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CAROL SHYDER

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**MCKAY LANDING  
CITY OF BROOMFIELD  
COUNTY OF ADAMS, COLORADO**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOO

MCKAY LANDING  
CITY OF BROOMFIELD  
COUNTY OF ADAMS, COLORADO

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**MCKAY LANDING  
CITY OF BROOMFIELD  
COUNTY OF ADAMS, COLORADO**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MCKAY LANDING, CITY OF BROOMFIELD, COUNTY OF ADAMS, COLORADO ("Declaration") is made this \_\_\_\_ day of November, 2000, by MCKAY LANDING LLC, a Colorado limited liability company ("Declarant").**

**RECITALS**

**A. Declarant owns the real property lying within the boundaries of the plat of McKay Landing Filing No. 1, City of Broomfield, County of Adams, State of Colorado, except the portions thereof dedicated by the Plat to the City.**

**B. Declarant desires to ensure the attractiveness of the Subdivision, to prevent the future impairment thereof, to prevent nuisances, and to preserve, protect, and enhance the values thereof. In order to achieve these goals, Declarant wants to subject the Subdivision to the covenants hereinafter set forth.**

**DECLARATION**

**In order to enhance the value of the Subdivision and maintain its value and desirability, for the purposes set forth herein, Declarant declares that the Subdivision shall be held, transferred, sold, conveyed, leased, and occupied subject to the covenants, conditions, and restrictions hereinafter set forth, all of which shall run with the land.**

**ARTICLE 1  
GENERAL**

**1.1. Community Area. Declarant is the owner of all of the Units in the Subdivision and other real property which is included in the Community Area, except the portions thereof dedicated by the Plat to the City. Declarant intends to develop the Units within the Community Area as a planned community of residential and other land uses, including open space.**

**1.2. Purposes of Declaration. Property which is subject to this Declaration in the manner hereinafter provided shall be referred to as the Community Area. This Declaration is executed: (a) in furtherance of a common and general plan for the Community Area; (b) to protect and enhance the quality, value, aesthetics, desirability and attractiveness of the Community Area; (c) to provide for an Association as a vehicle to hold, maintain, care for, and manage Association Properties; (d) to**

define the duties, powers, and rights of the Association; (e) to define certain duties, powers, and rights of Owners of Units; (f) to provide for the maintenance of the Units, the Association Properties, the Neighborhood Common Areas, and the other portions of the Community Area; and (g) to take other appropriate actions to enhance the quality of the Subdivision and consistent with the terms of this Declaration.

1.3. **Declaration.** Declarant, for itself, its successors and assigns, hereby declares that all of the Units, the other property in the Community Area owned by Declarant, and, to the extent the same are Association Properties, the other property located in the Community Area, and all other property which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with the terms hereof, shall inure to the benefit of each of the Units (together, the "Benefitted Property") and shall bind, be a charge upon, and inure to the mutual benefit of: (a) all of the Units and the other property in the Community Area and each part or parcel thereof, (b) Declarant and its successors and assigns, (c) the Association and its successors and assigns, and (d) all Persons having or acquiring any right, title, or interest in the Community Area or any part or parcel thereof or any Improvement thereon and their heirs, personal representatives, successors, and assigns.

1.4. **Applicability of Colorado Common Interest Ownership Act.** The Act is applicable to the Community Area as a planned community under the Act. This Declaration shall not be subject to the terms and provisions of the Act other than the Applicable Provisions.

1.4.1. "Units" under the Act are the Units, and each Unit is a "Unit" under the Act.

1.5. **Name: Type of Common Interest Community.** The name of the common interest community created by this Declaration is "McKay Landing." McKay Landing is a planned community under the Act.

## **ARTICLE 2 DEFINITIONS**

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

"Act": the Colorado Common Interest Ownership Act as provided in C.R.S. § 38-33.3-101, et seq., as the same may be from time to time amended.

"Additional Property": shall have the meaning provided in Section 10.11.

**"Administrative Functions"**: all functions of the Association that are provided for, or are necessary and proper, under this Declaration and shall include, without limitation, providing management and administration of the Association; providing architectural and design review services under Article 9 hereof; incurring reasonable attorneys' fees and accountants' fees; obtaining errors and omissions insurance for officers, directors, and agents of the Association; obtaining fidelity bonds for any Person handling funds of the Association; paying taxes levied against the Association Properties; incurring filing fees, recording costs, and bookkeeping fees; obtaining and maintaining offices and office furniture and equipment; and performing other reasonable and ordinary administration tasks associated with operating the Association.

**"Applicable Provisions"**: the provisions of the Act which cannot, according to the Act, be varied.

**"Appointment Period"**: shall have the meaning provided in Section 10.2.

**"Area of Common Responsibility"**: the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association.

**"Articles of Incorporation"**: the Articles of Incorporation of the Association, which have been or will be filed in the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

**"Assessment"**: a Common Assessment, Neighborhood Assessment, Special Assessment, or Specific Assessment.

**"Association"**: McKay Landing Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

**"Association Properties"**: all real and personal property, if any, including all Common Areas and all Improvements on Common Areas, (i) which are now or hereafter owned by the Association, (ii) with respect to which the Association holds an easement for the use, care, or maintenance, (iii) which the Association has a right or obligation to maintain, (iv) which are held for the common use and enjoyment of the Members of the Association or for other purposes permitted by this Declaration, or (v) which are otherwise identified in this Declaration as Association Properties or are otherwise identified as Association Properties as provided below. Without limiting the foregoing, the Association Properties shall include any properties which are part of the Community Area and which are designated as Association Properties by Declarant in the manner permitted hereby. Declarant may, from time to time, at the time that each portion of the Additional Properties is annexed to the Community Area, in the Notice of Annexation, or thereafter prior to the sale of any Unit in the portion of the Additional Property so annexed with a completed Residence on the Unit, designate tracts within or appurtenant to such Additional Property as Association Properties; provided that Declarant's failure to designate tracts in such Additional Property as Association Properties shall not make tracts that otherwise fall within the definition of Association Properties from being Association Properties. Association Properties do not include Units, except to the extent



of easements reserved thereon for the benefit of the Association and except to the extent, if any, owned by the Association and used only for the purposes of the Association.

**"Base Assessment"**: shall have the meaning provided in Section 8.2.3.

**"Benefitted Property"**: shall have the meaning provided in Section 1.3.

**"Board of Directors"** or **"Board"**: the body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as a board of directors under Colorado corporate law.

**"Builder"**: any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

**"Business"** and **"Trade"**: shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

**"By-Laws"**: the By-Laws of the Association which have been or will be adopted by the Board of Directors of the Association, as the same may be amended from time to time.

**"City"**: shall mean the City of Broomfield, Colorado.

**"Common Area"**: any portion of the Community Area owned or maintained by the Association or a Neighborhood Association for the common use and enjoyment of the Owners (including those which may also be used by others), including, but not limited to, the open space and easements for the use and benefit of the Owners. The term shall include the Neighborhood Common Areas, as defined below. Common Areas may be owned: (a) by the Association; (b) by individual Owners or other Persons over which the Association may have an easement for use or maintenance purposes or a maintenance obligation; (c) by a Neighborhood Association, or (d) by the City. Common Areas do not include the Units, except to the extent of easements reserved thereon for the benefit of the Association and except to the extent, if any, owned by the Association and used by the Association as Common Areas.

**"Common Assessment"**: assessments levied on all Units subject to assessment under Section 8.1 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1, 8.3, 8.4 and 8.5.

**"Common Expenses"**: the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reserve the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of

**Incorporation.** Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by the Members of the Association representing a majority thereof, excluding the Declarant.

**"Community Area"**: all of the real property lying within the boundaries of the McKay Landing, Filing No. 1, City of Broomfield, County of Adams, State of Colorado, and all of the Additional Property hereafter annexed to the Community Area in accordance with Section 10.11, together with any Association Properties or portions thereof lying outside the boundaries of such property that are subjected to this Declaration in accordance with Article 10.

**"Community-Wide Standard"**: the standard of conduct, maintenance, or other activity generally prevailing throughout the Community Area. Such standard may be more specifically determined by the Board of Directors and the Design Review Committee.

