

DECLARATION
CREATING
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF
THE PENINSULA AT PLUM CREEK
COUNTY OF DOUGLAS, STATE OF COLORADO

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**DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS OF
THE PENINSULA AT PLUM CREEK**

THIS DECLARATION is made and entered into by WGB Fairway Ten Partners, L.P., a Colorado limited partnership (“Declarant”).

RECITALS:

I. Declarant is the owner of that certain real property in the County of Douglas, State of Colorado, which is described in Exhibit A, attached hereto and incorporated herein by the reference; and

II. Declarant desires to create a Common Interest Community and to subject and place upon the above-described property certain covenants, conditions, restrictions, easements, reservations, right-of-way, obligations, liabilities and other charges set forth herein for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvement, sale and ownership of said property, to the end that a harmonious and attractive development of said property may be accomplished and the health, comfort, safety, convenience and general welfare of the Declarant, its successors and assigns in said property, or any portion thereof, may be promoted and safeguarded.

III. This Common Interest Community shall be subject to the terms and conditions of that certain Master Declaration (as that term is defined below), and the Association of Owners shall be a “Subassociation” as that term is defined in the Master Declaration.

IV. Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way; obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with, the above-described property and be binding on all parties having any right, title or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall insure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1. “**Act**” shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et al., as amended.

2. “**Agencies**” shall mean and collectively refer to the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration

(VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

3. **“Allocated Interests”** shall mean the Common Expense Liability and votes in the Association allocated to each Unit. The Allocated Interest of each Unit shall be equal to a fraction, the numerator of which is 1 and the denominator of which is the total number of Units within the Common Interest Community from time to time.

4. **“Architectural Review Committee”** shall mean and refer to the committee appointed by the Declarant or by the Association to review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

5. **“Articles of Incorporation”** shall mean the Articles of Incorporation of the Association.

6. **“Association”** shall mean The Peninsula at Plum Creek Homeowners Association, a unit owners association organized under section 38-33.3-301 of the Act.

7. **“Builder”** shall mean any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Common Interest Community for further subdivision, development, and/or resale in the ordinary course of such Person’s business.

8. **“Bylaws”** shall mean the bylaws of the Association, and any other instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including any amendments to those instruments.

9. **“Common Elements”** shall mean any real estate owned or leased by the Association other than a Unit.

10. **“Common Expense Liability”** shall mean the liability for Common Expenses allocated to each Unit based on its Allocated Interest.

11. **“Common Expenses”** shall mean expenditures made or liabilities incurred by or on behalf of Association, together with any allocations to reserves.

12. **“Common Interest Community”** shall mean real estate described in this Declaration, as supplemented and amended from time to time, with respect to which a Person, by virtue of such Person’s ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration.

13. **“Declarant”** shall mean WGB Fairway Ten Partners and those of its successors and assigns to which WGB Fairway Ten Partners, L.P., a Colorado limited

partnership, has delegated its rights as Declarant hereunder in a written instrument filed with the Clerk and Recorder of the County of Douglas, State of Colorado.

14. **“Declaration”** shall mean this Declaration of Covenants, Conditions and Restrictions and any other recorded instruments, however denominated, that create this Common Interest Community, including any amendments to those instruments and also including, but not limited to, plats and maps.

15. **“Development Rights”** shall mean any right or combination of rights reserved by the Declarant in this Declaration.

(a) to submit additional real estate to this Declaration, and

(b) to create Units, Common Elements or Limited Common Elements, in connection with the addition of such real estate.

(c) to subdivide Units owned by Declarant or convert Units owned by Declarant into Common Elements or Limited Common Elements.

(d) to withdraw real estate owned by Declarant from the Common Interest Community.

16. **“Executive Board”** shall mean the Board of Directors of the Association.

17. **“Improvements”** shall mean and refer to all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, exterior light fixtures, poles, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

18. **“Limited Common Elements”** shall mean a portion of the Common Elements allocated by this Declaration or by the application of the Act, for the exclusive use of one or more Units but fewer than all the Units.

19. **“Map”** shall have the meaning set forth in the Act.

20. **“Master Association”** shall mean The Plum Creek North Master Homeowner Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

21. **“Master Association Governing Documents”** shall mean the collective reference to the Master Association’s articles or incorporation, bylaws, and rules and regulations, and the Master Declaration, all as may be amended from time to time.

22. **“Master Declaration”** shall mean the Master Declaration Creating Covenants, Conditions, Restrictions and Easements for Plum Creek North recorded October 7, 1997 in Book 1472 at page 329 of the records of the Clerk and Recorder, Douglas County, Colorado, and all recorded amendments thereof.

23. **“Member”** shall mean and refer to each Unit Owner, membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit.

24. **“Owner”** shall mean one or more Persons which may include the Declarant, who hold legal title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

25. **“Period of Declarant Control”** shall mean and refer to a length of time expiring ten (10) years after initial recording of this declaration in the county in which the Common Interest Community is located; provided, that the Period of Declarant Control shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Units that May Be Created to Unit Owners other than a Declarant, two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or two (2) years after any right to add new Units to the Declaration was last exercised.

26. **“Person”** shall mean a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof.

27. **“Plat”** shall mean that part of the Declaration that is a land survey plat as set forth in C.R.S. §38-51-105 and is recorded in the real estate records of Douglas County, Colorado.

28. **“Residential Use”** shall mean use for dwelling or recreational purposes does not include spaces or Units primarily used for commercial income from, or service to, the public.

29. **“Rules and Regulations”** shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

30. **“Security Interest”** shall mean an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Article VII, Section I hereof, and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Article VI, Section 2 hereof, “Security Interest” shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or

has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of each county in which any portion of the Common Interest community is located, show the Administrator as having the record title to the Unit.

31. **"Security Interest Holder"** shall mean and refer to any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Article VII, Section 1, Article IX, Section 1, hereof, and, with respect to notice of cancellation of substantial modification of certain insurance policies, to Article VI, Section 2 hereof, the Administrator of Veteran Affairs, an Office of the United States of America, or his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records of the Clerk and Recorder of each county in which any portion of the Common Interest Community is located, show the said Administrator as having the record title to the Unit), or any successor to the interest of any such Person under such Security Interest.

32. **"Special Declarant Rights"** shall mean rights reserved for the benefit of a Declarant to perform the following acts: To complete Improvements indicated on plats and maps filed with the Declaration; to exercise any Development Right; to maintain sales offices, management offices, signs advertising the Common Interest Community, and models; to use easements through the Common Elements for the purpose of making Improvements within the common Interest Community or within real estate which may be added to the Common Interest Community; to merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership; to make the Common Interest Community subject to the Master Declaration or to appoint or remove any officer of the Association or any Executive Board member during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Common Interest Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically on the earlier of the following events; (a) conveyance of the last Unit that may be created by Declarant to a Unit Owner other than Declarant; (b) ten (10) years from the date of recordation of this Declaration, except with respect to the appointment of officers and directors which may only be exercised in accordance with Article III hereof.

