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**DECLARATION
OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
OSPREY RESERVE**

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
OSPREY RESERVE

THIS DECLARATION is made by Osprey Reserve, L.L.C., a Colorado limited liability company, P.O. Box 5265, Frisco, Colorado 80443 ("Declarant").

ARTICLE I - STATEMENT OF PURPOSE AND DECLARATION

Section 1.1. **Owner.** Declarant is the owner of the property located in the Town of Silverthorne, County of Summit, State of Colorado, described as follows:

LOTS 1A, 1B, 2A, 2B, 3A, and 3B, OSPREY RESERVE FIRST AMENDMENT, a resubdivision of Tract A, OSPREY RESERVE, according to the Plat recorded 4-1-05 under Reception No. 786274, County of Summit, State of Colorado (the "Property").

Section 1.2. **Purpose.** The purpose of this Declaration is to create a planned community which will be known as "Osprey Reserve", (the "Project") all in accordance with the Colorado Common Interest Ownership Act, Colo. Rev. Stat. §38-33.3-101 through §38-33.3-319 (the "Act"), as amended and supplemented from time to time.

Section 1.3. **Intention of Declarant.** Declarant intends to protect the value and desirability of the Project, further a plan for the improvements, sales and ownership of the Project, create a harmonious and attractive development, and promote and safeguard the health, comfort, safety, convenience and welfare of the owners of Lots in the Project.

Section 1.4. **Development and Use.** The initial number of Lots in the project is six (6). The Project may be expanded as provided in that Article entitled Development Rights, and upon completion will consist of a maximum of eighteen (18) Lots. The identification number of each Lot is shown on the Plat for Osprey Reserve recorded concurrently herewith in the real property records of Summit County, Colorado (the "Plat").

Section 1.5. **Imposition of Covenants.** To accomplish the purposes indicated above, Declarant hereby declares that from the date of recording of this Declaration forward, the Property shall constitute a planned community under the Act, and shall be held, sold and

conveyed subject to the following covenants, conditions, restrictions and easements (collectively, these "Covenants"). These Covenants shall run with the land and be binding upon all persons having any right, title or interest in all or any part of the Property (including Declarant and their heirs, successors and assigns, and their tenants, employees, guests and invitees. These Covenants will inure to the benefit of each Owner of the Property. All Owners (including Declarant) are subject to all the rights and duties assigned to Owners under these covenants. During the period that Declarant is the Owner of a Lot, Declarant also enjoys the same rights and assumes the same obligations as they relate to each Lot owned by Declarant.

Section 1.6. **Governing Documents.** The Osprey Reserve Governing Documents consist of the following, as they may be amended:

GOVERNING DOCUMENTS	
Articles of Incorporation (filed with the Colorado Secretary of State)	establish the Association as a non-profit corporation under Colorado law
By-Laws (the Board of Directors adopts)	govern the Association's internal affairs, such as voting, elections, meetings, etc.
Declaration (recorded in the Public Records)	creates obligations which are binding upon the Association and all present and future owners of property in Osprey Reserve
Supplemental Declaration (recorded in the Public Records)	adds property to Osprey Reserve; <i>may</i> create easements and impose additional obligations or restrictions on such property
Restrictions and Rules (Board or Owners may adopt)	govern use of property, activities, and conduct within Osprey Reserve.
Board Resolutions (Board Adopts)	establish rules, policies and procedures for internal governance and Association activities, regulate operation and use of Common Elements

ARTICLE II - DEFINITIONS

Section 2.1. **Definitions.** The following words when used in this Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

A. **“Act”** means the Colorado Common Interest Ownership Act, C.R.S. Sections 38-33.3-101, et seq., as it may be amended from time to time.

B. **“Agencies”** shall mean and collectively refer to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Veterans Administration (VA), the Colorado Housing Finance Authority (CHFA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

C. **“Articles”** means the Articles of Incorporation of Osprey Reserve Owners Association on file with the Colorado Secretary of State, and any amendments which may be made.

D. **“Assessments”** means the Periodic, Supplementary, Special and Default Assessments levied pursuant to that Article named Assessments below.

E. **“Association”** means the Osprey Reserve Owners Association, a Colorado non-profit corporation, and any successor entity by whatever name, charged with the duties and obligations of administering the Project.

F. **“Governing Documents”** means this Declaration, the Plat, the Articles and the Bylaws of the Association, and any procedures, rules, regulations or policies adopted under such documents by the Association.

G. **“Bylaws”** means the Bylaws adopted by the Association as amended from time to time.

H. **“Common Elements”** means all the Property, except the Lots and the Expansion Property, which the Association owns for the common use and enjoyment of the Owners on a non-exclusive basis as provided below. The Common Elements include the unimproved land surrounding the Lots, the water and sewer lines and facilities serving the project which are not owned by any public entity, and the private access roads. The term Common Elements shall also include the Limited Common Elements, which are exclusively reserved for use by an Owner or as otherwise provided in this Declaration.

I. **“Common Expenses”** means:

(i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements and property owned by the Owners; (B) providing facilities, services and other benefits to Owners and their guests; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (E) regulating and managing the Project; and (F) operating the Association; and

(ii) reserves for any such costs, expenses and liability.

J. **"Declarant"** means Osprey Reserve, L.L.C., a Colorado limited liability company and its successors and assigns.

K. **"Declaration"** means and refers to this Declaration of Covenants, Conditions and Restrictions for Osprey Reserve, a planned community in Summit County, Colorado.

L. **"Eligible Mortgagee"** means a First Mortgagee (as hereinafter defined) who (i) is also a bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, and (ii) has notified the Association, in writing, of its name and address, and that it holds the First Mortgage on one or more Lots. The notice must include the Lot number and street address of the Lot on which it has such security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the information and afforded the rights described in Article XIII below.

M. **"Executive Board"** means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

N. **"Expansion Property"** means Tract A, which is identified on the Plat as "Expansion Property" and which may be converted into additional Lots, Common Elements and Limited Common Elements as provided in that Article entitled Development Rights.

O. **"First Mortgage"** means any Deed of Trust or Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

P. **"First Mortgagee"** Means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Q. **“Home”** means an improved Lot which contains an attached residence for a single family.

R. **“Limited Common Elements”** means a portion of the Common Elements allocated by the Declaration or Plat for the exclusive use of one or more Owners but fewer than all the Owners; the Limited Common Elements are depicted on the Plat and described in this Declaration and as set forth in the Act. Sidewalks, decks and patios or other fixtures designed to serve a single home, but located outside the Lots boundaries, are Limited Common Elements allocated exclusively to that Lot. Without limiting the foregoing, the Limited Common Elements shall also include any driveway, entryway or porch adjacent to a Home.

S. **“Lot”** refers to the Lots described on the Plat whether improved or unimproved, which may be independently owned and is intended for development, use and occupancy as an attached residence for a single family. Lot refers to the land as well as all improvements constructed on the Lot. An improved Lot is also referenced in this Declaration as a Home.

T. **“Manager”** shall mean a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

U. **“Member”** means every person or entity who holds membership in the Association.

V. **“Mortgage”** means any mortgage, deed of trust or other document which encumbers any Lot or interest therein as security for payment of a debt or obligation.

W. **“Mortgagee”** means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

X. **“Owner”** means the owner of record (including Declarant), whether one or more persons or entities, of fee simple title to any Lot, and “Owner” also includes the seller under a contract for deed covering a Lot; Owner does not mean those having such interest in a Lot merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.