**"Condominium Lot"**: is a constructed, completed, and habitable condominium unit constructed on any Unit which is initially designated as a Multifamily Unit.

**"County"**: the County of Adams, State of Colorado or the City and County of Broomfield, State of Colorado.

**"Declarant"**: McKay Landing LLC, a Colorado limited liability company, and its successors by operation of law in the event of the merger or consolidation of McKay Landing LLC into another Person, and any other Person to which Declarant (including any such successor-Declarant) transfers all or a substantial portion of the remaining Units then owned by Declarant and which Declarant (or any such successor Declarant) designates as its successor as Declarant in a Recorded instrument.

**"Declarant Control Period"**: shall have the meaning provided in Section 10.1.

**"Declaration"**: this instrument as it may be amended from time.

**"Deed of Trust"**: a deed of trust to the public trustee given voluntarily by any Owner of a Unit and encumbering the Unit to secure the performance of a promissory note or other obligation.

**"Design Guidelines"**: the architectural guidelines and procedures adopted by the Design Review Committee pursuant to Article 9 and applicable to all Units within the Community Area.

**"Design Review Committee"**: the Committee provided for in Article 9 of this Declaration.

**"Design Standards"**: shall have the meaning provided in Section 9.7.

**"Dwelling"**: is any residential dwelling unit, including without limitation, a Residence, a townhome, a condominium unit, and an apartment.

**"Established Drainage Pattern"**: shall have the meaning provided in Section 3.17.

**"First Mortgage"**: shall have the meaning provided in Section 8.16.

**"First Mortgagee"**: shall have the meaning provided in Section 8.13.

**"Habitable Dwelling"**: shall have the meaning provided in Section 8.2.5.

**"Improvement"**: all structures and any appurtenances thereto of every type or kind, including, but not limited to, Residences, buildings, outbuildings, swimming pools, patio covers, awnings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, painting of any exterior surfaces of any visible structure, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning and water softener fixtures.

**"Improvement to Property"**: shall have the meaning provided in Section 9.2.

**"Installment Sale Contract"**: any contract for deed or real property sale contract pursuant to which possession is transferred to the contract purchaser and fee title is retained by the contract seller to secure the obligations of the contract purchaser to pay the purchase price owing under such contract.

**"Lease"**: any agreement for the leasing or rental of a Unit, and shall specifically include, without limitation, a month-to-month or other short-term rental.

**"Limited Declarant"**: shall mean, for purposes of Sections 3.4.3, 3.15, 5.7, 6.29, 9.1, 9.11, 10.1, 10.2, 10.6, 10.9, 11.2, 11.26, and 11.27, any Person to which Declarant transfers a Unit on which construction of a Residence has not yet been completed and which is specifically designated as a Limited Declarant as to such Unit in a written instrument executed and acknowledged by Declarant and duly Recorded.

**"Lot"**: is a single family detached residential lot platted by the Plat.

**"Maintenance Funds"**: the accounts into which the Board shall deposit monies paid to the Association and from which disbursements shall be made in the performance of the functions of the Association pursuant to Article 8.

**"Member"**: the Person or, if more than one, all Persons collectively who constitute the Owner of a Unit.

**"Mortgage"**: any mortgage, Deed of Trust, security deed, Installment Sale Contract, lease intended for security, or other such instrument, given voluntarily by any Owner of a Unit and encumbering the Unit to secure performance of a promissory note or other obligation.

**"Mortgagee"**: the holder of a promissory note or other obligation secured by a Mortgage.

**"Mortgagor"**: the Person who grants a Mortgage.

**"Multifamily Unit"**: shall have the meaning provided below in the definition of Unit.

**"Neighborhood" or "Neighborhood Area"**: each separate portion of the Community Area which is designated by Declarant as a separate Neighborhood or Neighborhood Area. The real property described on Exhibit A shall constitute Neighborhood Area I (Summer Bay). The real property described on Exhibit B shall constitute Neighborhood Area II (Lakesong). The real property described on Exhibit C shall constitute Neighborhood Area III (Lake Isle). The real property described on Exhibit D shall constitute Neighborhood Area IV (Sky Cove). If Additional Property is hereafter annexed to the Community Area, the Declarant shall, in the Notice of Annexation, or thereafter prior to the sale of any Unit in the Additional Property so annexed with a completed Residence on the Unit, identify the additional Neighborhood Area(s) and identify the portions of such Additional Property located in each of the Neighborhood Area(s).

**"Neighborhood Assessments"**: assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 8.1 and 8.8.

**"Neighborhood Association"**: any condominium association or other owners association having concurrent jurisdiction over any Neighborhood.

**"Neighborhood Common Area"**: a portion of the Common Area intended for the exclusive use or primary benefit of one of the Neighborhoods as more particularly described in Article 4.

**"Neighborhood Declaration"**: the declaration of covenants, conditions, and restrictions Recorded by Declarant or a Limited Declarant as to any Neighborhood.

**"Neighborhood Design Committee"**: the design committee for any Neighborhood established in the Neighborhood Declaration for such Neighborhood.

**"Neighborhood Expenses"**: the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners and occupants of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize and as may be authorized herein or in Neighborhood Declarations or Supplemental Declarations applicable to the Neighborhoods.

**"Notice of Annexation"**: shall have the meaning provided in Section 10.11.

**"Owner"**: the Person, including without limitation Declarant and a Limited Declarant, or, if more than one, all Persons collectively, who together hold fee simple title of Record to a Unit, including sellers under executory contracts of sale and excluding buyers thereunder.

**"Person"**: a natural person, a corporation, a partnership, or any other entity.

**"Plat"**: the plat of McKay Landing Filing No. 1 Recorded on May 16, 2000 as Reception No. CO670915 in the real property records for the County of Adams, State of Colorado, and any other final plat applicable to any portion of the Additional Property hereafter annexed to the Community Area, together with all amendments of the Plat from time to time approved and Recorded.

**"Priority Liens"**: shall have the meaning provided in Section 8.16.

**"Record"** or **"Recorded"**: shall mean the filing for record of any document in the office of the Clerk and Recorder for the County.

**"Related User"**: shall have the meaning provided in Section 3.12.

**"Residence"**: shall mean a single family residential dwelling unit.

**"Special Assessment"**: assessments levied in accordance with Section 8.9 of this Declaration.

**"Specific Assessment"**: assessments levied in accordance with Section 8.10 of this Declaration.

**"Subdivision"**: means all of the real property lying within the boundaries of the Plat.

**"Supplemental Declaration"**: an amendment or supplement to this Declaration filed pursuant to Article 10 which subjects additional property to this Declaration and which may, expressly or by reference, impose additional restrictions and obligations on the land described therein.

**"Total Number of Assessable Units"**: shall have the meaning provided in Section 8.2.3.

**"Townhome Lot"**: is a townhome lot as platted by the Plat.

**"Unit"**: is a Lot, a Townhome Lot, or an area of the Community Area platted as multifamily attached housing units ("Multifamily Unit"); provided that if any Multifamily Unit is subsequently subdivided in accordance with this Declaration into Lots, Townhome Lots, or Condominium Lots, such Multifamily Unit shall, when a condominium map and declaration is Recorded for such Unit, thereafter be deemed to contain the number of Units designated for residential use for such property on the condominium map and declaration.

### ARTICLE 3 GENERAL RESTRICTIONS APPLICABLE TO COMMUNITY AREA

All real property within the Community Area shall be held, used and enjoyed subject to the following easements, limitations, and restrictions, subject to exemptions of Declarant and Limited Declarant set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Design Review

Committee if such strict application is not necessary to achieve the purposes of this Declaration or, under the circumstances, would be unreasonably or unduly harsh in comparison to the goals of this Declaration that such strict application is necessary to achieve. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Design Review Committee.

3.1. Maintenance of Community Area. No property within the Community Area shall be permitted to fall into disrepair, and all property within the Community Area, including the Residences, fences, Improvements, and landscaping thereon, shall be kept and maintained in a clean, attractive, and sightly condition and in good repair. Maintenance, repair, and upkeep of each Unit and the Residence and other Improvements on such Units shall be the responsibility of the Owner of the Unit. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

3.2. Association Properties. Maintenance, repair, and upkeep of Association Properties other than the Neighborhood Common Areas (except as otherwise provided herein) shall be the responsibility of the Association.