33. **"Unit"** shall mean and refer to any separate numbered lot or parcel of real estate shown upon any recorded subdivision map of the real property described on the attached Exhibit A, or any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements and any public streets.

34. **"Unit Owner"** shall mean the Declarant or other Person who owns a Unit, but does not include a person having an interest in a Unit solely as security for an obligation. Declarant is the owner of any Unit created by the Declarant until that Unit is conveyed to another Person who may or may not be a Declarant under this Article.

35. **“Units That May Be Created”** shall mean and refer to 125 Units, which shall be the maximum number of Units that may be subject to this Declaration, including the Units within the real estate described on the attached Exhibit A and those Units which may be added if all of the property provided for in Article XIII, Section 4 hereof, is annexed to this Declaration.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

1. **Membership.** The membership of the Association at all times shall consist exclusively of all Unit Owners or, following termination of the common Interest Community, of all former Unit Owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

2. **One Class of Membership.** The Association shall have one class of voting membership. Each Unit Owner shall be entitled to one (1) vote for each Unit owned in accordance with the Allocated Interest attributable to such Unit, except that no votes allocated to a Unit owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total of all Units then existing within the common Interest Community. During the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint and remove all officers and members of the Executive Board which have been appointed by such Declarant. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

ARTICLE III

EXECUTIVE BOARD MEMBERS AND OFFICERS

1. **Authority of Executive Board.** Except as provided in this Declaration, the Bylaws or the Act, the Executive Board may act in all instances on behalf of the Association.

2. **Election of Unit Owners During Period of Declarant Control.** No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that May Be Created to Unit Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant. No later than sixty (60) days after conveyance of fifty percent (50%) of the Units that May Be Created to Unit Owners other than a Declarant, not

less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

3. **Authority of Declarant; Termination of Period of Declarant Control.**

Except as otherwise provided in this Article III, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and directors and remove all officers and directors of the Executive Board appointed by it. Not later than the termination of any period of Declarant Control, the Unit Owners shall elect an Executive Board of at least three members, at least majority of whom must be Unit Owners other than the Declarant or designated representatives of Unit Owners other than the Declarant or designated representatives of unit Owners other than the Declarant. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon termination of the Period of Declarant Control.

4. **Delivery of Documents by Declarant.** Within sixty (60) days after the Unit Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following items:

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

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the principles and the reasons therefore. The expenses of the audit shall not be paid for or charged to the Association;

(c) The Association funds or control thereof;

(d) All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties;

(e) A copy of the plans and specifications used in the construction of the Improvements in the Common Interest community which were completed within two (2) years before the Declaration was recorded;

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

(g) Copies of any certificates of occupancy that may have been issued with respect to any Improvements comprising the Common Interest Community;

(h) Any other permits issued by governmental bodies applicable to the Common Interest Community and which are currently in force or which were issued within one (1) year prior to the date on which Unit Owners other than the Declarant took control of the Association;

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

(j) A roster of Unit Owners and mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

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

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

5. **Budget.** Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the vote of eighty percent (80%) of the Allocated Interest rejects the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

ARTICLE IV

COVENANT FOR ASSESSMENTS

1. **Personal Obligation for Assessments.** Each Unit Owner, including Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association monthly assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Unit Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Unit Owners of each Unit shall be jointly and severally liable to the Association for the

payment of all assessments, fees, charges and other amounts attributable to their Unit. Each assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Unit Owner of such Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Unit Owner's successors in title unless expressly assumed by them. The Association's lien on a Unit for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Units, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law; provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

3. **Initial Annual Assessments.** Until the effective date of an Association budget ratified by the Unit Owners with a different amount for the Common Expense assessment, as provided in Section 4 of the Article III, the amount of the annual common Expense assessment against each Unit shall be Ten Dollars (\$10.00) per Unit per calendar year.

4. **Rate of Assessment.** Annual and special assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Units in accordance with their Allocated Interests. The Common Expense assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles. All Common Expenses shall be assessed against all the Units in accordance with the Allocated Interests set forth in this Declaration. If the Common Expense Liability is reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liability.

5. **Date of Commencement of Annual Assessments.** Until the Association makes a Common Expense assessment, the Declarant shall pay all Common Expenses. After any assessment has been made by the Association, assessment shall be based on a budget adopted by the Association as provided in this Declaration, which shall be done no less frequently than annually. The annual assessments shall be due and payable in semi-annual installments, in advance, or on such other dates, and with such frequency (which may be other than semi-annually, but not less frequently than annually), as the Executive Board determines in its discretion from time to time, provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Unit Owner purchasing a Unit between annual due dates shall pay a pro rata share of the last payment due.

6. **Special Assessments.** In addition to the annual common Expense assessments authorized in this Article, the Executive Board of the Association may at any time levy, in any fiscal year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any operating deficit incurred by the Association. Any such special assessment shall be set against each Unit in accordance with the Allocated Interest set forth in this Declaration. Notwithstanding the foregoing, special assessments levied during the Period of Declarant Control may not be used for the Purpose of constructing capital improvements.

7. **Lien for Assessments.**

(a) The Association has a statutory lien on a Unit for any assessment levied against that Unit or fines imposed against its Unit Owner from the time the assessment or fine becomes due. Fees, charges, late charges, attorney fees, fines and interest charge pursuant to this Declaration are enforceable as assessments under this Article. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Article is required. However, the Executive Board may prepare and record, or cause to be prepared and recorded, in the real property records of Douglas County, Colorado, a written notice setting forth the amount of the unpaid indebtedness, the name of the Unit Owner and a description of the Unit. If alien is filed, the costs and expenses thereof shall be added to the assessment for the unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments become due.

(d) Unless the Declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

8. **Priority of Association Lien**

(a) A lien under this Article IV is prior to all other liens and encumbrances on a Unit except:

(1) Liens and encumbrances recorded before the recordation of the Declaration;

(2) A Security Interest on the unit which has priority over all other Security Interests on the Unit and which was recorded before the date on which the assessment sought to be enforced became delinquent; and

(3) Liens for real estate taxes and other governmental assessments or charges against the Unit.