Y. **“Plat”** refers to the subdivision plat depicting the Property entitled “OSPREY RESERVE FIRST AMENDMENT, a resubdivision of Tract A, OSPREY RESERVE, Town of Silverthorne, Summit County, State of Colorado, together with such additional, supplemental or amended plats as may be filed for the Property. Lot 1 on the Plat is not a part of the Project, nor subject to the Governing Documents.

Z. **“Project”** means the planned community created by this Declaration, consisting of the Property and any other improvements constructed on the Property and as shown on the Plat.

AA. **“Property”** means the real property described in Section 1.1, and as it may be supplemented after exercise of Development Rights, which is subject to this Declaration.

BB. **“Successor Declarant”** means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Summit County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant’s rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

ARTICLE III - MEMBERSHIP & VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 3.1. **The Association.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.2. **Transfer of Membership.** An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or Mortgagee of his Lot.

Section 3.3. **Class of Membership.** The Association shall have one (1) class of voting membership. Members shall be all Owners who, except as otherwise provided for in this Declaration, shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised by one person or alternative persons (who may be a tenant of the Owners) appointed in accordance with the Bylaws. The vote allocated to the Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter.

Section 3.4. **Period of Declarant’s Control.** During the period of Declarant’s control, Declarant and any successor of Declarant who takes title to all or part of the Property for the purpose of development and sale of the Property and who is designated as Successor Declarant in a recorded instrument executed by Declarant, will have exclusive power to appoint and remove members of the Executive Board and officers of the Association subject to the limitations in the Act. This period of Declarant's control will terminate no later than sixty (60) days after conveyance of 75% of the Lots that may be created to Owners other than Declarant, two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business, or two (2) years after any right to add new units was last exercised, whichever occurs first. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of

Declarant's control, but, in that event, the Declarant may require for the duration of the period of Declarant's control, that specified actions of the Association or the Executive Board, as described in a recorded instrument by the Declarant, be approved by the Declarant before they become effective.

Section 3.5. Compliance with Governing Documents. Each Owner and occupant of a Home shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Governing Documents. The obligations, burdens and benefits of membership in the Association concern the land and shall be covenants running with each Lot for the benefit of all other Lots.

Section 3.6. Books and Records. The Association shall make available for inspection, upon advance request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Governing Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 3.7. Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

Section 3.8. Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Governing Documents, and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

Section 3.9. Powers of the Executive Board. The Executive Board shall have power to take the following actions:

A. Adopt and publish rules and regulations governing the use of the Common Elements and governing the personal conduct of the Members and their guests on the Project; the Association may establish penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations;

B. Suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association, as provided in that Article named Assessments. Such rights may also be suspended after notice and hearing for a period up to ninety (90) days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to ninety (90) days thereafter;

C. Exercise for the Association all powers, duties, and authority vested in or delegated to the Executive Board and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws of the Association or as provided by the Act; and

D. Assign its right to future income, including the right to receive Common Expense Assessments.

ARTICLE IV - MAINTENANCE OF LOTS AND COMMON ELEMENTS

Section 4.1. **Maintenance of Common Elements.** Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the Common Elements and the Association's property in good order and condition and shall otherwise manage and operate the Common Elements and such property as it deems necessary or appropriate. In this regard the Association may:

A. construct, modify, add to, replace or renovate any improvements that are located on or constitute a part of any Common Element;

B. plant and replace trees, shrubs and other vegetation on any Common Element;

C. place, maintain and replace signs upon any Common Element;

D. adopt and enforce Rules and Regulations regulating the use and Common Elements;

E. impose and collect fees for the use of any Common Element;

F. take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the Common Elements;

G. repair and maintain all Limited Common Elements which include, but is not limited to, repair and maintenance of driveways, patios, decks, sidewalks;

H. remove snow from all Common Elements and Limited Common Elements; and

- I. repair glass in exterior windows and doors damaged by golf balls.

Section 4.2. Maintenance of Lots and Homes.

A. Each Owner, at such Owner's sole cost and expense, shall maintain the interior of his Home (including the interior wall, ceiling, and floor finishes, and all fixtures therein) in good order and repair. The Owner will also keep the Limited Common Element decks and patios appurtenant to his Home clean and in good order.

B. The Association will maintain and repair the exterior surfaces of all Homes, including the siding, decks, walls, fences, patios, foundations, retaining walls, stairs and roofs. Exterior maintenance will include painting, replacement of trim, caulking, repairs, and such other services deemed appropriate by the Executive Board. All costs authorized of maintenance will be paid as a Common Expense. If the negligence of any one Owner or any parties claiming under such Owner will cause damage to or destruction of a Home's exterior, such negligent Owner will bear the entire cost of such repair or reconstruction. However, upon the determination of the Executive Board, any part of a Home's exterior maintenance under this Section will become the obligation and be performed by the individual Owners

C. No owner shall construct any structure or improvement, or make or suffer any structural or design change (including a color scheme change), either permanent or temporary and of any type or nature whatsoever to the exterior of a Home or construct any addition or improvement on a Lot or its Limited Common Elements, without first obtaining the prior written consent thereto from the Executive Board and, in regard to structural changes, the prior written consent of the Town of Silverthorne.

D. In the event that a Lot is not properly maintained by an Owner, then the Association, after ten (10) days prior written notice to the Owner and with the approval of the Executive Board, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and other improvements thereon to a condition of good order and repair. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with that Article named Assessments below.

Section 4.3. Maintenance of Party Wall. Each wall or similar structure built as a part of the original construction on the Lots which serves and separates any two Homes shall constitute a party wall. In the event of damage to or destruction of a Party Wall, the Association will repair or rebuild that wall, except that maintenance, repairs, and decoration of the surface of such wall facing any Home will be the responsibility of the Owner of such Home. The cost of repair and maintenance of a party wall will be shared equally by the adjacent Owners. If the negligence of any one Owner or any parties claiming under such Owner causes damage to or destruction of a party wall, such

negligent Owner will bear the entire cost of such repair or reconstruction. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successor-in-title.

Section 4.4. **Maintenance of Landscaping.** The Association will maintain all landscaping on the Project in a healthy condition and according to the requirements of the landscaping plan approved by the Town of Silverthorne. No owner nor the Association may alter existing landscaping or add additional landscaping in any manner contrary to the approved landscaping plan. Owners may plant seasonal flower or herb gardens in designated areas as set forth in the landscape plan and such Owner will be responsible for all maintenance of such seasonal gardens.

Section 4.5 **Limited Common Expense Allocation.** Any expense associated with the repair or replacement of a Limited Common Element which is an appurtenance to all Lots in the Project shall be assessed as a Common Expense. Any expense associated with the maintenance, repair or replacement of a Limited Common Element which is not provided to all Homes shall be assessed to the Lot or equally among the Lots to which the Limited Common Element is allocated.

Section 4.6. **Allocation of Specified Common Elements.** The Executive Board may designate parts of the Common Elements from time to time for use by less than all of the Lot Owners or by non-owners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Any such designation by the Executive Board shall not be a sale or disposition of such portions of the Common Elements.

Section 4.7. **Maintenance Contract.** The Association or Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Elements. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power or function so delegated by written instrument executed by or on behalf of the Executive Board.

ARTICLE V- PROPERTY RIGHTS OF OWNERS & RESERVATIONS BY DECLARANT

Section 5.1. **Owner's Easement of Enjoyment.** Every Owner has a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions contained herein.