3.3. Neighborhood Common Areas. Maintenance, repair, and upkeep of the Neighborhood Common Areas shall be the responsibility of the Neighborhood Association for the Neighborhood in which the Neighborhood Common Areas are located, or if there is no Neighborhood Association for the Neighborhood in which the Neighborhood Common Areas are located, the Association, or if all of the Units located in a Neighborhood are owned by one Owner, the Owner of those Units within the Neighborhood. The Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring the Neighborhood Common Areas. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and open space between the Neighborhood and adjacent public roads and private streets within the Neighborhood, regardless of ownership. Any Neighborhood Association or Owner having any responsibility for maintenance of Neighborhood Common Areas within such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs against all Units within such Neighborhood as provided in Section 8.8.

3.4. Property Uses. All Units shall be used for private residential purposes. No Dwelling erected or maintained within the Community Area shall be used or occupied for any purpose other than for a Residence. Notwithstanding the foregoing:

3.4.1. Activities associated with the sale of Units shall be allowed.

3.4.2. In-home businesses not involving visits to the Community Area by customers or employees shall be allowed if permitted under applicable zoning and other regulations so long as

such activities are conducted solely within the Residence and do not create or result in any offensive or noxious activities or constitute a nuisance.

3.4.3. Declarant (including Limited Declarants) may (subject to owning such Unit or obtaining the permission of the Owner of such Unit for such use) use any of the Units for purposes of selling or marketing the Units or Residences constructed or to be constructed on the Units (including without limitation maintaining sales offices and model homes on the Units) or for the purpose of housing construction trailers for use in connection with the construction of Residences on the Units; provided that, unless otherwise authorized in writing by the Design Review Committee (which authorization shall, in each case, state the time period during which such authorization shall be in effect and any limitations or conditions on such authorization), not more than eight Units may be used at any one time by the Declarant (and not more than four Units by each Limited Declarant) for sales offices, not more than eight additional Units may be used at any one time by Declarant (and not more than four Units by each Limited Declarant) for construction offices, not more than thirty-two Units may be used at any one time by Declarant (and not more than sixteen Units by each Limited Declarant) for model homes, and not more than sixteen Units may be used at any one time by Declarant (and not more than eight Units by each Limited Declarant) for construction trailers. Any stricter restrictions imposed in writing by Declarant on any Limited Declarant, written notice of which referencing this Section is given to the Association, shall be binding on the Limited Declarant and enforceable by the Association as if set forth in this Declaration.

3.5. Construction Type. All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a Unit, except as expressly hereinafter provided for temporary buildings.

3.6. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within the Community Area, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others.

3.7. Annoying Sounds or Odors. No sound or odor shall be emitted from any property within the Community Area which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the Design Review Committee, and no loud or obnoxious sounds shall be emitted from any Unit or part of the Community Area at any time.

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

3.9. No Unsightliness. All unsightly conditions, structures, facilities, equipment, including snow removal equipment and garden or maintenance equipment, and objects shall be enclosed within a structure, except when in actual use.

3.10. Weeds. Each Unit shall be kept free from brush or other growth or trash which, in the opinion of the Design Review Committee, is unsightly or causes undue danger of fire, and shall be kept mowed during growing seasons so that no weeds, brush, grasses or growth on any Unit exceed six (6) inches in height at any time.

3.11. Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Unit except within an enclosed structure or appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up and except that compost and composting materials shall not be subject to the foregoing restriction so long as they are kept in an appropriate, attractive container in an appropriate location that does not detract from the overall attractiveness of the Unit on which such container is placed.

3.12. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that, so long as not bred or maintained for commercial purposes and so long as not hazardous, a nuisance, or otherwise offensive to any portion of the Community Area, domesticated birds or fish, other small domestic animals permanently confined indoors, and (i) in Neighborhoods II and IV, an aggregate of not more than two (2) domesticated dogs or cats (which must be fenced or restrained at all times within a Unit), will be permitted on any one Unit and (ii) in Neighborhoods I and III and/or any Multifamily Unit, an aggregate of not more than (a) one (1) domesticated dog not exceeding fifty (50) pounds and one (1) domesticated cat or (b) two (2) domesticated cats (all of which must be fenced or restrained at all times within a Unit, or for any Multifamily Unit, within a Residence within such Multifamily Unit), will be permitted on any one Unit or within any one Residence within a Multifamily Unit. No animal of any kind (including dogs and cats) shall be permitted which is determined by the Design Review Committee to make an unreasonable amount of noise or odor, to be offensive or hazardous, or to be a nuisance. All household pets shall be controlled by their owner and shall not be allowed off the owner's Unit except when properly leashed and accompanied by the pet owner or his representative, who shall be responsible for collecting and properly disposing of any animal waste. Each Owner of a Unit shall be financially responsible and liable for any injury or damage caused by any household pet (a) normally housed on that Unit or (b) belonging to or brought onto the Community Area by the Owner of the Unit, or (c) belonging to or brought onto the Community Area by anyone living in the Residence on the Unit or visiting with or staying with the Owner of the Unit or coming onto the Community Area pursuant to the permission granted by the Owner of such Unit (all of whom together are herein called "Related Users").

3.13. No Temporary Structures. No tent, shack, storage shed, satellite dish, temporary structure, or temporary building shall be placed upon any property within the Community Area except with the prior written consent of the Design Review Committee obtained in each instance, subject to such conditions or restrictions as may be required by the Design Review Committee.



3.14. Restrictions on Antennae, Pipes, Utility Lines, and Transmitters. Pipes for water, gas sewer, drainage, or other purposes, and wires, poles, aerials, antennae, satellite dishes, and other facilities for the transmission or reception of audio, visual, microwave, or similar signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground, within an enclosed structure, or otherwise screened from view from neighboring properties other than the Unit on which such facilities are installed and from any public streets, roads, or other rights-of-way in or adjacent to the Community Area, and no such facilities shall be installed without the prior approval of the Design Review Committee; provided that the Design Review Committee shall not withhold its approval of the installation on any Unit (and on each separate apartment building in any Multifamily Unit) of one satellite dish television reception device which does not exceed 36 inches in diameter so long as such device is located on the Unit in a manner consistent with the terms set forth in this Declaration and approved by the Design Review Committee and screened from view in accordance with the requirements of this Section and in a manner approved by the Design Review Committee. With the approval of the Design Review Committee, a master antenna or cable television antenna may, but need not, be provided for use of all Owners or a group of Owners, and Declarant or the Association may grant easements for such purposes. No electronic or radio transmitters of any kind other than garage door openers or cellular or cordless telephones shall be operated in or on any structure or within any Unit.

3.15. Restrictions on Signs and Advertising. No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Community Area so as to be evident to public view, except signs as may be approved in writing by the Design Review Committee. One two-sided sign advertising a Unit (or if the Unit is comprised of multiple Residences, a Residence within the Unit) for sale or for lease may be placed on such Unit; provided, however, that standards relating to dimensions, color, style, and location of such sign shall be determined from time to time by the Design Review Committee. Notwithstanding the foregoing, subject to approval by the Design Review Committee, Declarant and each Limited Declarant shall be permitted to place one- or two-sided signs (of not more than one hundred twenty square feet per side) on any Units which it owns or in the Common Areas to advertise the Units during the development, construction, and sales period. If a Unit is comprised of rental apartments, the Owner of such Unit, subject to approval by the Design Review Committee, shall be permitted to place one- or two-sided signs (of not more than one hundred twenty square feet per side) for a period not to exceed six (6) months after completion of construction of the rental apartments on the Unit on such Unit to advertise the name of the Unit and the availability of Residences within the Unit. If a Unit is comprised of rental apartments, the Owner of such Unit, subject to approval by the Design Review Committee, shall be permitted to place a one- or two-sided monument sign (of not more than thirty square feet per side) on such Unit to advertise the name of the Unit.