(b) A lien under this Section is also prior to the Security Interest described in the preceding subsection (a)(2) to the extent of:

(1) An amount equal to the Common Expense assessments based on a periodic budget adopted by the Association as provided in this Declaration, which would have become due, in the absence of any acceleration during the six (6) months immediately preceding institution of an action to enforce the lien, but in no event shall the priority of such lien accorded under this subsection exceed one hundred fifty percent (150%) of the average monthly assessment during the immediately preceding fiscal year multiplied by six (6);

(2) Attorney fees and costs being incurred in an action to enforce the lien.

(c) This Section 8 does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S., as amended, or to the provisions of Section 15-11-201, C.R.S. 1973, as amended.

9. **Receiver.** In any action by an Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit Owner to collect all sums alleged to be due from the unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense assessments.

10. **Certificate of Status of Assessments.** The Association shall furnish to a Unit Owner or such Unit 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 Unit Owner's Unit. The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Executive Board, and every Unit Owner. If no statement is furnished to the Unit Owner or holder of a Security Interest or their designee, delivered personally or by certified mail, first class, postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Unit for unpaid assessments which were due as of the date of the request.

11. **Effect of Non-payment of Assessments; Remedies of the Association** Any assessment installment, which is not paid on or before the 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 Executive Board deems appropriate;

(b) Assess an interest charge from the due date at the rate of twenty-one percent (21%) per annum, or such other lawful rate as the Executive board may establish,

(c) Suspend the voting rights of the Owner 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) Bring an action at law against any Owner personally obligated to pay the delinquent assessment; and

(f) Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit, the Association may institute foreclosure proceedings against defaulting Owner's Unit in a manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid assessments, any penalties and interest thereon, the costs and expenses of such proceedings, the cost and expenses for filing the notice of claim and lien, and all reasonable attorney's fees incurred in connection with enforcement of the lien. The association shall have the power to bid on a Unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

12. **Surplus Funds**. Any surplus funds of the Association, including, but not limited to, working capital funds remaining after payment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be credited to the Unit Owners in proportion to their Common Expense Liability or credited to them to reduce their future Common Expense Assessments.

13. **Working Capital Fund**. The Association or Declarant shall require the first Unit Owner of any Unit other than Declarant too make a non-refundable contribution to the Association in an amount equal to two (2) times the monthly assessment against the Unit in effect at the closing thereof (regardless of whether or not assessments have commenced as provided in Section 5 of this Article). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit and shall be held in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve a Unit Owner from making regular payments of assessments as the same

become due. Upon the transfer of his Unit, a Unit Owner shall be entitled to a credit from his transferee (but not from the Association) for the aforesaid contribution to the working capital fund.

14. **Assignment of Future Income.** The Executive Board may assign the Association's right to future income, including the right to receive Common Expenses.

15. **Assessments for Misconduct.** If any Common Expense is caused by the misconduct of any Unit Owner, the Association may assess that Common Expense exclusively against such Unit Owner and his Unit.

ARTICLE V

ARCHITECTURAL REVIEW COMMITTEE

1. **Composition of Committee.** The Architectural Review Committee shall consist of three (3) or more persons appointed by the Executive Board; provided, however, that until all of the Units that May Be Created have been conveyed by Declarant to the first Unit Owner thereof (other than Declarant), Declarant shall appoint the Architectural Review Committee. Two or more members of the Committee may jointly designate a representative to act for them. The power to "appoint," as provided herein, shall include without limitation the power to: constitute the initial membership of the Architectural Review Committee; appoint member(s) to the Architectural Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor.

2. **Review by Committee.** No Improvements shall be constructed, erected, placed, planted, applied or installed upon any Unit unless complete plans and specifications therefore (said plans and specifications to show exterior design, height, materials, color and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee), shall have been first submitted to and approved in writing by the Architectural Review Committee; provided, however, that the Declarant shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's development of, construction on, or sales of any Unit or residences on any Unit. In conducting its review, the Committee shall adhere to the general and specific provisions of any Design guidelines which have been established by the Committee Design Guidelines which have been established by the Committee or by the Master Association which are applicable to Units located within the common Interest Community. The Architectural Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the Architectural Review committee may

require that the applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the Common Expense assessment against the unit for which the request for Architectural Review Committee approval was made, but shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection of such assessments, as more fully provided in this Declaration.

3. **Procedures.** The Architectural Review Committee shall approve or disapprove all requests for approval within thirty (30) days after the complete submission of all plans, specifications, and other materials and information which the Committee may require in conjunction therewith. If the Architectural Review Committee fails to approve or disapprove any request within thirty (30) days after the complete submission of all plans, specifications, materials and other information with respect thereto, approval shall not be required and this Article shall be deemed to have been fully complied with.

4. **Vote and Appeal.** A majority vote of the Architectural Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event an application for architectural approval is approved or denied by the Architectural Review Committee any unit Owner shall have the right to appeal such decision to the Executive Board, if a written request for a hearing or an appeal of the same shall be submitted to the Executive Board within thirty (30) days after such approval or denial by the Committee.

5. **Records.** The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

6. **Liability.** The Architectural Review Committee and the members thereof, as well as any representative of the Committee appointed to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any Unit Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

7. **Variance.** The Architectural Review Committee may grant reasonable variances or adjustment from any conditions and restrictions imposed by this Article or Article IX hereof, when circumstances such as topography, natural obstruction, hardship or aesthetic or environmental conditions require. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

8. **Waivers.** The approval or consent of the Architectural Review Committee, any representative thereof, or the Executive Board, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or the Executive Board, as to any

application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

ARTICLE VI

INSURANCE

1. **Insurance.** The Association shall maintain insurance in connection with parcels of real property which the Association has an obligation to maintain, repair and/or reconstruct. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, costs and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a Common Expense. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the ten-existing requirements of any of the Agencies with respect to their insurance, guaranty or purchase of Security Interests.

(a) A policy of property insurance covering all parcels of real property for which the Association has the duty to repair and/or reconstruct, including, without limitation, the Common Elements and property which must become Common Elements, except for land, foundation, excavation and other matters normally excluded from coverage, for broad form covered causes of loss in an amount not less than full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date and not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy. Further, said policy shall include an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement," a "Vacancy Permit Endorsement" or the equivalent, and coverage on personal property owned by the Association including fixtures and building service equipment, furnishings and supplies. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

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

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

(b) A comprehensive policy of commercial general public liability insurance in connection with the ownership, existence, use or management of the Common Elements and covering parcels of real property which the Association has the obligation to maintain, repair and/or reconstruct, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of all parcels of

real property for which the Association has the obligation to maintain, repair and/or reconstruct, legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-owned and hired automobiles. Such coverage may also include, if applicable, comprehensive automobile liability insurance, garage keeper's liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be required by private institutional mortgage investors with respect to projects similar in construction, location and use. Such insurance shall insure the Executive Board, Association, any managing agent and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner and member of the Executive Board. The Unit Owners shall also be included as additional insured but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements or other property insured by the Association from time to time. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, Unit Owners, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Common Interest Community, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Units, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity contractor employed for the purposes of managing the Common Interest Community to carry more fidelity insurance coverage than required hereinabove. Such fidelity coverage or bonds shall meet the following requirements:

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

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

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

(d) If any parcels of real property which the Association has an obligation to repair or reconstruct is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

(1) the maximum coverage available under the national Flood Insurance Program for all building and other insurable property located within a designated flood hazard area; or

(2) one hundred percent (100%) of current replacement costs of all buildings and other insurable property located within a designated flood hazard area.