Section 5.2. **Recorded Easements.** The Property shall be subject to all easements as

shown on the Plat and to any other easements of record or in use as of the date of recordation of this Declaration as listed in Exhibit A. In addition, the Property is subject to those easements set forth in this Article.

Section 5.3. Utility Easements. There is hereby created a general easement upon, across, over, in and under the Common Elements for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, electrical, and cable communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install and maintain necessary equipment, wires, circuits and conduits under the Property. Such utilities may temporarily be installed above ground during construction, if approved by Declarant. Any person or utility company disturbing the surface of the Property during installation, maintenance or repair of facilities within an easement will restore the surface to its original grade and revegetate the surface to its former condition.

Section 5.4. Easement for Ingress and Egress. Declarant hereby grants as an appurtenance of each Lot a non-exclusive easement of ingress and egress across the Common Elements as shown on any recorded Plat of the Property to each Lot to assure access from a public road to each Lot. The specific means of ingress and egress shall be subject to change as Declarant shall from time to time deem necessary so long as a reasonable means of access is always provided.

Section 5.5. General Maintenance Easement. An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Executive Board or the Manager, and their respective officers, agents, employees, and assigns, upon, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Governing Documents, including the right to enter upon any Home.

Section 5.6. Easements for Golf Course. The Common Elements are burdened with an easement permitting golf balls unintentionally to come upon such areas and for golfers at reasonable times and in a reasonable manner to come upon the Common Elements to retrieve errant golf balls; provided, however, if any portion of the Common Element is fenced or walled, the golfer shall not enter. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: Declarant, the Association or its Members (in their capacities as such); any builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing; or any officer or director of any partner.

Section 5.7. Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and

egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction on the Lots of improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which prohibits the occupancy, use, or access to the Project by the Owners.

Section 5.8. Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property within Osprey Reserve, including Homes, and a perpetual nonexclusive easement of access through Osprey Reserve to the extent reasonably necessary to exercise such right. Except in an emergency, entry into a Home shall be only after reasonable notice to the Owner with the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

Section 5.9. Right to Notice of Design or Construction Claims. No person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Osprey Reserve in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the Owner of the property to discuss the Owner's concerns and conduct their own inspection.

Section 5.10. Right to Approve Additional Covenants. No person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of Osprey Reserve without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.

Section 5.11. Right to Approve Changes in Osprey Reserve Standards. No amendment to or modification of any restrictions, rules or architectural guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with that Section entitled Expansion Rights below.

Section 5.12. Special Declarant Rights. Declarant reserves the right to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- A. Completion of Improvements. The right to complete improvements indicated on the

Plat filed with the Declaration.

B. Exercise of Development Rights. The right to exercise any Development Right reserved in that Article entitled Development Rights. The fact that Declarant may exercise one or more of Declarant's Development Rights or other Special Declarant Right on one portion of the property will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to any other portion of the Property.

C. Sales Management and Marketing. The right to maintain sales offices, management offices, signs advertising the Project and models. The offices, model Home and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Home and signs will remain the property of Declarant and may be removed from the Property by Declarant at any time.

D. Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Project or within the Expansion Property which may be added to the Project.

E. Merger. The right to merge or consolidate a Project with another Project of the same form of ownership.

F. Control of Association and Executive Board. The right to appoint or remove any Officer of the Association or any Executive Board member during the period of Declarant control, subject to the limitation of the Act.

G. Amendment of Declaration. The right to amend the Declaration in connection with the exercise of any Development Rights.

H. Amendment of Plat. The right to amend the Plat in connection with the exercise of any Development Rights.

Section 5.13. **Termination of Rights.** The Special Declarant Rights contained in Section 5.12 shall not terminate until the earlier of (a) 20 years from the date this Declaration is recorded; (b) Recording by Declarant of a written statement that all sales activity has ceased; or (c) as provided in the Act.

Section 5.14. **Liens.** Except for annual, special and default assessment liens obtainable as provided herein, mechanics' liens, tax liens, judgment and execution liens arising by operation of law and liens arising under deeds of trust or mortgages, there shall be no other liens obtainable against the Common Elements or any interest therein of any Lot.

ARTICLE VI - INSURANCE AND FIDELITY BONDS

Section 6.1. **Authority to Purchase.** All insurance policies relating to the Common Elements shall be purchased by the Association or its duly authorized agent. The Executive Board, the Manager, and Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at demonstrably unreasonable cost. In such event, the Executive Board shall cause notice of such fact to be delivered to all Owners.

Section 6.2. **Notice to Owners.** The Executive Board shall promptly furnish to each Owner written notice of the procurement of, subsequent change in, or termination of, insurance coverages obtained on behalf of the Association under this Article.

Section 6.3. **General Insurance Provisions.** All such insurance coverage obtained by the Executive Board shall be governed by the following provisions.

A. As long as Declarant owns any Home on which a certificate of occupancy has been issued, Declarant shall be protected by all such policies as an Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for (or waive any rights with respect to) warranty claims against Declarant as developer of the Project.

B. The deductible amount, if any, on any insurance policy purchased by the Executive Board may be treated as a Common Expense payable from Annual Assessments or Special Assessments, or as an item to be paid from working capital reserves established by the Executive Board; or alternatively, the Executive Board may treat the expense as an assessment against an Owner whose Lot is specifically affected by the damage or whose negligence or willful act resulted in damage. The Association may enforce payment of any amount due from an individual Owner toward the deductible in accordance with that Article entitled Assessments, Sections entitled Special Assessments and Default Assessments below.

C. The insurance coverage described in this Article shall be considered minimum coverage and the Association will be obligated to secure and maintain such other and/or additional coverage as may be required by law or §38-33.3-313 of the Act, which Section 313 is also applicable to supplement the provisions of this Article.

D. Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage provided by the Executive Board pursuant to this Article shall be a Common Expense to be paid by regular Assessments levied by the Association.

Section 6.4. **Physical Damage Insurance on Improvements.** The Association shall obtain and maintain in full force and effect physical damage insurance on all Homes, (together with, unless the Executive Board directs otherwise, the fixtures, equipment, and other personal property initially installed in a Home and replacements thereof up to a value of those initially installed by Declarant, but excluding furniture, wall coverings, improvements, additions or other personal property installed by Owners) and all insurable Common Elements improvements within the Project, in an amount equal to full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, and other items normally excluded from coverage). Such insurance shall afford protection against at least the following:

- A. Loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement with the standard all-risk endorsement including but not limited to sprinkler leakage, debris removal, demolition, vandalism, malicious mischief, windstorm, and water damage;
- B. Property damage insurance covering personal property owned by the Association.

Section 6.5. **Provisions Common to Physical Damage Insurance.**

A. In contracting for the policy or policies of insurance obtained pursuant to Section 6.4, the Executive Board shall make reasonable efforts to secure coverage if the Board deems such coverage advisable, which provides the following:

- (i) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to this Declaration not to do so.
- (ii) The following endorsements (or equivalent): (a) "cost of demolition;" (b) "contingent liability from operation of building laws or codes;" (c) "increased cost of construction;" and (d) "agreed amount" or elimination of co-insurance clause.
- (iii) Periodic appraisals to determine replacement cost, as more fully explained in Section 6.5.B below.
- (iv) A provision that no policy may be canceled, invalidated, or suspended on account of the conduct of any Owner (including such Owner's tenants, servants, agents, invitees, and guests), any member of the Executive Board, officer, or employee of the Association or the Manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be covered by the Association, the Manager, any Owner, or Mortgagee.