3.16. Restrictions on Mining or Drilling. No property within the Community Area shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except drilling, exploring for, or removing underground water by Declarant or any Person designated by Declarant.

**3.17. Maintenance of Drainage: Established Drainage Patterns.** There shall be no interference with the Established Drainage Pattern over any property within the Community Area, except as approved in writing by the Design Review Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "Established Drainage Pattern" shall mean the drainage pattern which exists at the time the overall grading of any Unit is completed in accordance with any established drainage pattern shown on any plans approved by the Design Review Committee and includes the positive slope away from the Residence (or if the Unit is comprised of multiple Residences, the Residences) built on the Unit in accordance with the status thereof as of the date of the completion of the Residence(s) on the Unit as reflected on the finished grading plan for such Unit and the drainage certificate, if any, provided to the Owner of each Unit reflecting the existing positive slope away from the Residence(s) upon completion thereof. The established drainage pattern may include the drainage patterns: (a) from Association Properties over any Unit; (b) from any Unit over the Association Properties; (c) from any property owned by the City or other Persons over any Unit; (d) from any Unit over property owned by the City or other Persons; (e) from any Unit over another Unit; (f) from any Neighborhood Common Area over any Unit; (g) from any Unit over any Neighborhood Common Area; or (h) on any Unit. The Owner of each Lot, the Neighborhood Association as to each Townhome Lot, and the Owner of each Multifamily Unit shall not disturb and shall from time to time restore such Established Drainage Pattern on its Unit without regard to whether it is disturbed by actions of Owner, actions of others, subsidence, or natural causes. The Owner of each Lot, the Neighborhood Association as to each Townhome Lot, and the Owner of each Multifamily Unit shall maintain positive drainage away from the Residence(s) built on the Unit as necessary so that melting snow, rain, surface, irrigation, and other water coming onto the Unit is drained away from the Residence(s) and does not collect near the Residence(s) and does not seep into the fill areas and other areas lying within the area adjoining or near the Residence(s) and as necessary to conform with the finished grading plan for such Unit as reflected on the drainage certificate, if applicable. The Owner of each Lot, the Neighborhood Association as to each Townhome Lot, and the Owner of each Multifamily Unit shall be responsible for promptly repairing any erosion on the Unit or any adjoining property resulting from the failure of the Owner or Neighborhood Association, as applicable, to maintain the positive draining away from the Residence(s) built on the Unit in accordance with the finished grading plan for such Unit and the drainage certificate, if applicable. If the Owner of any Lot, the Neighborhood Association as to each Townhome Lot, and the Owner of each Multifamily Unit fails to maintain that Owner's Unit in accordance with this Section, the Association may enter onto the Unit and restore the positive slope and make a Specific Assessment against the Unit and the Owner and/or the Neighborhood Association, as appropriate, for the Association's cost in doing so including the cost of restoration of adjoining property as a result of the failure by the Owner or the Neighborhood Association, as applicable, to maintain the Unit in accordance with this Section.

**3.18. Maintenance of Underdrain System.** The Owner of each Lot, the Owner of each Multifamily Unit, and the Owner of each Townhome Lot shall perform regular maintenance of the underdrain system and sump pump located on or serving such Lot, Multifamily Unit or Townhome Lot, including, but not limited to, regular pumping of the sump pump, to insure the performance of such system. All Owners of Property within the Community Area acknowledge the importance of the maintenance of the underdrain system and sump pumps serving the Lots, Multifamily Units or Townhome Lots, and agree to regularly perform their maintenance obligations. All Owners of

Property within the Community Area further acknowledge that the Association shall only be responsible for the maintenance of the underdrain system outfalls located within the Community Area and that such maintenance obligations shall be included within the Assessments and that the Association shall not maintain any underdrain system or sump pumps located on any Lots, Multifamily Units or Townhome Lots, and that the Owners of such Property shall be solely responsible for maintenance of such underdrain systems and sump pumps located on any Lots, Multifamily Units or Townhome Lots.

3.19. Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on property within the Community Area which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association. No Owner shall cause or permit a situation or condition to exist on that Owner's Unit which causes or might reasonably cause the insurance rates for neighboring Units to be increased beyond those that would be applicable absent such situation or condition.

3.20. Compliance with Laws. Nothing shall be done or kept on any property within the Community Area in violation of any law, ordinance, rule, or regulation of any governmental authority or quasi-governmental entity having jurisdiction.

3.21. Further Subdivision of Units. No Unit may be subdivided into two or more separate parcels. The boundaries and lot lines of any Unit shall not be changed or adjusted and no Owner shall give the Owner of any adjoining Unit the right to use any portion of any Unit for the purpose of effecting a lot line adjustment by easement, lease, or similar contrivance without the written approval of the Association approved by the Directors of the Association after public meeting where notice of such meeting has specifically identified the proposed lot line adjustment as an agenda item for such meeting and a copy of such notice has been given to all Owners. Before any change or adjustment in boundaries or lot lines of Units, the Owners of the Units as to which the lot lines or boundaries are adjusted shall, at their expense, comply with all requirements of Section 38-33.3-212 of the Act, with all other applicable laws, and with any requirements which the Directors of the Association shall impose in connection with their approval of such adjustment and in connection with compliance with such laws. Notwithstanding the foregoing, the Owner or Owner of a Unit which is comprised of apartments, may, upon receipt of written approval of the Association, which approval shall not be withheld unless such subdivision has an adverse impact on the Community Area, and subject to satisfaction of the reasonable conditions and requirements imposed by the Association in connection with such approval, subdivide such Unit for the sole purpose of converting the apartments contained therein to condominiums, whereupon each such condominium shall constitute a separate Unit for the purposes of this Declaration.

3.22. Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any Unit, the Owner thereof shall cause the damaged or destroyed Improvement to be replaced or restored to its original condition or to such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be demolished and, until a new Improvement approved by

the Design Review Committee is constructed, the Unit to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance.

3.23. Storage. No building materials shall be stored on any Unit except temporarily during continuous construction of an Improvement.

3.24. Playground Equipment. No playground equipment, excluding basketball backboards, above eight (8) feet in height, nor any basketball backboards above thirteen (13) feet in height, all as measured from the ground level where the equipment is installed, shall be erected on any property within the Community Area without the prior written consent of the Design Review Committee; provided that one temporary movable basketball backboard may be used on each Unit without the prior written consent of the Design Review Committee so long as such backboard is not installed or used on any Unit in a manner which provides for the long-term or permanent use thereof.

3.25. Vehicle Repairs. No maintenance, servicing, repair, dismantling, or repainting of any type of vehicle, boat, trailer, machine, or device may be carried on, except within a completely enclosed structure which screens the sight and sound of the activity from the street and from other Units.

3.26. Storage of Gasoline and Explosives, Etc. No Unit shall be used for storage of explosives, gasoline, or other volatile and/or incendiary materials or devices. Gasoline or fuel for Owner's lawn mower, snowblower, and the like may be maintained on an incidental basis on the Unit in an aggregate amount not to exceed five (5) gallons or, as to each Multifamily Unit, such larger amount as the Association determines. No elevated tanks or appurtenances of any kind shall be erected, placed, or permitted on any part of the Community Area.

3.27. Trailers, Campers, and Other Vehicles. No boat, camper (on or off supporting vehicles), trailer, tractor, truck (other than a three-quarter ton or smaller pickup truck not used for commercial purposes), towed trailer unit, motorcycle, snowmobile, disabled, junked, or abandoned vehicle, motor home, mobile home, camper, recreational vehicle, or any other vehicle, the primary purpose of which is recreational, sporting, or commercial use, shall be parked or stored in, on, or about any Unit or street within the Community Area, except within the garage with garage door closed except temporarily as required for entrance or exit of vehicles from such attached garage and except as permitted by Section 3.4.3 and except for construction vehicles during periods of construction on any property so long as they are not stored within the Community Area and are not parked within the Community Area except temporarily as may be required for purposes of loading and unloading. The Association shall have the right to enter any Owner's Unit to remove and store, at Owner's expense, any of the foregoing in violation of this Section. Owner shall be entitled to thirty (30) days' written notice prior to such action by the Association. Parking of any motor vehicles and any of the vehicles and types of equipment listed above on public streets within the Community Area may be regulated or restricted by the Association, the City, or any other governmental body with jurisdiction over the Community Area.