(e) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

2. **General Provisions of Insurance Policies.** All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Unit Owners, and each Unit Owner shall be an insured person under such policies with respect to liability arising out of any Unit Owner's interest in the Common Elements or membership in the Association. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Unit Owner or member of his household. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of a Unit Owner where such Unit Owner is not under the control of the Association. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void any policy or be a condition to recovery under the policy.

3. **Deductibles.**

(a) The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of One Thousand Dollars (\$1,000.00) or one percent (1%) of the face amount of the policy.

(b) Any loss to any Unit or to any parcels of real property for which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the person or entity who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the parties sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Executive Board. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of a Unit owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the unit Owner in question and the Association may collect the amount from said Unit owner in the same manner as any assessment.

4. **Payment of Insurance Proceeds.** Any loss covered by an insurance policy described in Section 1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not any holder of a Security Interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Unit Owners and Security Interest Holders as their interest may appear. Subject to the provisions of Section 1 of Article VII of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Unit Owners and holders of Security Interest are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored or the Common Interest Community is terminated.

5. **Association Insurance as Primary Coverage.** If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Unit Owner and such Unit Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. A Unit Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of a Unit Owner, and the Association may collect the amount from said Unit Owner in the same manner as any assessment.

6. **Acceptable Insurance Companies.** Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Unit Owner from collecting insurance proceeds.

7. **Insurance to be Maintained by Unit Owners.** An insurance policy issued to the Association does not obviate the need for Unit Owners to obtain insurance for their own benefit. Insurance coverage on the real property and improvements thereon constituting each Unit, on the furnishings and other items of personal property belonging to a Unit Owner, and public liability insurance coverage on each Unit, including those portions of any Unit to be maintained by the Association, shall be the responsibility of the Unit Owner of such Unit. Unit Owners shall also be responsible for obtaining any policies of title insurance required in connection with any sale of a Unit other than the purchase by the initial Unit Owner from the Declarant, or from a Builder.

8. **Annual Review of Insurance Policies.** All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Executive Board or the

managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the Improvements to the insured for the purpose of determining the amount of insurance required pursuant to the provisions of this Article. Any Security Interest Holder shall be furnished with a copy of such appraisal upon request.

9. **Other Insurance.** If the insurance described in Section 1 of this Article is not reasonably available, or if the Executive Board ascertains that the insurance maintained by the Master Association adequately covers some or all other risks contemplated thereby, the Association may carry any other insurance it considers appropriate, including, but not limited to, insurance as a co-insured or as an additional insured under the Master Association's policies of insurance.

ARTICLE VII

DAMAGE OR DESTRUCTION

1. **Damage or Destruction**

(a) Any portion of the Common Interest Community for which insurance is required under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (1) the Common Interest Community is terminated;
- (2) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (3) Eighty percent (80%) of the Unit Owners, including every Unit Owner of a Unit that will not be rebuilt, vote not to rebuild; or
- (4) Prior to the conveyance of any Unit to a Person other than the Declarant, the Security Interest Holder of a deed of trust or mortgage on the damaged portion of the Common Interest Community rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Interest Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community, and except to the extent that other persons will be distributed, the insurance proceeds attributable to units that are not rebuilt must be distributed to the Unit Owners of those Units or to lienholders, as their interest may appear, and the remainder of the proceeds must be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the Common Expense Liability of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the unit had been condemned as provided in Article XII, Section 11,

hereof, and the Association promptly shall repair, execute and record an amendment to the Declaration reflecting such reallocations.

ARTICLE VIII

EXTERIOR MAINTENANCE

1. **General.**

(a) The Association is responsible for maintenance, repair and replacement of the Common Elements. Maintenance, repair or replacement of any drainage structure or facilities, or other public improvements required by the local governmental entity as a condition of development of the Common Interest Community or any part thereof shall be the responsibility of the Association unless such improvements have been dedicated to and accepted by the local governmental entity or by the Master Association for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.

(b) The maintenance, repair and replacement of each Unit, including, but not limited to the interior and exterior of the residence and the other Improvements constructed thereon, shall be the responsibility of the Unit owner thereof. The Association and each unit Owner, and their agents and contractors, are hereby granted an easement for the purpose of maintenance and repair of the unit owner's Unit on, over, across, under and through any adjacent Unit upon reasonable notice to the Unit Owner thereof. Any damage occurring to such adjacent unit or the Improvements thereon in performing such repairs or maintenance shall be the responsibility of the party performing or authorizing such repairs or maintenance.

2. **Association's Rights to Repair, Maintain, Restore and Demolish** In the event any Unit Owner shall fail to perform his maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Executive Board of the Association, the Association may, if said failure continues for a twenty (20) day period after written notice to said Unit Owner by the Board, file suit in a court of competent jurisdiction subsequent to the expiration of said twenty (20) day time period seeking a court order requiring such unit Owner and/or permitting the Association to perform any or all of such maintenance, repair or restoration or, pursuant to Article IX, Section 3 hereof, to demolish a residence. The cost of such maintenance, repair, reconstruction and/or demolition shall be the personal obligation of the Unit owner of the Unit on which such work is performed, and shall be subject to all of the terms and provisions applicable to "assessments" as provided in Article IV thereof, including, without limitation, interest, late charges and lien rights.

3. **Access Easement.** Each Unit Owner shall afford to the Association and the other Unit Owners, and to their agents or employees, access through such Unit Owner's Unit reasonably necessary for maintenance, repair and replacement of any Common Elements and any other property or Improvements maintained, repaired or replaced by the Association. If

damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Unit through which access is taken, the Unit Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the costs of prompt repair. Further, each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Unit Owners or occupants of any affected Unit, except that no such notice shall be required of the Association in connection with the fence and landscape maintenance performed upon any Unit or within any street right-of-way pursuant to Section 1 and 2 of this Article, and except that in emergency situations entry upon a Unit may be made at any time provided that the Unit Owner or occupants of each affected Unit shall be warned of impending emergency entry as early as is reasonably possible. The interior of any residence located on a Unit shall not be subject to such easements as provided for in this Section 3.