(v) Any other provisions the Executive Board deems advisable.

B. Prior to obtaining any policy of physical damage insurance or any renewal thereof, and at such other intervals as the Executive Board may deem advisable, the Executive Board shall obtain an appraisal from a general contractor, an insurance company, or such other source as the Board may determine, of the then replacement cost of the property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Article.

C. A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums and any notice issued under Section 6.5.A. (iv) above, shall be delivered by the insurer to the Association and upon request to any Owner or Mortgagee. The Mortgagee on any Home shall be entitled to receive notice promptly of any event giving rise to a claim under such policy arising from damage to such Home.

Section 6.6. **Liability Insurance.**

A. The Executive Board shall obtain and maintain in full force and effect commercial general liability insurance with such limits as the Executive Board may from time to time determine, insuring the Association, each member of the Executive Board, the Manager, and their respective employees and agents. The liability policy will cover claims and liabilities arising out of or incident to the ownership existence, management, operations, maintenance or use of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

B. The Executive Board shall review such limits once every two years, but in no event shall such insurance be less than \$1,000,000.00 covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

Section 6.7. **Fidelity Insurance.** To the extent obtainable at reasonable cost, fidelity insurance shall be obtained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, fidelity coverage shall be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least 25% of the estimated annual operating expenses of the Association, including reserves. Such insurance shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 6.8. Provisions Common to Physical Damage Insurance, Liability Insurance, and Fidelity Insurance. Any insurance coverage obtained by the Association under the provisions of this Article shall be subject to the following provisions and limitations:

A. The named insurance under any such policies shall include Declarant, until all the Lots have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee" and such Insurance Trustee will be recognized by an insurer providing insurance pursuant to this Article) who shall have exclusive authority to negotiate losses and receive payments under such policies, and the "loss payable" clause should designate the Association or the Insurance Trustee, if any, who will act as trustee for each Owner and the holder of each Lot's Mortgage.

B. Each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

C. In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees;

D. The policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner (including an Owner's tenants, servants, agents, invitees, and guests) when such act or neglect is not within the control of the Association, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control;

E. The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be canceled nor may the insurer refuse to renew (including cancellation for non-payment of premium) without at least thirty (30) days' written notice to the Association, each Owner and any First Mortgagee listed as an insured in the policies; and

F. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Executive Board, the Association, the Manager, and any Owner or their respective agents, employees, or tenants; and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

Section 6.9. Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate personal liability insurance shall be maintained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

Section 6.10. **Worker's Compensation Insurance.** The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 6.11. **Other Insurance.** The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 6.12. **Insurance Obtained by Owners.** Each Owner may obtain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering personal property and personal liability. In addition, an Owner may obtain such other and additional insurance coverage on the Home as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Lot. No Owner shall obtain separate insurance policies on the Common Elements.

The Executive Board may require an Owner who purchases insurance coverage for the Owner's Home (other than coverage for the Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

ARTICLE VII - ASSESSMENTS

Section 7.1. **Obligation.** Owners, by accepting a deed to a Lot, are deemed to covenant to pay the Association Assessments including (1) the Periodic Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted by law; and (3) Default Assessments which may be assessed against a Lot for the Owner's failure to perform an obligation under the Governing Documents or because the Association has incurred an expense on behalf of the Owner under the Governing Documents.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Elements, abandonment of his or her Home, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or

for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Section 7.2. **Purpose of Assessments.** The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Property and for the improvement and maintenance of the Common Elements all as more fully set forth in this Declaration and on the Plat.

Section 7.3. **Budget.** The Executive Board will adopt a budget with Assessments sufficient to pay all Common Expenses and adequate reserves on an annual basis before the commencement of each calendar year. Within ninety (90) days after adoption of any proposed budget, the Executive Board will mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and will set a date for a meeting of the Owners to consider ratification of the budget. The budget proposed by the Executive Board will be deemed approved by the Owners unless at that meeting a majority of all Owners vote to veto the budget. In the event that the proposed budget is vetoed, the periodic budget last prepared by the Executive Board not vetoed by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board is not vetoed.

Section 7.4. **Capitalization of Association - Reserves.** The Association or Declarant shall require each buyer of a Lot to make a non-refundable payment to the Association in an amount equal to three times the monthly installment of the Periodic Assessment for the Lot, which sum shall be segregated and held, without interest, by the Association to meet unforeseen expenditures, acquire additional services or equipment for the Owners or as a maintenance reserve. A Reserve Fund contribution shall be collected and transferred to the Association at the time of closing of the sale, or re-sale, of each Lot, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of a Lot, an Owner shall not be entitled to a credit from the transferee for any unused portion of the Reserve Fund. Declarant may not use any of the Reserve Fund to defray any of its expenses, construction costs or to make up budget deficits.

Section 7.5. **Periodic Assessments.** Periodic Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. Periodic Assessments shall be payable on a prorated basis each month in advance and shall be due on the first day of each month, or such other periods as the Executive Board may determine. The omission or failure of the Association to fix the periodic Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Periodic Assessments in excess of the actual expenses incurred in any fiscal year. Periodic Assessments will commence after the Executive Board has approved a budget and levied Assessments when a Certificate of Occupancy is issued for a Home

or the first day of the month after any Lot within the Expansion Property is submitted to this Declaration, whichever first occurs. Declarant will pay all costs pertaining to the Expansion Property before Periodic Assessments commence.

Section 7.6. Apportionment of Periodic Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses which will be divided equally among the Owners. Any extraordinary maintenance, repair or restoration work on, or Common Expense benefitting, fewer than all of the Lots or Limited Common Elements shall be borne by the Owners of those affected Lots only. Any extraordinary insurance cost incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his agents, servants, guests, tenants or invitees) shall be borne by that Owner. Any Common Expense caused by the misconduct or negligence of any Owner shall be assessed solely against such Owner's Lot. Any Common Expense incurred or billed to the Association on a per unit basis may be allocated to each Unit in accordance with such Unit cost.

Section 7.7. Supplementary Assessments. In the events the Executive Board shall determine, at any time or from time to time, that the amount of the annual assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more supplementary assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each supplementary assessment, the Executive Board shall revise the budget, a summary of which shall be furnished to each Owner and shall set a date for a meeting of the Owners to consider the ratification of such budget. Upon request, the Executive Board will deliver a summary of the revised budget to any Mortgagee. Based on such revised budget, the Executive Board may make a supplementary assessment for such fiscal year against each Lot.

Section 7.8. Special Assessments. In addition to the Periodic Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners as provided in this Article, subject to the requirements that any extraordinary maintenance, repair or restoration work on fewer than all of the Homes shall be borne by the Owners of those affected Homes only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his agents, servants, guest, tenants or invitees) shall be borne by that Owner. Notice in writing in the amount of such Special Assessments and the time for payment of the Special Assessments shall be

given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 7.9. Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to that due date.

Section 7.10. Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Periodic, Special, or Default Assessment, which is not paid within thirty (30) days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- A. Assess a late charge for each delinquency in such amount as the Association deems appropriate.
- B. Assess an interest charge from the date of delinquency at the yearly rate of four points above the prime rate charged by the Association's bank, or such other rate as the Executive Board may establish, not to exceed twenty-one percent (21%) per annum;
- C. Suspend the voting rights of the Owner or the right to use any Common Element during any period of delinquency;
- D. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- E. Disconnect any utility services to the Lot which are paid as a Common Expense;
- F. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- G. File a statement of lien with respect to the Lot and proceed with foreclosure as set forth below.