3.28. Fences Prohibited. No fences shall be constructed along or adjacent to the boundary or lot line of any Unit, or on any other portion of any Unit by any Owner, without the prior approval

of the Design Review Committee unless in conformance with standard design specifications previously approved by the Design Review Committee. Privacy fences, security fences, and fences for screening purposes shall also be subject to the approval of the Design Review Committee unless in conformance with standard design specifications previously approved by the Design Review Committee.

3.29. Air Conditioning and Heating Equipment. No heating, air conditioning, or refrigeration equipment shall be placed, allowed, or maintained anywhere other than those contained totally within structures and those placed on the ground with screening as approved by the Design Review Committee; provided, however, that solar units meeting all governmental guidelines for residential uses may be located on the roof if such unit is not viewable from the street on which the Residence fronts or faces or from any Unit and if specifically approved by the Design Review Committee.

3.30. Landscaping. All portions of each Unit not used for improvements shall be landscaped utilizing primarily perennial and similarly "long-lived" ground cover, sod, shrubs, trees, and similar plantings and rock, bark, mulch, and similar materials. Annual and other short-lived and non-living durable plantings and landscape materials may be utilized only to supplement long-lived elements. Every Unit improved with a Residence shall be landscaped as approved by the Design Review Committee within nine (9) months after the occupancy or completion of the Residence thereon as evidenced by the certificate of occupancy, whichever shall first occur. If a Unit is developed for apartments and is therefore comprised of multiple Residences, and such buildings containing the Residences are constructed in phases, so that all of the buildings are not completed simultaneously, the area around each building located within the Unit shall be landscaped as approved by the Design Review Committee within nine (9) months after the occupancy or completion of the construction of that building as evidenced by the certificates of occupancy, whichever shall first occur. The landscaping of each Unit having once been installed shall be maintained in a neat, attractive, slightly and well-kept condition, which shall include lawns mowed, hedges trimmed, adequate watering, replacement of dead, diseased, or unsightly materials, removal of weeds and debris, and appropriate pruning of plant materials.

3.31. Reflective Glass. No reflective glass windows shall be utilized in any improvements constructed within the Community Area.

3.32. Association Easement. Easements to perform its maintenance and enforcement duties and as necessary to exercise its powers pursuant to this Declaration are hereby granted by Declarant to the Association, its officers, agents, employees, and assigns, upon, across, over, in, and under the Community Area, together with the right to make such use of the Community Area as may be necessary and appropriate in carrying out such maintenance and enforcement duties. All conveyances of Units hereafter made, whether by Declarant or other Person, shall be construed to grant and reserve the easements contained in this Declaration, whether or not specific reference to such easements or to the Declaration appears in the instrument of such conveyance.

3.33. Application of Restrictions. All provisions of this Declaration and of any Association rules shall also apply to all occupants, tenants, guests and invitees of any Unit (or in the case of a

Unit comprised of multiple Residences, any portion thereof). Any lease on any Unit (or in the case of a Unit comprised of multiple Residences, a lease of any Residence or portion of any Unit) shall provide that the lessee and all occupants of the leased Unit (or portion thereof, if applicable) shall be bound by the terms of this Declaration, the By-Laws and the rules of the Association.

#### **ARTICLE 4 PROPERTY RIGHTS**

4.1. **Common Area.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

4.1.1. This Declaration, the By-Laws and any other applicable covenants;

4.1.2. Any restrictions or limitations contained in any deed conveying such property to the Association or the Neighborhood Association;

4.1.3. The right of the Board to adopt rules regulating the use and enjoyment, of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Units and their guests and rules limiting the number of guests who may use the Common Area;

4.1.4. The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area, or the right of the Neighborhood Association to suspend the right of an Owner to use recreational facilities within a Neighborhood Common Area, (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association;

4.1.5. The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 6.28;

4.1.6. The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests with or without the payment of use fees established by the Board;

4.1.7. The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 6.19; and

4.1.8. The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Neighborhood Common Areas," as more particularly described in Section 4.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

4.2. Neighborhood Common Areas. Initially, the Neighborhood Common Areas shall be assigned for the exclusive or primary use thereof pursuant to Exhibit E attached hereto and incorporated herein by this reference; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Neighborhood Common Area to additional Units and/or Neighborhoods in the Notice of Annexation adding to the Community Area pursuant to Section 10.11. After the Declarant Control Period, a portion of the Common Area may be assigned as Neighborhood Common Area of a particular Neighborhood or Neighborhoods and Neighborhood Common Area may be reassigned upon approval of the Board, the consent of the Neighborhood Association for such Neighborhood (if applicable), the approval of a majority of the Members within the Neighborhood(s) to which the Neighborhood Common Areas are then presently assigned, if applicable, and the approval of a majority of the Members within the Neighborhood(s) to which the Neighborhood Common Areas are to be assigned. As long as the Declarant owns any property within the Community Area for development and/or sale, any such assignment or reassignment shall also require the Declarant's consent. Upon designation of a Neighborhood Common Area, the Neighborhood Association (if any) for such Neighborhood shall be responsible for the maintenance of such Neighborhood Common Area. If there is no Neighborhood Association, the Association shall maintain the Neighborhood Common Areas and assess the Members through Neighborhood Assessments within such Neighborhoods for the maintenance of the Neighborhood Common Areas.

## **ARTICLE 5 ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS**

5.1. Function of Association. The Association has been or will be formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association has been or shall be organized prior to the date the first Unit located in the Community Area is conveyed to an Owner other than the Declarant. The Association shall be the entity responsible for management, maintenance, operation and control of the Association Properties within the Community Area. As more specifically set forth hereinafter, the Association shall have a Board of Directors which, except as provided herein, in the Articles, or the By-Laws, shall be elected by the Members. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Community Area as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and Colorado law.

5.2. Board of Directors. The affairs of the Association shall be managed by the Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation and By-Laws. The Board of Directors may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

5.3. Membership. Every Owner shall be a Member of the Association. There shall be one Membership in the Association for each Unit. The Person or Persons who constitute the Owner of a Unit shall automatically be the holder of the Membership appurtenant to that Unit, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Unit. Declarant shall hold a Membership in the Association for each Unit owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Unit except that an Owner may assign some or all of his rights as an Owner and as a Member of the Association to a tenant, a purchaser under an Installment Sale Contract, or a Mortgagee and may arrange for a tenant, a purchaser under an Installment Sale Contract, or a Mortgagee to perform some or all of such Owner's obligations as provided in this Declaration, but no Owner shall be permitted to relieve himself of the responsibility for fulfillment of the obligations of an Owner under this Declaration. The rights acquired by any such tenant, purchaser under an Installment Sale Contract, or Mortgagee shall be extinguished automatically upon termination of the lease or Mortgage.

5.4. Voting. Each Member shall have the right to cast the votes for the Units owned by such Member except that, in the event any Unit is owned by more than one Member, any Member who is Owner of that Unit and is present to vote at any meeting may cast the votes for such Unit, if more than one Member who is an Owner of that Unit is present at a meeting, the votes for such Unit shall be cast as such Members shall agree or, in the absence of agreement, each Member who is Owner of such Unit shall be entitled to cast the portion of the votes for such Unit equal to such Owner's fractional ownership interest in such Unit.

5.5. Numbers of Votes. Each of the Units shall have the following numbers of votes:

5.5.1. Each Townhome Lot and Condominium Lot shall have one vote.

5.5.2. Each Lot shall have one and one-half votes.

5.5.3. Each Multifamily Unit shall have a number of votes equal to a fraction, the numerator of which is the number of completed and Habitable Dwellings in that Multifamily Unit and the denominator of which is ten; provided that, in the event that any Multifamily Unit shall be subdivided into Condominium Lots, Lots, or Townhome Lots, after such subdivision takes place and Habitable Dwellings are then or have been constructed on such newly subdivided Condominium Lots, Townhome Lots, and Lots, votes shall be allocated thereto as provided in Sections 5.5.1 and 5.5.2.