4. **Unit Owner's Misconduct.** Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of or within any right-of-way or Common Element which the Association has an obligation to maintain, repair or any Improvements located thereon, is caused by the misconduct of any Unit Owner, or by the misconduct of any member of such Unit Owner's family or by a guest or invitee of such Unit Owner, the costs of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Unit Owner to the extent that said Unit Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Unit Owner's Unit is subject and shall be subject to all of the terms and provisions of Article IV of this Declaration. A determination of the misconduct of any Unit Owner, or any member of a Unit Owner's family or a guest or invitee of any Unit Owner, and the amount of the Unit Owner's liability therefore, shall be determined by the Association at a hearing after notice to the Unit Owner, provided that any such determination which assigns liability to any Unit Owner pursuant to the terms of this Section may be appealed by said Unit Owner to a court of law.

5. **Expenses for Property Subject to Development Rights.** The Declarant is liable for all expenses in connection with real estate subject to Development Rights until expiration or termination of all Development Rights with respect to such real estate. Any income or proceeds from real estate subject to Development Rights inures to the Declarant.

ARTICLE IX

RESTRICTIONS

1. **General Plan.** It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Units, all in order to enhance the value, desirability and attractiveness of the units and subserve and promote the sale thereof.

2. **Restrictions Imposed.** This Common Interest Community is subject to the recorded easements, licenses and other matters listed on Exhibit B, attached hereto and incorporated herein by this reference. In addition, the Declarant declares that all of the Units shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon, hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreement and covenants, as well as those contained elsewhere in this Declaration.

3. **Residential Use.** Subject to Section 4 of this Article IX, Units shall be used for Residential Use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes, provided, however, that a Unit Owner may use his Unit for professional or home occupation(s) so long as the applicable zoning permits such use, there is no external evidence thereof, such as signage, and no unreasonable inconvenience, such as excessive traffic, to other residents of the Units is created thereby.

4. **Declarant's Use.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, contractors and Builders who have purchased ten (10) or more Units from the Declarant to perform such reasonable activities, and to maintain upon portions of the Units such facilities as Declarant or Builder deems reasonably necessary or incidental to the construction and sale of Units, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its reasonable discretion. Notwithstanding the foregoing, neither the Declarant or any Builder shall perform any activity or maintain any facility on any portion of the Units in such a way as to unreasonably interfere with or disturb any Unit Owner, or to unreasonably interfere with the use, enjoyment or access of such Unit Owner, his family members, guests or invitees of and to his Unit and to a public right-of-way.

5. **Household Pets.** No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Units; provided, however, that the Unit Owners of each Unit may keep a reasonable number of dogs, cats or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Units. The Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that a Unit Owner is otherwise in violation of the provisions of this Section 5, and to take such action or actions as it deems appropriate to correct the same. A Unit Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article IV hereof.

6. **Temporary Structures: Unsightly Condition.** Except as hereinafter provided, no structure of a temporary character, including but not limited to, a house trailer, tent, shack, storage shed or outbuilding shall be placed or erected upon any Unit; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Unit as to be visible from a street or from any other Unit.

7. **Miscellaneous Improvements.**

(a) No advertising or signs of any character shall be erected, placed, permitted or maintained on any Unit other than a name plate of the occupant and a street number, and except for a "For Sale", "Open House" or "For Rent" sign of not more than five (5) square feet. Notwithstanding the foregoing, reasonable signs, advertising or billboards used by the Declarant or by a Builder who has purchased ten (10) or more Units from the Declarant, in connection with the sale or rental of the Units, or otherwise in connection with the development of or construction on the Units, shall be permissible, provided that such use shall not interfere with the Unit Owners' use and enjoyment of their Unit or with their ingress or egress from a public way to their Unit.

(b) No clothesline, chain-linked (or other) dog runs, drying yards, service yards, wood piles or storage areas shall be so located on any Unit as to be visible from a street or from the ground level of any other Unit. No woodpiles nor any other materials or any Improvements other than a boundary fence approved by the Architectural Review Committee shall be located on any Unit so as to be adjacent to any fence maintained by the Association.

(c) No types of refrigerating, cooling or heating apparatus shall be permitted on a roof and no such apparatus shall be permitted elsewhere on a Unit, except when appropriately screened and approved by the Architectural Review Committee.

(d) Except as may otherwise be permitted by the Architectural Review Committee, no exterior radio antenna, television antenna or other antenna, satellite dish or audio or visual reception device of any type shall be placed, erected or maintained on any unit, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Units.

(e) No wind generators of any kind shall be constructed, installed, erected or maintained on the Units.

(f) No fences shall be constructed, installed, erected or maintained on any Unit unless approved by the Architectural Review Committee and except such fences, in

such locations, as were installed or permitted to be installed by the Declarant in its constructions of Improvements on the Units.

(g) Any exterior lighting installed or maintained on the Units shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby properties.

8. **Vehicular Parking, Storage and Repairs.**

(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessory thereto, truck (larger than $\frac{3}{4}$ ton), self-contained motorized recreational vehicle or other type of recreational vehicle or equipment, may be parked or stored on the Units unless such parking or storage is within the garage area of any Unit or suitably screened from view by a fence not to exceed five feet (5') in height unless the unit is bounded by an arterial street, in which case a six foot (6') fence shall be permitted adjacent to such arterial in accordance with the requirements of the Architectural Review Committee such that such vehicle will not be visible from the ground level of any adjacent Unit or from the street, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles which are necessary for construction or for the maintenance of the units or any improvements located thereon.

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on any Unit. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Unit Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

(c) In the event the Association shall determine that a vehicle is parked or stored on any Unit in violation of subsections (a) or (b) of this Section 8, then a written notice describing said vehicle shall be delivered to the owner thereof (if such owner thereof can be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted on any Unit unless it is done within completely enclosed structures(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle or other vehicle together with those activities normally incident and necessary to such washing and polishing.

9. **Nuisances.** No nuisance shall be permitted on any Unit nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs the resident of any Unit or which interferes with the peaceful enjoyment or possession and proper use of any Unit, or any portion thereof, by its residents. As used herein, the term “nuisance” shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities on, the Units; provided, however, that such activities of the Declarant shall not unreasonably interfere with any Unit Owner’s use and enjoyment of his Unit, or with any Unit Owner’s ingress and egress to or from his Unit and a public way. No noxious or offensive activity shall be carried on upon any Unit nor shall anything be done or placed on any Unit which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of any Unit or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Units, or any portion thereof, shall be observed.

10. **Units Not to be Subdivided.** Except for Units subject to Development Rights, no Unit shall be subdivided, except for the purpose of combining portions with an adjoining Unit provided that no additional building site is created thereby. Not less than one entire Unit, as conveyed, shall be used as a building site.

