in Book 105 at Page 507 and in Patent recorded August 8, 1921 in Book 105 at Page 276.
3. Right of proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded June 16, 1955, in Book 147 at Page 390.
4. Right of way for ditches or canals constructed by the authority of the United States as reserved in United States Patent recorded September 9, 1924, in Book 105 at Page 366.
5. Mineral reservation for ½ of all the minerals as reserved by Helen King and Lee King in document recorded July 13, 1957 in Book 151 at Page 373 under Reception No. 78247.
6. Right of way easement granted to Western Slope Gas Company as contained in document recorded September 16, 1969 in Book 197 at Page 510 under Reception No. 113793.
7. The effect of Ordinance No. 99 Zoning Territory Annexed, recorded July 6, 1981, under Reception No. 225567 and Ordinance No. 84 annexing the property to the Town of Silverthorne recorded August 7, 1981, under Reception No. 227036.
8. Terms, conditions and provisions of Agreement relating to the annexation and zoning of Eagles Nest and to the extension of municipal water and sewer utility services recorded December 11, 1982 under Reception No. 249358.
9. Terms, conditions and provisions of Agreement between Centron Corporation and Oxbow Ranch Company recorded December 15, 1982 under Reception No. 249361.

10. Terms, conditions and provisions of Right-of-Way Agreement recorded February 16, 1984 under Reception No. 273120.
11. Terms, conditions and provisions of Development Plan Agreements between the Town of Silverthorne and Centron Corporation recorded December 15, 1982 under Reception No. 249359 and recorded January 7, 1983 under Reception No. 250391 and recorded June 5, 1985 under Reception No. 297954 and Amendment recorded January 23, 1995 under Reception No. 485074 and Amendment recorded May 21, 1999 under Reception No. 596435.
12. Restrictive covenants, which do not contain a forfeiture or reverter clause, as contained in instrument recorded June 14, 1983, under Reception No. 257911 and as amended in instrument recorded February 16, 1984, under Reception No. 273119 and as amended in instrument recorded June 5, 1985, under Reception No. 297953 and as amended in instrument recorded December 26, 1985 under Reception No. 309536, and as amended in instrument recorded June 25, 1992 under Reception No. 423894 and as amended in instrument recorded May 28, 1993 under Reception No. 443946 and Certificate Amending and Restating Design Guidelines recorded December 28, 1999 under Reception No. 614077.
13. The effect of Resolution Imposing a Development Fee, recorded December 19, 1991, under Reception No. 414585.
14. Terms, conditions and provisions of Architectural Design Guidelines recorded December 28, 1999 at Reception No. 614076.
15. Terms, conditions and provisions of Utility Easement recorded September 17, 1984 at Reception No. 284434.
16. Terms, conditions and provisions of Eagles Nest Golf Course Filing No. 6 PUD recorded August 31, 2001 at Reception No. 661522.
17. Easements, notes and dedications as shown and reserved on the recorded Plat of Eagles Nest Golf Course Filing No. 6 recorded August 31, 2001 under Reception No. 661523 and Plat Correction recorded January 3, 2002 under Reception No. 672899.
18. Terms, conditions and provisions of Town of Silverthorne Site Improvements Agreement for Eagles Nest Golf Course Filing No. 6 recorded August 31, 2001 at Reception No. 661524.
19. Terms, conditions and provisions of Town of Silverthorne Site Improvements Agreement for the Cabins at Eagles Nest Golf Course Filing No. 6 recorded October 26, 2001 at Reception No. 666455.
20. Terms, conditions and provisions of Resolution 02-13 endorsing the Mandatory provisions of the Ten Mile Master Plan recorded January 28, 2002 at Reception No. 674978 and re-recorded January 30, 2002 under Reception No. 675056.

21. Terms, conditions and provisions of Declaration of Cart Path Easement recorded September 25, 2002 at Reception No. 696726.