5.6. Meetings of Members. The By-Laws shall provide for the manner, time, place, conduct, and voting procedures for meetings of Members.

5.7. Neighborhoods. Every Unit shall be located within a Neighborhood. Prior to the sale of any Lot, Townhome Lot, or Condominium Lot to a Person other than the Declarant or a Limited Declarant, the Declarant or the Limited Declarant (subject to the Declarant's consent, not to be unreasonably withheld) may record a Neighborhood Declaration as to such Neighborhood creating a Neighborhood Association as to such Neighborhood.



**ARTICLE 6**  
**DUTIES AND POWERS OF ASSOCIATION**

6.1. General Duties and Powers of Association. The Association will be formed to further the common interests of the Members. The Association, acting through the Board or Persons to whom the Board has from time to time temporarily delegated such powers in any given instance, shall have the duties and powers hereinafter set forth and, in general, subject to the limitations set forth in this Declaration, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve, and enhance the common interests of the Members, to maintain, improve, and enhance Association Properties, and to improve and enhance the attractiveness, aesthetics, and desirability of the Community Area.

6.2. Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to all Association Properties and other real property from time to time transferred to the Association, including any Improvements thereon, and personal property transferred to the Association by Declarant, and equipment related thereto, together with the responsibility to perform any and all Administrative Functions associated therewith; provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests from time to time transferred to the Association by Declarant may include fee simple title, easements, leasehold interests, contractual rights, or licenses to use. Any real property or interest in real property transferred to the Association by Declarant shall be within the boundaries of the Community Area. Any property or interest in property from time to time transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all monetary liens (other than the lien of taxes and assessments not yet due and payable) but shall be subject to the terms of this Declaration. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

6.3. Power and Duty to Manage and Care for Association Properties. The Association shall have the power and duty to manage, operate, care for, maintain, and repair all Association Properties, to keep the same in an attractive and desirable condition for the use and enjoyment of the Members consistent with this Declaration and the Community-Wide Standard, and to satisfy its obligations with respect to Association Properties under the Plat or any document executed in connection with obtaining the City's approval of the Plat.

6.4. Power to Pay Taxes. The Association shall have the power to pay all taxes and assessments levied upon the Association Properties and all taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings.

6.5. Power to Maintain Casualty Insurance. The Association shall have the power to obtain and keep in full force and effect property insurance on all insurable Improvements and personal property from time to time owned by the Association as Association Properties in such

amounts used with such terms as the Board of Directors shall from time to time determine. The Association shall maintain all such insurance required by the Act.

6.6. Power to Maintain Liability Insurance. The Association shall have the power to obtain and keep in full force and effect general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Association Properties with such limits and terms as the Board of Directors shall from time to time determine. The Association shall maintain all such insurance required by the Act.

6.7. General Provisions Respecting Insurance. Insurance obtained by the Association may contain such deductible provisions as the Board of Directors may determine and as shall be consistent with the Act. The Association may carry any other type of insurance it considers appropriate in amounts it deems appropriate, to insure the interests of the Association. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration for all deductibles paid by the Association. At Declarant's request, insurance obtained by the Association shall, to the extent reasonably possible and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

6.8. Fidelity Bonds. The Association may obtain and keep in force a fidelity bond or bonds for any Person handling funds of the Association. The Board of Directors may request any Person employed as an independent contractor by the Association for the purpose of managing the Association Properties to obtain and maintain fidelity insurance in an amount determined by the Board.

6.9. Other Insurance and Bonds. The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity, or other bonds as the Association shall deem necessary or desirable.

6.10. Duty to Prepare Budgets. The Association shall prepare Budgets for the Association as elsewhere provided in this Declaration.

6.11. Power to Levy and Collect Assessments and Fees. The Association may levy and collect Assessments and Fees as elsewhere provided in this Declaration.

6.12. Duty to Keep Association Records. The Association shall keep financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against any Unit.

6.13. Duties With Respect to Design Review Committee Approvals. The Association shall perform functions to assist the Design Review Committee as elsewhere provided in this Declaration.

6.14. Power to Acquire Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property. The Association may construct Improvements on property and may demolish existing Improvements.

6.15. Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Units. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Member at the address for notices to Members as elsewhere provided in this Declaration or the By-Laws, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

6.16. Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (a) by entry upon any property within the Community Area, without liability to the Owner thereof, for the purpose of enforcement or causing compliance with this Declaration or the Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (d) by suspension of the voting rights of a Member during and for up to sixty (60) days following the cure of any breach by such Member or a Related User of this Declaration or the Rules and Regulations; (e) by levying and collecting a Specific Assessment against any Member for breach of this Declaration or the Rules and Regulations by such Member or Related User; and (f) by uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, assessed against any Member or Related User for breach of this Declaration or the Rules and Regulations by such Member or Related User.

6.17. Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility, and other such easements in, on, over, or under Association Properties.

6.18. Power to Convey and Dedicate Property to Government Agencies. The Association shall have the power to grant, convey, dedicate, or transfer any Association Properties or facilities

to any public, governmental, or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate. Any such transfer shall require the approval of Declarant, if Declarant still owns any Units, and the approval of Members owning at least sixty percent (60%) of the Units (exclusive of the Units owned by the Declarant).

6.19. Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money and, with the approval of Members owning at least sixty percent (60%) of the Units (exclusive of the Units owned by Declarant), determined as provided in Section 5.4, to encumber Association Properties as security for such borrowing, subject to provisions elsewhere contained in this Declaration with respect to required approvals and consents to such action.

6.20. Power to Merge or Consolidate. The Association shall have the power to merge or consolidate with another association with the approval of Members owning at least sixty-seven percent (67%) of the Units (exclusive of the Units owned by Declarant), determined as provided in Section 5.4, and, if Declarant still owns any Units, the approval of Declarant. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Property, together with the covenants, conditions, and restrictions established upon any other property as one plan.

6.21. Power to Engage Employees, Agents, and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, management, and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

6.22. General Corporate Powers: Limitations. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or By-Laws. The Association shall also have the power to do any and all lawful things which may be authorized, required, or permitted to be done under this Declaration or the Articles of Incorporation or By-Laws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles of Incorporation or By-Laws. Notwithstanding any other provision of this Declaration to the contrary, the Association shall have no power to bring any legal action or proceeding, on its own account or on behalf of any one or more of, or any class of, the Members or Owners or any one or more of, or any class of, Mortgagees, with respect to or regarding any defects in the construction, or any failure to perform any obligation under any express or implied warranty against defects in construction, of any Dwelling or Residence or other Improvement constructed on any of the Units, and any such action by the Association would be *ultra vires*.

6.23. Powers Provided by Law. In addition to the above-referenced powers, except as may be limited by this Declaration, the Act, the Articles of Incorporation, or the By-Laws, the Association shall have full power to take and perform any and all actions which may be lawfully taken by the Association under the Colorado Nonprofit Corporation Act.

6.24. Owners Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "all-risk" property insurance on its Unit(s) and structures thereon providing full replacement cost coverage less a reasonable deductible, unless either the Neighborhood in which the Unit is located or the Association carries such insurance (which they are not obligated to do hereunder). Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, he shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9 of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within such Neighborhood and the standards for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

6.25. Implied Rights: Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board or any duly authorized executive committee, officer, agent, or employee without a vote of the membership.

6.26. Governmental Interests. So long as the Declarant owns any property within the Subdivision, the Declarant may designate sites within the Community Area for fire, police, utility facilities, public schools and parks, and other public facilities. The sites may include Common Areas.

6.27. Indemnification. The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be

exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.28. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the County and/or the City, or to any other local, state, or federal governmental entity, subject to such approval as may be required by this Declaration.