11. **No Hazardous Activities.** No activities shall be conducted on any Unit or within Improvements constructed on any Unit which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Unit and no open fires shall be lighted or permitted on any Unit except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace, or except such campfires or picnic fires on property which may be designated for such use by the Association.

12. **No Annoying Light, Sounds or Odors.** No light shall be emitted from any Unit which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Unit which is unreasonably loud or annoying; and no odor shall be permitted from any unit which is noxious or offensive to others.

13. **Restrictions on Trash and Materials.** No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored or allowed to accumulate on any Unit unless placed in a suitable container suitably located solely for the purpose of the garbage pickup. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

14. **Minor Violations of Setback Restrictions.** If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement or setback of lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Unit immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Unit Owners. However, nothing contained in this Section 15 shall prevent the prosecution of a suit for any other violation of the restrictions, covenants or other provisions contained in this Declaration. A “minor violation”, for the

purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines or Unit lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any such structures.

15. **Rules and Regulations.** Rules and Regulations concerning and governing the Units and/or this Common Interest Community may be adopted, amended or repealed from time to time by the Executive Board, and the Executive Board may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such Rules and Regulations.

16. **Units to be Maintained.** Each Unit shall at all times be kept in a clean, sightly and wholesome condition by the Unit Owner of the Unit. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Unit except as necessary during the period of construction or as provided in Section 13 of this Article.

17. **Leases.** The term “lease”, as used herein, shall include any agreement for the leasing or rental of a Unit, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Unit Owner shall have the right to lease his Unit, or any portion thereof, under the following conditions:

(a) All leases shall be in writing, and a copy of the lease delivered to the Executive Board or the Association’s Managing Agent, if any; and

(b) All leases shall provide that the terms of the lease and lessee’s occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws and Rules and Regulations of the Association; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease; and

(c) No lease shall be for less than thirty (30) days.

18. **Management Agreements and Other Contracts.** Any agreement for professional management of the Association’s business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the Period of Declarant Control shall be subject to review and approval by HUD or the VA, if at the time such agreement is entered into, VA has a guarantee(s) or HUD has insurance on one or more Security Interests, and shall terminate absolutely, in any event, no later than thirty (30) days after termination of the Period of Declarant Control.

19. **Use of Common Elements.** An easement is hereby granted to the Declarant through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant’s obligations or exercising any special Declarant Rights. Subject to the immediately preceding sentence:

(a) No use shall be made of the Common Elements which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Elements.

(b) No Unit Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Elements to all Members, nor shall any Unit Owner place any structure whatsoever upon the Common Elements.

(c) The use of the Common Elements shall be subject to such Rules and Regulations as may be adopted from time to time by the Executive Board.

(d) No use shall ever be made of the Common Elements which will deny ingress and egress to those Unit Owners having access to their Units only over Common Elements, and the right of ingress and egress to said Units is hereby expressly granted.

ARTICLE X

EASEMENTS

1. **Easement for Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for the encroachment exists. The easement does not relieve a Unit Owner of liability in case of willful misconduct nor relieve a Declarant or any other Person of liability for failure to adhere to the Plats.

2. **Easements for Drainage and Utilities.** Easements for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the recorded plats affecting the Units and any amendments to such plats or as established by any other instrument of record. Declarant hereby reserves, to itself and to the Association, easements for drainage or drainage facilities across the five (5) rear and five (5) side feet of each Unit. No Improvements shall be placed or permitted to remain on any Unit nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each five foot rear and side yard drainage easement and at any time to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time.

3. **Easements Deemed Created.** All conveyances of any Unit hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

ARTICLE XI

PROPERTY RIGHTS IN THE COMMON ELEMENTS

1. **Unit Owner's Easements.** Subject to the provisions of Section 2 of this Article XI, every Unit Owner shall have a non-exclusive right and easement for the purpose of access to their Units and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Unit.

2. **Extent of Unit Owners' Easements.** The rights and easements created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by Members casting at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by the Declarant; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

(c) The right of the Association to promulgate and publish Rule and Regulations with which each Member shall strictly comply, including, but not limited to, the right of the Association to regulate and/or restrict vehicular parking and Improvements; and

(d) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of a Member for any period during which any assessment against his Unit remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Bylaws or its Rules and Regulations; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer shall be effective unless first approved by the Members entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by the Declarant, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Property shall not be deemed a transfer within the meaning of this subsection (3); and

(f) The right of the Association, through its Executive Board, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Unit Owners, other persons,

their family members, guests and invitees, for any purposes(s) the Board may deem to be useful, beneficial or otherwise appropriate; and

(g) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

3. **Delegation of Use.** Any Unit Owner may delegate his rights of use of and access over the Common Elements to the members of his family, his tenants or contract purchasers who reside on his Unit.

4. **Payment of Taxes or Insurance by Security Interest Holders of First Security Interests.** Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefore from the Association.

5. **Conveyance or Encumbrance of Common Elements.**

(a) Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only if persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by a Declarant, agree to that action;

(b) An agreement to convey Common Elements or subject them to a Security Interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratification thereof must be recorded in every county in which a portion of the Common Interest community is situated and is effective only upon recordation.

(c) The Association, on behalf of all Unit Owners, may contract to convey an interest in a Common Interest Community pursuant to subsection (a) of this section, but the contract is not enforceable against the Association until approved, executed and ratified. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Unless in compliance with this Section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements is void.

(e) A conveyance or encumbrance of Common Elements pursuant to this Section shall not deprive any Unit of its rights of ingress and egress to the Unit.

ARTICLE XII

MASTER ASSOCIATION

1. **Membership in Master Association.** Each Unit Owner shall be a Member of the Master Association subject to the terms of the Master Declaration.

2. **Inclusion of the Property in the Master Association.** The inclusion of the Property in the Master Association shall be evidenced by the recording of a supplemental Declaration in form and content and in the manner provided by the Master Declaration. For all purposes, this Declaration shall be considered a Supplemental Declaration as that term is defined by the Master Declaration. Upon recordation of this Declaration, the Property shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in the Master Declaration.

3. **Election of the Executive Board of the Master Association.** After the period of Declarant Control, all Unit Owners of all common interest communities subject to the Master Declaration may elect all members of the Master Association's Executive Board.

4. **Delegation of Powers.** In addition to those powers specifically reserved or granted to the Master Association pursuant to the Master Declaration, the Master Association may exercise all of the powers set forth in C.R.S. §38-33.3-302 and such powers are expressly permitted to be exercised by the Master Association. In addition, the Executive Board may delegate such powers to the Master Association, as it deems appropriate, and in such case, the members of the Executive Board shall have no liability for the acts or omissions of the Master Association with respect to the powers following delegation.