Assessments chargeable to any Lot shall constitute a lien on such Lot, including any improvements on the Lot. To evidence the lien created under this Section, the Association may, but is not required to, prepare a written notice setting forth (i) the address of the Association, (ii) the amount of such unpaid indebtedness, (iii) the amount of accrued penalty on the indebtedness, (iv)

the name of the Owner of the Lot, and (v) a description of the Lot. The notice shall be signed and acknowledged by the President or a Vice-President of the Association or by the Manager, and the Association shall serve the notice upon the Owner by mail to the address of the Lot or to such other address as the Association may have in its files for such Owner. At least ten (10) days after the Association mails the Owner such a notice, the Association may record the same in the office of the Clerk and Recorder of Summit County, Colorado. Such lien for Assessments shall attach from the due date of the Assessment. Thirty (30) days following the date the Association mails the notice, the Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under Colorado law. In the events of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

Section 7.11. **Personal Obligation.** The amount of any Assessment chargeable against any Lot shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Lot or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest, thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 7.12. **Successor's Liability for Assessment.** In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such for such Assessments, all successors to the fee simple title of a Lot, except as provided in the Section named Subordination of Lien below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses and attorney's fees against such Lot without prejudice to such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association as set forth below.

Section 7.13. **Subordination of Lien.** The lien of the Assessments provided for in this Declaration shall be subordinate to (i) the lien of real estate taxes and special governmental assessments, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) liens for all sums unpaid for a First Mortgage of record, recorded before the date on which the assessment sought to be enforced became delinquent, except that the Association claims the priority for 6 months' assessment lien as granted in the Act. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of

Colorado. Seller's transfer of any Lot shall not affect the Association's lien except that sale or transfer of any Lot pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's liens as provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Lot as a Common Expenses at the direction of the Executive Board. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, or the Lot from the lien of any Assessments made after the sale or transfer.

Section 7.14. Notice to Mortgagee. The Association may report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Lot may pay any unpaid Assessment payable with respect to such Lot, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

Section 7.15. Statement of Status of Assessment Payment. 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, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot.

ARTICLE VIII - DAMAGE OR DESTRUCTION

Section 8.1. The Role of the Executive Board. Except as provided in that Section named Decision Not to Rebuild Common Elements, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the Association's name under that Article named Insurance, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to that Article named "Insurance" may be referred to as "Association-Insured Property").

Section 8.2. Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the cost of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board determines to be necessary.

Section 8.3. Repair and Reconstruction. As soon as practical after the damage occurs

and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 8.4. Funds for Repair and Reconstruction. Proceeds received by the Association from any hazard insurance carried by the Association shall be used to repair, replace and reconstruct the Association-Insured Property. If said proceeds are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to that Article named Assessments, Section named Special Assessments, but subject to applicable law, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 8.5. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Lot, first to the Mortgagees and then to the Owners, as their interests appear.

Section 8.6. Decision Not to Rebuild Common Elements. If at least sixty-seven percent (67%) of the Owners and all directly adversely affected Owners (as determined by the Act) agree in writing not to repair and reconstruct improvements within the Common Elements and if no alternative improvements are authorized, then the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with applicable law.

ARTICLE IX - CONDEMNATION

Section 9.1. Rights of Owners. Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the

Executive Board acting as attorney-in-fact for all Owners under instruction from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 9.2. **Partial Condemnation, Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Elements was conveyed, and the award shall be disbursed as follows: If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty-seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in that Article named Damage or Destruction above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such replacement is completed, then such award or net funds shall be distributed in equal shares per Lot among the Owners, first to the Mortgagees, if any, and then to the Owners, as their interests appear.

Section 9.3. **Complete Condemnation.** If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in that Section named Disbursement of Funds for Repair and Reconstruction above.

ARTICLE X - DURATION OF COVENANTS AND AMENDMENT

Section 10.1. **Covenants Binding.** Each provision of this Declaration and a promise, covenant and undertaking to comply with each such provision (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed; (ii) shall by virtue of acceptance of any right, title or interest in any of the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner and shall be binding on such Owner or his or her respective heirs, personal representatives, successors or assigns, to, with and for the benefit of the Declarant and all Owners within the Project; (iii) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to all of such Owner's right, title and interest to any of the Property, which lien shall be deemed a lien in favor of the Declarant, as its interest may appear, and all Owners within the Subdivision; and (iv) shall run with the land.

Section 10.2. Amendment.

A. Except as otherwise specifically provided elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners holding not less than sixty percent (60%) of the votes possible to be cast under this Declaration. Any amendment must be executed by the president of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association. In addition, the approval requirements set forth in Article XIII shall be met, if appropriate.

B. Notwithstanding anything to the contrary contained in this Declaration:

- (i) The Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of Incorporation and Bylaws of the Association, at any time for the purpose of correcting spelling, grammar, dates, typographical errors or as may otherwise be necessary to clarify the meaning of any provision of any of such documents without the consent of any of the Owners or First Mortgagees.
- (ii) The Declarant hereby reserves and is granted the right and power to record special amendments to the Declaration, the Articles of Incorporation and Bylaws of the Association at any time in order to comply with any requirement of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages, to comply with the requirements and powers set forth in the Act, or to conform with any amendments, modifications, revisions or revocations of the Silverthorne Town Code, without the consent of the Owners or any First Mortgagees.

Section 10.3. When Modifications Permitted. Notwithstanding the provisions of that Section named Amendment above or that Section named Revocation below, no termination, extension, modification, or amendment of this Declaration made prior to the termination of Declarant's control shall be effective unless the prior written approval of Declarant is first obtained.

Section 10.4. Revocation. This Declaration shall not be revoked nor shall the Project be terminated, except as provided in that Article named Condemnation regarding total condemnation, without the consent of the Owners holding 67% of the votes in the Association and evidenced by a written instrument duly recorded.

ARTICLE XI - INITIAL PROTECTIVE COVENANTS

Section 11.1. **Plan of Development; Applicability; Effect.** Declarant has established a general plan of development for the Property in order to protect the Owners' collective interests and the aesthetics and environment within the Project. In furtherance of that general plan, this Declaration and the Association's Documents, establish affirmative and negative Covenants, easements, and restrictions on the Property, subject to certain rights vested in the Executive Board and the Owners to enable them to respond to changes in circumstances, conditions, needs and desires within the Project.

Section 11.2. **Authority to Promulgate Use Restrictions.** Initial use restrictions applicable to the Project are set forth below. Amendment of these use restrictions requires a vote of sixty percent (60%) of all votes in the Association. Provided, however, in accordance with the duty to exercise reasonable business judgment, the Executive Board, with the consent of the Declarant during the period of Declarant Control, may adopt Rules and Regulations which modify, limit, create exceptions to, or expand the initial use restrictions set forth in this Section.

Section 11.3. **Owners Acknowledgment.** All Owners, tenants, guests and invitees of Lots are given notice that use of their Lot is limited by provisions of each of the Governing Documents as they may be amended, expanded and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that all restrictions upon the use and occupancy of a Lot may change from time to time.

Section 11.4. **Rights of Owners.** The Executive Board shall not adopt any Rule or Regulation in violation of the following provisions:

- A. Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.
- B. Speech. The rights of Owners to display political signs and symbols in or on their Lots of the kinds normally displayed in Lots located in a residential project shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and related users.
- C. Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations on Lots of the kinds normally displayed in Lots located in a residential project shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage or disturbance to other Owners and occupants.