6.29. Security. The Association shall not be obligated to maintain or support any security activities within the Community Area. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT OR LIMITED DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY AREAS, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT OR LIMITED DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY AREAS ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

6.30. Powers of the Association Relating to Neighborhoods.

6.30.1. No declaration of covenants, conditions, and restrictions, restrictive covenants and/or other declaration, conditions, or covenants (collectively described herein as a "Neighborhood Declaration") creating a Neighborhood Association shall be adopted and/or Recorded unless the Neighborhood Declaration has been approved in writing by the Association, and, during the Declarant Control Period, the Declarant, which approval shall be evidenced by a consent to the Neighborhood Declaration, executed by the Board on behalf of the Association and executed by the Declarant, if applicable, and Recorded. Any Neighborhood Declaration which is Recorded and does not contain the executed consents required by the terms of this Section shall be void and of no effect. In the event of any inconsistency between the conditions and restrictions contained in this Declaration and any Neighborhood Declaration, this Declaration shall control.

6.30.2. The Association shall have the power to require specific action to be taken by any Neighborhood Association in connection with any of its obligations and responsibilities under Section 4.2 to maintain any Neighborhood Common Areas or pursuant to any Neighborhood Declaration. If the Neighborhood Association fails to perform its obligations to maintain any Neighborhood Common Areas or pursuant to any Neighborhood Declaration within thirty (30) days after delivery of written notice from the Association requiring performance thereof, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the

Association shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 8.10. Such assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for herein.

## ARTICLE 7 ASSOCIATION PROPERTIES AND NEIGHBORHOOD COMMON AREAS

7.1. Member's Rights of Use and Enjoyment Generally. Unless otherwise provided in this Declaration, all Members may use the Association Properties and the Neighborhood Common Areas within the Neighborhood in which the Member's Unit is located.

7.2. Right of Association to Regulate Use. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members and, to the extent within the power of the Association, the public to further enhance the overall rights of use and enjoyment of all Members. The Association, or the Neighborhood Associations after formation, if applicable, shall have the power to regulate the use of the Neighborhood Common Areas and, to the extent within the power of the Association or the Neighborhood Association, as applicable, the public to further enhance the overall rights of use and enjoyment of all Members within the Neighborhood.

7.3. No Partition of Association Properties or Neighborhood Common Areas. No Owner shall have the right to partition or seek partition of the Association Properties, the Neighborhood Common Areas, or any part thereof.

7.4. Liability of Owners for Damage by Member. Each Member shall be liable to the Association or the Neighborhood Association, respectively, for any damage to Association Properties or Neighborhood Common Areas and for any cost, expense or liability incurred by the Association or the Neighborhood Association, to the extent not covered by insurance, which may be sustained by reason of the negligent conduct or intentional misconduct of such Member or any Related User and for any violation by such Member or any such Related User of this Declaration or any Rule and Regulation adopted by the Association, including any increase in insurance premiums directly attributable to any such damage or any such violation.

7.5. Association Duties if Damage. In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties other than Neighborhood Common Areas (except as otherwise set forth herein), the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Association Properties other than Neighborhood Common Areas (except as otherwise set forth herein) by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement,

or improvement, levy a Special Assessment in accordance with Section 9.8, or if a Member or group of Members is liable for such damage, levy a Specific Assessment against the Member or group of Members responsible therefor, to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of other Association Properties.

7.6. Damage to Neighborhood Common Areas. In the event of damage to any Neighborhood Common Areas by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Neighborhood Common Areas, the Neighborhood Association, or if there is no Neighborhood Association for the Neighborhood in which the Neighborhood Common Areas are located, the Association, shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Neighborhood Common Areas by fire or other casualty shall be paid to the Association or the Neighborhood Association, as appropriate, and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of improvements damaged or destroyed, or if the Association or the Neighborhood Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment in accordance with Section 8.9, or if a Member or group of Members is liable for such damage, levy a Specific Assessment against the Member or group of Members responsible therefor, to provide the additional funds necessary. Repair, reconstruction, or replacement of Neighborhood Common Areas shall be done under such contracting and bidding procedures as the Association or Neighborhood Association, as appropriate, shall determine are appropriate. If insurance proceeds available to the Association or the Neighborhood Association, as appropriate, on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association or Neighborhood Association, as appropriate, may use the same for future maintenance, repair, improvement, and operation of other Neighborhood Common Areas for the Neighborhood.

7.7. Association Powers in the Event of Condemnation. If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in the Maintenance Funds as determined by the Board, as a reserve for future maintenance, repair, reconstruction, or replacement of Association Properties or may be used for Improvements or additions to or operation of Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.



7.8. Title to Association Properties on Dissolution of Association. In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be allocated to the Units in accordance with the Assessment Ratios and distributed to the Members.

## ARTICLE 8 ASSESSMENTS AND FEES

8.1. Obligation and Lien for Assessments. Each of the Units shall be subject to the Assessments. Each Unit shall be subject to a lien for the Assessments (together with interest, late charges, costs of collection, and attorneys' fees on or accrued with respect thereto) as provided in this Declaration and in the Act. The lien may be claimed and enforced in accordance with the provisions of this Declaration and of the Act. The Assessments against each Unit and each portion of each Assessment (together with interest, late charges, costs of collection, and attorneys' fees on or accrued with respect thereto) shall be the personal, joint and several obligation of the Owners of the Unit at the time each Assessment or portion thereof becomes payable. Each Owner, by acceptance of its interest in any Unit, agrees to pay to the Association the Assessments as to that Unit and as otherwise provided herein, together with interest, late charges, costs of collection, and attorneys' fees as provided herein. Assessments may consist of Common Assessments, Neighborhood Assessments, Special Assessments, and Specific Assessments.

### 8.2. Amount of Common Assessments; Allocation of Assessments; Working Capital.

8.2.1. Amount of Common Assessments. The amount of the annual Common Assessment for each Unit which is a Habitable Dwelling shall be the product of the amount of the Base Assessment multiplied by the Assessment Ratio for the type of Unit. The amount of the annual Common Assessment for each Unit which is not a Habitable Dwelling shall be one-third of the product of the amount of the Base Assessment multiplied by the Assessment Ratio for the type of Unit.

8.2.2. Assessment Ratios. The "Assessment Ratios" for each of the different types of Units shall be:

8.2.2.1. For each Townhome Lot and Condominium Lot, 100%.

8.2.2.2. For each Lot, 150%.

8.2.2.3. For each Multifamily Unit, the product of 75% multiplied by the number of Dwellings contained in such Multifamily Unit; provided that, in the event that any Multifamily Unit shall be subdivided into Condominium Lots, Lots, or Townhome Lots, after

such subdivision takes place and Habitable Dwellings have been or are constructed thereon, the assessment ratios for such Lots, Condominium Lots, and Townhome Lots shall be as provided in Sections 8.2.2.1 and 8.2.2.2, above.

8.2.3. Base Assessment. As used herein, "Base Assessment" shall mean the total amount of the Annual Common Assessment, divided by the sum of the following (the "Total Number of Assessable Units"):

8.2.3.1. The total number of Lots which are Habitable Dwellings, multiplied by the Assessment Ratio applicable to the Lots.

8.2.3.2. The total number of Townhome Lots and Condominium Lots which are Habitable Dwellings, multiplied by the Assessment Ratio applicable to the Townhome Lots and Condominium Lots.

8.2.3.3. The sum of the Assessment Ratios for all of the Multifamily Units containing only Habitable Dwellings.

8.2.3.4. One-third of the total number of Lots which are not Habitable Dwellings, multiplied by the Assessment Ratio applicable to the Lots.

8.2.3.5. One-third of the total number of Townhome Lots and Condominium Lots which are not Habitable Dwellings, multiplied by the Assessment Ratio applicable to the Townhome Lots and Condominium Lots.

8.2.3.6. One-third of the sum of the Assessment Ratios for all of the Multifamily Units which do not contain any Habitable Dwellings.

8.2.3.7. For those Multifamily Units containing some Habitable Dwellings and some Uninhabitable Dwellings, the sum of the Assessment Ratios for such Multifamily Units calculated at the rate of the full Assessment Ratio for the number of Dwellings constituting Habitable Dwellings and one-third of the Assessment Ratio for the number of Dwellings constituting Uninhabitable Dwellings.

8.2.4. Percentage of Assessment. Each Unit containing Habitable Dwelling(s) shall be assessed a portion of the Common Assessment equal to the Assessment Ratio for such Unit divided by the Total Number of Assessable Units. Each Unit containing Uninhabitable Dwelling(s) shall be assessed a portion of the Common Assessment equal to one-third of the Assessment Ratio for such Unit divided by the Total Number of Assessable Units.