5. **Obligation to Pay Master Association Charges.** In addition to the obligation to pay all Association Assessments, each Member shall, by virtue of ownership of a Unit, be obligated to pay all Master Association Assessments, as set forth in the Master Declaration.

ARTICLE XIII

GENERAL PROVISIONS

1. **Enforcement.** Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations of the Association, as amended, may be by any proceeding at law or in equity against any Person violating or attempting to violate any such provision. The Association and any aggrieved Unit Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. For each claim, including, but not limited to, counterclaims, cross-claims and third-party claims, in any legal proceeding to enforce the provisions of the Act or of the Declaration, Bylaws, Articles or Rules and Regulations, the

court shall award to the party prevailing on such claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Failure by the Association or any Unit Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

2. **Severability.** All provisions of the Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association are severable. Invalidation of any of the Provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

3. **Conflict of Provisions.** Except to the extent that any provision of this Declaration is inconsistent with the Act, in case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

4. **Annexation.**

(a) Additional residential property may be annexed to this Declaration with the consent of the Members having two-thirds (2/3) of the Allocated Interests. Notwithstanding the foregoing, the Declarant may annex to this Declaration additional property within the lands described on Exhibit C, attached hereto and incorporated herein by this reference, until that date which is ten (10) years after the date of recording of this Declaration in the county in which the Common Interest Community is located, without consent of any other Unit Owners, Security Interest Holders, or any other Person, subject to a determination by VA or HUD that the annexation is in accord with the general plan approved by it and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements (if the Declarant desires to attempt to obtain VA or HUD approval of the property being annexed). Subject to such right of approval, Declarant may exercise its Development Rights in all or in any portion of the Property described in the attached Exhibit C over which such rights have not already been exercised, and no assurances are made as to the boundaries or order of exercise of such Development Rights. Each such annexation shall be effected, if at all, by the recording of a Plat or Map of the property to be annexed (unless such Plat or Map has been previously recorded), which Plat or Map shall contain such certifications as required by Section 38-33.3-209 of the Act, an by recording of an Amendment to the Declaration in the Office of the Clerk and Recorder of the county in which this Common Interest Community is located, which Amendment to the Declaration shall provide for annexation to this Declaration of the property described and shall state that the Declarant is the owner of the Units thereby created, assign an identifying number to each new Unit, describe any Common Elements within the property being annexed, and reallocate the Allocated Interests among all Units, an may include such other provisions as the Declarant deems appropriate. An Amendment to the Declaration may also be called a supplemental Amendment. All provisions this Declaration, including, but not limited to, those provisions regarding obligations to pay assessments to the Association and

any right to cast votes as Members, shall apply to annexed property immediately upon recording an Amendment to the Declaration with respect thereto, as aforesaid.

(b) Subject to the approval of VA or HUD as stated in (a) above, the Declarant may amend this Declaration at any time during the ten (10) year period stated in (a) above, and add additional real estate to the Common Interest Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Common Interest Community pursuant to this sentence, and not described in the attached Exhibit C, does not exceed ten percent (10%) of the total area described in the attached Exhibit A and C.

5. **Duration, Revocation and Amendment.**

(a) Each and every provision of this Declaration shall run with and bind the land subject to this Declaration for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as provided in subsection (d) of this Section 5 or in Section 4 of this Article XIII, or as otherwise permitted by the Act, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by a vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

(b) No action to challenge the validity of an Amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the Amendment is recorded.

(c) Every Amendment to the Declaration must be recorded in every county in which any portion of the Common Interest Community is located, and is effective only upon recordation.

(d) Except to the extent expressly permitted or required by other provisions of this Declaration or under the Act, no Amendment may create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit or the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

(e) Amendments to the Declaration that are required by this Declaration to be recorded by the Association shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Where a Unit is owned by more than one Person, the execution of any Amendment shall be valid if executed by any one Owner. Signatures need not be notarized. All signatures shall be irrevocable even upon death or conveyance of the Unit except that if an Amendment is not recorded within three (3) years of the date of signature, then the executing Owner, or their successor or assigns, may revoke their signature by a written and

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

6. **Registration of Mailing Address.** Each Unit Owner and each Security Interest Holder, insurer or guarantor of a Security Interest shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon a Unit Owner, or upon a Security Interest holder, insurer or guarantor of a Security Interest, whether by the Association or any Unit Owner, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such person or entity at such registered mailing address. However, if any Unit Owner fails to notify the Association of the registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Unit Owner at the address of such Unit Owner's Unit. All notices, demands or other notices intended to be served upon the Executive Board or the Association shall be sent by registered or certified mail, postage prepaid, c/o The Peninsula at Plum Creek Homeowners Association, 56 Inverness Drive East, Suite 105, Englewood, Colorado 80112, until such address is changed by the Association.

7. **HUD or VA Approval.** During the Period of Declarant Control, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more Security Interests: annexation of additional real property; amendment to this Declaration; termination of this Common Interest community; or merger or consolidation of the Association.

8. **Description of Units.** A description of a Unit which sets forth the name of the Common Interest Community, the recording data for the Declaration, the county in which the Common Interest Community is located, and the identifying number of the Unit, is a legally sufficient description of that Unit and all rights, obligations and interest appurtenant to that Unit which were created by the Declaration or Bylaws. It shall not be necessary to use the term "unit" as a part of the legally sufficient description of a Unit.

9. **Termination of Common Interest Community.**

(a) Except in the case of a taking of all the Units by eminent domain, a Common Interest Community may be terminated only by agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. Provided, however, that during the period of Declarant control the Common Interest Community Association may only be terminated by agreement of Unit Owners of Units to which 100% of the votes in the Association are allocated.

(b) An agreement of Unit Owners to terminate must be evidenced by their execution of a termination agreement or ratification thereof in the same manner as a deed, by the requisite number of Unit Owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination

agreement and all ratifications thereof must be recorded in every county in which a portion of the Common Interest Community is situated and is effective only upon recordation.

(c) The Association, on behalf of the Unit Owners, may contract for the sale of real estate in which the Association has an interest following termination, but the contract is not binding on the Unit Owners until approved pursuant to this Section. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all the powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lienholders as their interests may appear.

(d) Following termination of the Common Interest Community, the proceeds of any sale of real estate, together with the assets of the Association, are held by the Association as trustee for Unit Owners and holders of liens on the Units, as their interest may appear.