D. Activities within Homes. No rule shall interfere with the activities carried on within the confines of a Home, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Homes, that generate excessive noise, odors or traffic, that create unsightly conditions visible outside the Home, that block the views from other Lots, or that create an unreasonable source of annoyance.

E. Pets. No animals of any kind shall be kept, raised or bred on any portion of the Project, except not more than two dogs, cats or other interior confined household pets may be kept by an Owner. The rules and regulations may regulate, permit or prohibit the kind and number of such pets from time to time.

(i) **Containment.** Household pets, such as dogs and cats, must be contained in a Home or on the deck or patio that is assigned to a Home as a Limited Common Element. No pets are permitted to run at large at any time.

(ii) **Leashes.** Persons within the Property who are accompanied by pets permitted under this Declaration must have a pet under the persons' direct control by use of a leash not to exceed 10 feet in length.

(iii) **Noise.** Owners of pets on the Property must take all steps necessary to control excessive barking or other disturbances caused by their pets.

F. Reasonable Rights to Develop. No Rule by the Association or Executive Board shall impede the Declarant's right to develop in accordance with the provisions of this Declaration.

G. Abridging Existing Rights. If any Rule would otherwise require Owners or related users to dispose of personal property which they owned at the time they acquired their interest in the Lot and such ownership was in compliance with all Rules and Regulations in force at that time, such rule shall not apply to any such Owners without their written consent. However, all subsequent Owners and related users of that Lot shall comply with such rule.

Section 11.5. **Initial Use Restrictions.** The following restrictions apply within the Project unless expressly authorized (and in such cases, subject to such conditions as may be imposed) by a resolution unanimously adopted by the Executive Board:

A. Subdivision. No Lot may be subdivided into two or more Lots, or the boundary lines of any Lot altered;

B. Leases. The term "lease", as used herein, shall include any agreement for the leasing

or rental of a Home and shall specifically include, without limitation, term or month to month rental. Owners shall have the right to lease their Homes only under the following conditions.

- i. All leases shall be in writing.
- ii. All leases shall provide that the terms of the lease and the tenant's occupancy of the Home shall be subject in all respects to the provisions of the Governing Documents, as the same may be amended from time to time, and that any failure by such tenant to comply with the provisions of these instruments, in any respect, shall be a default under the lease, said default to be enforceable by the Executive Board, the Owner/landlord, or both.
- iii. Minimum lease terms may be established by the Owners as provided in Section 11.2.
- iv. The Association may require any Owner who leases his Home to forward a copy of the lease to the Association within ten (10) days after the execution by Owner and the tenant.
- v. No garage may be leased or used by anyone but an Owner, his guests and invitees, or a tenant leasing the Owner's Home. Leasing a garage separately from a Home is prohibited.

C. Restrictions on Vehicles.

- i. Parking or storing of vehicles within the Property shall be subject to Rules and Regulations enacted by the Executive Board and provisions of this Declaration.
- ii. No portion of the Common Elements shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, motor home, running gear, boat or accessories thereto.
- iii. No abandoned or inoperable vehicles of any kind shall be stored or parked on the Project. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, van, recreational vehicle or other device for carrying passengers, goods or equipment which has not been driven under its own propulsion for a period of two weeks or longer, or which does not have installed within it an operable propulsion system.

- iv. Unlicensed motor vehicles shall not be operated on the Common Elements. The definition of unlicensed motor vehicles shall include, but is not limited to, go-carts, mini-bikes, unlicensed motor bikes, motorized scooters, snow mobiles and all-terrain vehicles.
- v. Parking of permitted vehicles upon designated parking areas shall be subject to Rules and Regulation of the Executive Board.

D. Nuisances. Any use, activity, or practice which is the source of disturbance to or unreasonably interferes with the peaceful enjoyment or possession of a Lot or any portion of the Common Elements or any portion of the planned community created hereunder. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project or a portion thereof shall be observed and may be enforced by the Association as if the same were contained in The Association Governing Documents. In no event shall the activities of the Declarant or of an approved builder which are reasonably necessary to the exercise of the rights granted by this Declaration and the Act be considered a "nuisance".

E. Timeshare Restriction. No Owner of any Lot shall offer or sell any interest in such Lot under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written approval of the Association and the Declarant (during the period of Declarant's control as further described in that Section named Period of Declarant's Control) in their absolute discretion, which approvals shall be in addition to the requirements of the applicable ordinances of the Town of Silverthorne.

F. Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property. Further, no Owner shall dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

G. No Outside Clotheslines. No laundry or wash shall be dried or hung outside any Home.

H. Decks and Patios. Lawn furniture and propane gas barbecue grills may be used and stored on decks or patios of Homes. Charcoal grills are prohibited. Owners understand their use of the exterior Limited Common Elements can detrimentally affect other Owners. The Executive Board will adopt rules governing appropriate use and appearance of the decks and patios.

I. Hot Tubs. Hot tubs and spas may only be installed on the Limited Common Element patio next to a Home.

ARTICLE XII - DEVELOPMENT RIGHTS*

Section 12.1. **Expansion Rights.** Declarant expressly reserves the right to add to the Project all or any part of the portion of Tract A labeled on the Plat as "Expansion Property", to develop additional Lots, Common Elements and Limited Common Elements. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant, in its sole discretion, determines. The consent of the existing Owners or Mortgagees will not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option. Owners and Mortgagees hereby agree not to oppose any proposed rezoning or resubdivision to allow up to eighteen (18) Lots on the Project in accordance with existing approvals from the Town of Silverthorne for the Project.

Section 12.2. **Maximum Number of Lots.** The maximum number of Lots in the Project will not exceed eighteen (18) Lots. Declarant is not obligated to expand the project beyond the number of Lots initially submitted to this Declaration.

Section 12.3. **Amendment of the Declaration.** If Declarant elects to create Lots, Common Elements, or Limited Common Elements on the Expansion Property, or any part thereof, at such time the Expansion Property is submitted to the Project by recording an amendment to the Plat, the Declaration will be automatically amended so that Periodic Assessments will be divided equally among all Lots submitted to the Declaration.

Section 12.4. **Amendment of the Plat.** Declarant will, contemporaneously with the exercise of Development Rights file an Amendment of the Plat showing the location of the additional Lots, Common Elements or Limited Common Elements. The Amendment to the Plat will substantially conform to the requirements contained in this Declaration.

Section 12.5. **Interpretation.** Recording of amendments to the Declaration and Plat in the office of the Clerk and Recorder of Summit County will automatically:

- (i) Vest in each existing Owner any additional rights or interest appurtenant to his/her Lot; and
- (ii) Vest in each existing Mortgagee a perfected security interest in the additional rights or interest appurtenant to the encumbered Lot.

Upon the recording of an Amendment to the Plat, the definitions used in this Declaration will automatically be extended to encompass and to refer to the Property, as improved. All conveyances of Lots after such amendment will be effective to transfer rights in the Common Elements and Limited Common Elements as improved, whether or not reference is made to any Amendment to the Declaration or Plat. Reference to the Declaration and Plat in any instrument will be deemed to

include all Amendments to the Declaration and Plat without specific reference thereto.

Section 12.6. **Reservation of Withdrawal Rights.** Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from provisions of this Declaration individual Lots and/or Common Elements, provided however that none of the real estate described on the Plat may be withdrawn after any Lot has been conveyed by Declarant to a purchaser.