(e) The respective interests of Unit Owners referred to in subsections (c) and (d) of this Section 9 are as follows:

(1) Except as provided in paragraph (2) of this subsection (f), the respective interests of Unit Owners are the fair market values of their Allocated Interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit Owners and becomes final unless disapproved within thirty (30) days after distribution by Unit Owners of Units to which twenty-five percent (25%) of the votes in the Association are allocated.

(f) Except as provided in subsection (g) of this Section, foreclosure or enforcement of a lien or encumbrance against the entire Common Interest Community does not terminate, of itself, the Common Interest Community. Foreclosure or enforcement of a lien or encumbrance against a portion of the Common Interest Community other than withdrawable real estate does not withdraw, of itself, that real estate from the Common Interest Community, but the person taking title thereto may require from the Association, upon request, an amendment to the Declaration excluding the real estate from the Common Interest Community prepared, executed and recorded by the Association.

(g) If a lien or encumbrance against a portion of the real estate comprising the Common Interest Community has priority over the Declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the Common Interest Community. The Executive Board shall reallocate interests as if the foreclosed sections were taken by eminent domain by an amendment to the Declaration prepared, executed and recorded by the Association.

10. **Transfer of Special Declarant Rights.** A Special Declarant Right created or served under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Common Interest Community is located. The instrument is not effective unless executed by the transferee.

11. **Eminent Domain.**

(a) If a Unit is acquired by eminent domain or part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Unit Owner for that Unit and its Allocated Interests whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking. Any remnant of a Unit remaining after part of a Unit is taken under this subsection (a) is thereafter Common Elements.

(b) Except as provided in subsection (a) of this Section, if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and its interest in the Common Elements whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides:

(1) That Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Unit or on any other basis specified in this Declaration; and

(2) The portion of Allocated Interests divested from the partially acquired Unit is automatically reallocated to that Unit and to the remaining Units in proportion to the respective interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

(c) If part of the Common Elements is acquired by eminent domain, that portion of any award attributable to the Common Elements taken must be paid to the Association. For the purposes of acquisition of a part of the Common Elements, service of process on the Association shall constitute sufficient notice to all Unit Owners, and service of process on each individual Unit Owner shall not be necessary.

(d) The court decree shall be recorded in every county in which any portion of the Common Interest Community is located.

(e) The reallocation of Allocated Interests pursuant to this Section shall be confirmed by an amendment to the Declaration prepared, executed and recorded by the Association.

12. **Association as Trustee.** With respect to a third person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not

bound to inquire whether the Association has the power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

13. **Golf Course Hazards.**

(a) Risks of Location Near Golf Course. Neither the Association, the Declarant, a Builder, nor the agents, heirs, successors, assigns, guests or invitees of any of the foregoing, known as the "Protected Group", shall be liable to any owner of a Unit, his family, tenants, guests, invitees, servants, agents or employees for any personal injury or property damage resulting from activity emanating from the Plum Creek Golf and Country Club ("Country Club"), golf course, including, but not limited to errant golf balls. By virtue of accepting title to a Unit subject to the terms of this Declaration, each Owner of a Unit agrees to:

(1) Assume the risk of injury or damage to property or persons resulting from activity emanating from the Country Club.

(2) Obtain such policies of insurance that Owner deems necessary to insure such Owner, his family, guests, invitees, servants, agents or employees from injury or damage to property or person resulting from activity emanating from the Country Club.

(3) Release the Protected Group from any liability or any personal injury or property damage resulting from activity emanating from the Country Club golf course.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 15th day of January, 1998.

DECLARANT:

WGB Fairway Ten Partners, L.P.

By: WGB Management LLC, its General Partner

By Richard Dean, Mgr
Richard Dean, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

Acknowledged before me this 15th day of January, 1998 by Richard Dean, Manager, of WGB Management LLC, General Partner of WGB Fairway Ten Partners, L.P.

Witness my hand and official seal.

My commission expires July 24, 2001.
Wyoma Johnson

The undersigned, being the owner and holder of all of the indebtedness secured by a certain deed of trust dated September 16, 1997, in the original principal amount of \$400,000.00 recorded September 17, 1997 in Book 1466 at Page 280 of the records of the Clerk and Recorder of Douglas County Colorado (“Deed of Trust”) hereby agrees that the above First Supplemental Declaration shall be prior and paramount to all rights under such Deed of Trust that the recording priority of the Deed of Trust shall at all times be subordinate to the First Supplemental Declaration to which this page is attached, and that any sale under foreclosure of that Deed of Trust shall be subject to such First Supplemental Declaration.

Holmby Leisure Country Club, Ltd.
By John Chen_____

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 12th day of February, 1998 by John Chen as President of Holmby Leisure Country Club, Ltd.

Witness my hand and official seal.

My commission expires February 19, 1999.

Janette B. Fairley
Notary Public

The undersigned , being the owner and holder of all of the indebtedness secured by a certain deed of trust dated September 16, 1997, in the original principal amount of \$2,962,999.00 recorded September 16, 1997 in Book 1466 at Page 220 of the records of the Clerk and Recorder of Douglas County Colorado (“Deed of Trust”) hereby agrees that the above Declaration shall be prior and paramount to all rights under such Deed of Trust that the recording priority of the Deed of Trust shall at all times be subordinate to the Declaration to which this page is attached, and that any sale under foreclosure of that Deed of Trust shall be subject to such Declaration.

Bank Midwest N.A.
By John E. Baxter

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this 12th day of January, 1998 by John E. Baxter as Vice President of Bank Midwest N.A.

Witness my hand and official seal.

My commission expires September 30, 2001.

Shannon Okely
Notary Public

LOTS 1 THROUGH 54 INCLUSIVE, BLOCK 1, LOTS 1 THROUGH 10 INCLUSIVE,
BLOCK 2, LOTS 1 THROUGH 45 INCLUSIVE, BLOCK 3 AND TRACTS A, B, C, D, E,
F, G, H I AND J, PLUM CREEK FAIRWAY 10 SUBDIVISION FILING NO. 1, COUNTY
OF DOUGLAS, STATE OF COLORADO.

EXHIBIT A

TO THE DECLARATION CREATING COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS OF THE PENINSULA AT PLUM CREEK

COUNTY OF DOUGLAS, STATE OF COLORADO

Any and all easements as shown on any recorded plat depicting all or any portion of the common interest community or any easement recorded of record which pertains to all or any portion of the common interest community.

EXHIBIT B

**TO THE DECLARATION CREATING COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS OF THE PENINSULA AT PLUM CREEK**

COUNTY OF DOUGLAS, STATE OF COLORADO

NONE

EXHIBIT C

**TO THE DECLARATION CREATING COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS OF THE PENINSULA AT PLUM CREEK**

COUNTY OF DOUGLAS, STATE OF COLORADO