Section 12.7. **Reciprocal Easements.** If property is withdrawn from the Property ("Withdrawn Property"):

(i) the Lot Owner(s) of the Property and Withdrawn Property will have whatever easements are necessary, if any, for access, utility service, repair, maintenance and emergencies over and across the Property; and

(ii) the Owner(s) in the Expansion Property will have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Property and Withdrawn Property.

Declarant will prepare and record in the office of the Clerk and Recorder of Summit County whatever documents are necessary to evidence such easements and will amend the Subdivision Plat to include reference to the recorded easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section will conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

Section 12.8. **Termination of Expansion and Development Rights.** The rights reserved to the Declarant for itself, its successors and assigns for the expansion and development of the Expansion Property ("Expansion and Development Rights"), will expire twenty (20) years from the date of recording this Declaration, unless the Expansion and Development rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the Expansion and Development rights by Declarant.

Section 12.9. **Transfer of Expansion and Development Rights.** The Expansion and Development Rights created or reserved under this Article for the benefit of Declarant may be transferred to any person by instrument describing the rights transferred and recorded in every county in which any portion of the Project is located. Such instrument will be executed by the transferor Declarant and the transferee.

Section 12.10. Additional Covenants and Easements.

Declarant may subject any portion of the Project to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If someone other than Declarant owns the property, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

ARTICLE XIII - MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Lots. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

Section 13.1. Title Taken by Mortgagee. Any Mortgagee holding a First Mortgage of record against a Lot who obtains title to the Lot pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Lot is acquired.

Section 13.2. Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Lots for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Lot.

Section 13.3. Right to Pay Taxes and Charges. Mortgagees who hold First Mortgages against Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 13.4. Financial Statement. Upon written request from any Agency or Mortgagee, which has an interest or prospective interest in any Lot or the Project, the Association shall prepare and furnish within ninety days any financial statement of the Association for the immediately

preceding fiscal year at the expense of such Mortgagee.

Section 13.5. Notice of Action. Any Eligible Mortgagee and any Agency, which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Lot number), will be entitled to timely written notice of:

A. Any proposed amendment of the Governing Documents effecting a change in (i) the boundaries of any Lot or the exclusive easement rights appertaining thereto, (ii) the interest in the Common Elements appurtenant to the Lot (excluding changes resulting from the submission of Expansion Property to the Declaration) or the liability of Assessments relating thereto, (iii) the number of votes in the Association relating to any Lot, or (iv) the purposes to which any Lot or the Common Elements are restricted or any amendment set forth in Section 13.6 below;

B. Any proposed termination of the common interest community;

C. Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Agency;

D. Any delinquency in the payment of Assessments owed by the Lot Owner subject to the Mortgage which such delinquency has continued for a period of sixty days;

E. Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article VI.

Section 13.6. Amendment of Association Documents. Approval shall first be obtained of fifty-one percent (51%) of Eligible Mortgagees (which percentage is measured by votes allocated to such Lots) if the amendment to the Association Documents add or delete any material provisions, which establish, provide for, govern or regulate any of the following:

A. Voting;

B. Assessments, Assessment liens or subordination of such liens;

C. Reserves for maintenance or repair and replacement of the Common Elements;

D. Insurance or fidelity bonds;

E. Reallocation of interests in the Common Elements, or rights to use of the Common Elements other than as set forth in Article XII;

- F. Responsibility for maintenance and repair of the Project;
- G. Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;
- H. Boundaries of any Lot;
- I. The interests in the Common Elements;
- J. Convertibility of Lots into Common Elements or of Common Elements into Lots;
- K. Imposition of any restrictions on the leasing of Homes;
- L. Imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer, or otherwise convey his Lot;
- M. Establishment of self-management by the Association where professional management has been required by any Agency;
- N. Any provision, which is for the express benefit of an Agency or First Mortgagees, regardless of whether the amendment is material;
- O. Hazard or fidelity insurance requirements; and
- P. Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

Section 13.7. Action by Mortgagee. If this Declaration or any Governing Documents require the approval of any Agency or Mortgage then, if any Mortgagee or Agency fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XIV - DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 14.1. Agreement to Encourage Resolution of Disputes Without Litigation.

A. Declarant, the Association and its officers, directors, and committee members, Owners, all persons subject to this Declaration and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in

the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection B, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.2 in good faith effort to resolve such Claim.

B. As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations and duties of any Bound Party under the Government Documents; or
- (iii) the design or construction of improvements within the Project, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the Court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;
- (iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (iv) any suit in which any indispensable party is not a Bound Party; and
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

Section 14.2. **Dispute Resolution Procedures.**

A. **Notice.** The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;
- (ii) the legal basis of the Claim (*i.e.* the specific authority out of which the Claim arises);
- (iii) the Claimant’s proposed resolution or remedy; and
- (iv) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

B. **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

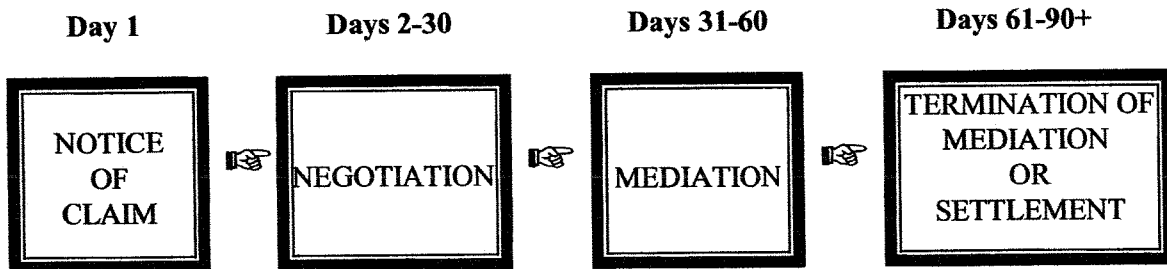
C. **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 14.2.A (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Colorado.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys’ fees and each Party shall share equally all fees charged by the mediator.

ALTERNATIVE DISPUTE RESOLUTION PROCESS



D. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In the event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

Section 14.3. **Initiation of Litigation by Association.**

In addition to compliance with the foregoing alternative dispute resolution procedure, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by 75% of the Owners, except that no such approval shall be required for actions or proceedings by the Association:

- A. initiated during the period of Declarant control;
- B. initiated to enforce the provisions of the Declaration, including collection of Assessments and foreclosure of liens;
- C. initiated to challenge *ad valorem* taxation or condemnation proceedings;
- D. initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- E. to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same

percentage of votes necessary to institute proceedings.

Section 14.4. Compliance and Enforcement.

A. Every Owner and occupant of a Home shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and an opportunity for a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Home. (In the event that any occupant, guest, or invitee of a Home violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote;

(iii) suspending any services provided by the Association to an Owner or the Owner's Home if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Home in violation of the Governing Documents and to restore the Home to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vi) without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Architectural Guidelines from continuing or performing any further activities in the Project; and

(vii) levying Default Assessments to cover costs incurred by the Association to bring a Home into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

- (i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or
- (ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Home and the Owner as a Default Assessment. Except in an emergency situation, the Association shall provide the owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

B. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable city and county

ordinances and permit Summit County or the Town of Silverthorne to enforce ordinances within Osprey Reserve for the benefit of the Association and its Members.

ARTICLE XV - GENERAL PROVISIONS

Section 15.1. **Mailing of Notices.** All notices, demands or other notices intended to be served upon an owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such owner according to the Association's records in care of the Lot number and building address of the applicable Lot. All notices, demands or other notices intended to be served upon the managing agent or the Executive Board of the Association shall be sent by ordinary or certified mail, postage prepaid to the registered agent for the Association as indicated in the records of the Secretary of State. Such agent and address may be changed by subsequently recorded documents or by written notice to all affected parties.

A. Any owner may, by notice in writing, provide the Association with a different address for mail to such owner which shall be used by the Association in lieu of such address above provided.

B. Any First Mortgagee, upon written request, shall be entitled to notice from the Association or managing agent under the same circumstances as its mortgagor, at such address as such mortgagee shall provide by such notice.

C. Any notice provided herein shall be deemed given when deposited postage prepaid in the United States mail.

Section 15.2. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 15.3. **Conflicts Between Documents.** In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 15.4. **References to the Town of Silverthorne Standards.** Wherever in this Declaration there is a reference to land use regulations, zoning regulations, or other Town of Silverthorne standards, any plats approved by the Town of Silverthorne or any other federal, state or local rule, law or regulation, such references shall automatically be waived, released, modified or amended, as the case may be, to correspond with any subsequent waiver, release, modification or amendment of such regulations, zoning, other Town of Silverthorne standards, ordinances, plats or any other rule or law.

EXHIBIT A
RECORDED EASEMENTS

1. Covenants, conditions and restrictions, which do not include a forfeiture or reverter clause, set forth in the Declaration and Agreement Creating Covenants, Conditions, Restrictions and Easements recorded June 14, 1983 under reception no. 257911, Amendment recorded February 16, 1984 under reception no. 273119, Amendment recorded June 5, 1985 under reception no. 297953 and Amendment recorded December 26, 1985 under reception no. 309536.
2. Terms, conditions, provisions and obligations contained in the Easement granted to Public Service Company of Colorado recorded February 3, 1994 under reception no. 461498.
3. Dedications, easements and covenants set forth on the 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.
4. Dedications, easements and covenants set forth on the Plat of the Osprey Reserve recorded September 24, 2004 under reception no. 769821.



**FIRST SUPPLEMENT TO THE DECLARATION
OF COVENANTS, CONDITIONS & RESTRICTIONS FOR
OSPREY RESERVE**

Osprey Reserve, LLC, a Colorado limited liability company ("Declarant") makes this First Supplement to the Declaration of Covenants, Conditions & Restrictions for Osprey Reserve for the purpose of expanding the Osprey Reserve Project.

RECITALS

A. Timothy Crane as Manager of Osprey Reserve, LLC, executed the Declaration of Covenants, Conditions & Restrictions for Osprey Reserve (the "Declaration") on March 25, 2005, which Declaration was recorded April 1, 2005 at Reception No. 786273, and executed the Osprey Reserve First Amendment, a resubdivision of Tract A, Osprey Reserve plat which was recorded on March 25, 2005 at 786272 (the "Plat").

B. The Declaration at Article XII, Section 12.1 expressly reserves the right to Declarant to add to the Project all or any part of the portion of Tract A labeled on the plat as "Expansion Property" to develop additional Lots, Common Elements and Limited Common Elements.

C. Declarant now desires to expand the Project by adding six (6) lots, Common Elements and Limited Common Elements on that portion of Tract A labeled on the Plat as Expansion Property.

NOW THEREFORE, Declarant supplements the Declaration of Covenants, Conditions & Restrictions for Osprey Reserve as follows:

1. Addition of Lots, Common Elements and Limited Common Elements. Declarant converts a portion of the Expansion Area described on the Plat into six (6) lots, Common Elements and Limited Common Elements as depicted in the Osprey Reserve, Second Amendment, a resubdivision of Tract A, Osprey Reserve, First Amendment and Lot 1, Osprey Reserve Plat. The Common Expenses shall be equally apportioned among the Owners of the Lots created by the Declaration and the Owners of the Lots created by this First Supplement to the Declaration as set forth in the Declaration.

2. The Osprey Reserve, Second Amendment, a Resubdivision of Tract A, Osprey Reserve, First Amendment, and Lot 1, Osprey Reserve Plat. The Osprey Reserve, Second Amendment, a Resubdivision of Tract A, Osprey Reserve, First Amendment, and Lot 1, Osprey Reserve Plat means the plat of Lots 4A, 4B, 5A, 5B, 6A, and 6B, recorded simultaneously with this First Supplement in the records of the Summit County, Colorado Clerk and Recorder.

4. Incorporation of Declaration Provisions. Declarant ratifies and affirms all of the terms and the provisions of the Declaration. All references to the Declaration will be deemed to



Cheri Brunvand-Summit County Recorder 1/25/2006 15:01 DF:

**SECOND SUPPLEMENT TO THE DECLARATION
OF COVENANTS, CONDITIONS & RESTRICTIONS FOR
OSPREY RESERVE**

Osprey Reserve, LLC, a Colorado limited liability company (“Declarant”) makes this Second Supplement to the Declaration of Covenants, Conditions & Restrictions for Osprey Reserve for the purpose of expanding the Osprey Reserve Project.

RECITALS

A. Timothy Crane as Manager of Osprey Reserve, LLC, executed the Declaration of Covenants, Conditions & Restrictions for Osprey Reserve on March 25, 2005, which Declaration was recorded April 1, 2005 at Reception No. 786273, executed the First Supplement to the Declaration of Covenants, Conditions & Restrictions for Osprey Reserve on August 24, 2005, which First Supplement was recorded August 26, 2005 at Reception No. 799505 (the “Declaration”), executed the Osprey Reserve First Amendment, a resubdivision of Tract A, Osprey Reserve Plat which was recorded on March 25, 2005 at Reception No. 786272, executed the Osprey Reserve Second Amendment, a resubdivision of Tract A, Osprey Reserve, First Amendment Plat which was recorded August 26, 2005 at Reception No. 799504 (the “Plat”).

B. The Declaration at Article XII, Section 12.1 expressly reserves the right to Declarant to add to the Project all or any part of the portion of Tract A labeled on the Plat as “Expansion Property” to develop additional Lots, Common Elements and Limited Common Elements.

C. Declarant now desires to expand the Project by adding six (6) lots, Common Elements and Limited Common Elements on that portion of Tract A labeled on the Plat as Expansion Property.

NOW THEREFORE, Declarant supplements the Declaration of Covenants, Conditions & Restrictions for Osprey Reserve as follows:

1. Addition of Lots, Common Elements and Limited Common Elements. Declarant converts a portion of the Expansion Area described on the Plat into six (6) lots, Common Elements and Limited Common Elements as depicted on the plat titled Osprey Reserve, Third Amendment, a resubdivision of Tract A, Osprey Reserve, Second Amendment. The Common Expenses shall be equally apportioned among the Owners of the Lots created by the Declaration and the Owners of the Lots created by this Second Supplement to the Declaration as set forth in the Declaration.

2. Osprey Reserve, Third Amendment, a Resubdivision of Tract A, Osprey Reserve, Second Amendment Plat. Osprey Reserve, Third Amendment, a Resubdivision of Tract A, Osprey Reserve, Second Amendment Plat means the plat of Lots 7A, 7B, 8A, 8B, 9A, and 9B, recorded January 13, 2006 at Reception Number 812199 in the records of the Summit County, Colorado Clerk and Recorder.