8.2.5. Habitable Dwellings. For purposes of Assessments, there shall be two classes of Units, Units which are Habitable Dwellings and Units which are not Habitable Dwellings. "Habitable Dwellings" shall mean all Units on which a Dwelling has been constructed and for which a certificate of occupancy has been issued, except, on a temporary basis, any Unit on which the Dwellings have become uninhabitable because of casualty (such as fire, flood, or earthquake) and

are not inhabited or on which the Dwellings have been totally demolished, during the period starting with the occurrence of such casualty or demolition and ending when repairs or reconstruction have rendered a Dwelling on such Unit habitable. Units which are not Habitable Dwellings shall mean all Units on which Dwellings have not been constructed or, if constructed, for which no Certificate of Occupancy has been issued and any Unit, on a temporary basis, on which the Dwellings have become uninhabitable because of casualty (such as fire, flood, or earthquake) and are not inhabited or on which the Dwellings have been totally demolished, during the period starting with the occurrence of such casualty or demolition and ending when repairs or reconstruction have rendered the Dwelling on such Unit habitable.

8.2.6. Working Capital. At the time of the sale of each Unit to the first Owner thereof following the completion of the Dwelling on the Unit by the Declarant or any Limited Declarant, the Owner purchasing the Unit shall pay an amount equal to the quarterly Common Assessment for such Unit assuming it is a Habitable Dwelling to the Association as a contribution to the Association's working capital except that, as to Multifamily Units, the Owner thereof shall pay an amount equal to the quarterly Common Assessment for a number of Habitable Dwellings equal to the number of Dwellings contained within such Multifamily Unit at the time the first Dwelling in such Multifamily Unit is occupied. After such contribution to the working capital of the Association has been made as to any Unit, at the time when the Unit is transferred to a new Owner, the new Owner shall pay an amount to the Association equal to such contribution, and, at the time such replacement contribution is made, the Association shall return the existing capital contribution to the transferring Owner, less a handling charge as set from time to time by the Association; provided that the contribution shall not otherwise be refundable and, in lieu of replacing the contribution in such manner, the transferring Owner may transfer the capital contribution to the new Owner, in which case the handling fee shall be avoided.

8.3. Common Assessments and Initial Assessment. For each calendar year, the Association may levy Common Assessments against Owners of the Units. Each Owner shall jointly and severally be obligated to pay the Common Assessments levied against and allocated to such Owner and the Unit of such Owner. The first Common Assessment (the "Initial Assessment") shall be made at or after the time the first Habitable Dwelling is transferred by Declarant to the first purchaser thereof, as shall be determined by the Board of Directors. After the Initial Assessment has been made, Common Assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually in accordance with Section 8.5. The Initial Assessment and each subsequent Common Assessment shall be determined by the Board in accordance with the Budget. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner subject thereto not less than thirty (30) days prior to the effective date of such change.

8.4. Supplemental Common Assessments. If the sums provided for Common Assessments prove or at any time are anticipated to be inadequate for any reason, including nonpayment of any Owner's Common Assessment, the Board may, from time to time, levy a supplemental Common Assessment. Such supplemental Common Assessments shall be allocated among the Units in the same manner Common Assessments are allocated. Written notice of any

supplemental Common Assessment shall be sent to every Owner subject thereto not less than thirty (30) days prior to the date such supplemental Assessment becomes payable.

8.5. Annual Budgets. The Board of Directors shall cause to be prepared, prior to the commencement of each calendar year, commencing with the first calendar year after the Initial Assessment, a budget (the "Budget") for such calendar year. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the reserve fund for major capital repairs, replacements, and improvements to the Association Properties. The Budget, when prepared and revised to the satisfaction of the Board of Directors, shall be adopted by the Board of Directors. Within thirty days after the adoption of the proposed Budget for any year by the Board of Directors, the Board of Directors shall cause the Budget or a summary thereof to be delivered to all Members in any manner in which notices may be given hereunder. Such notice shall set a meeting of the Members to consider the ratification of the budget, which shall be not less than fourteen nor more than sixty days after the delivery of the Budget or summary thereof. Unless at that meeting Members representing a majority of all of the Units (Members representing all of the Units, other than the Units owned by Declarant, during the Declarant Control Period) reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. In the event that any Budget approved by the Board of Directors is rejected by the Members, the Budget last ratified by the Members shall be continued until such time as the Members ratify, as provided in this Section, a subsequent Budget adopted by the Board of Directors. The Budget approved by the Board of Directors and ratified by the Members may be amended from time to time by the Board of Directors and ratified by the Members, in the manner provided above in this Section and when so approved and ratified, shall be adopted as the Association Budget and replace the Budget previously adopted.

8.6. Payment of Assessment. Unless otherwise provided by the Board of Directors as to any Common Assessment, Common Assessments shall be due and payable in advance to the Association by the assessed Member during the calendar year in equal quarterly installments, on or before January 1, April 1, July 1, and October 1 of each calendar year, or in such other manner and on such other dates as the Board of Directors may designate in its sole and absolute discretion.

8.7. Failure to Set Assessment. If the Board of Directors fails to levy an Assessment for any year, the Assessment set for the prior year shall continue in effect for such year until revised by the Board of Directors in accordance with this Declaration. The failure by the Board of Directors to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. No abatement of the Common Assessment or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to Association Properties or Neighborhood Common Areas or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

8.8. Neighborhood Assessments. Each Neighborhood Association shall, to the extent provided in the Neighborhood Declaration applicable to such Neighborhood, be entitled to make assessments for the purposes and in the amounts provided in the Neighborhood Declaration. If there

is no Neighborhood Association for the Neighborhood, and the Association is maintaining Neighborhood Common Areas for the Neighborhood, the Association shall levy a Neighborhood Assessment against the Units in such Neighborhood in the amounts and allocated to each of such Units as provided in the Association's Budget. When collected by the Association, each such Neighborhood Assessment shall be disbursed for the payment and discharge of the Neighborhood Expenses for which such Neighborhood Assessment was levied.

**8.9. Special Assessments for Capital Expenditures.** In addition to Common Assessments and Neighborhood Assessments, the Board of Directors may, subject to the provisions of this Section 8.9, levy Special Assessments for the purpose of raising funds not otherwise provided from Common Assessments to construct or reconstruct, repair, or replace capital Improvements upon Association Properties, including necessary personal property related thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration; or for such other purposes as reasonably determined by the Association. Special Assessments shall be allocated in the same manner as Common Assessments. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay any such Special Assessment in the manner so specified. Notwithstanding the foregoing, during the Declarant Control Period, no Common Assessments or Special Assessments may be used for construction of capital improvements to Association Properties.

**8.10. Specific Assessments.**

**8.10.1. Member Specific Assessments.** The Board of Directors may, subject to the provisions hereof, levy an Assessment against any Member for the funds expended by the Association if the Member or a Related User or other Person enjoying the privileges and benefits of the Subdivision (such as the use of Association Properties or the Neighborhood Common Areas) in a way which the Board of Directors reasonably determines makes such Person's conduct the responsibility of the Member violates or fails to comply with this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations and such violation or failure to comply shall have resulted in the expenditure of funds by the Association to cause such compliance or the cessation of such violation. Such Assessment shall be known as a Specific Assessment and shall be levied only after hearing and approval by the Board in accordance with the By-Laws following notice to the Member(s) against whom the Specific Assessment is proposed to be made given in a time and manner reasonably determined by the Board of Directors to be adequate under the circumstances but in any event in writing delivered to the Residence of which the Member is the Owner. The amount of the Specific Assessment shall be due and payable to the Association thirty (30) days after notice to the Member of the decision of the Board of Directors that the Specific Assessment is owing.

**8.10.2. Neighborhood Specific Assessments.** The Board of Directors may, subject to the provisions hereof, levy an Assessment against any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of this Declaration, any applicable Supplemental Declaration, any applicable Neighborhood Declaration, the Articles of

Incorporation, the By-Laws, and Rules and Regulations, including but not limited to any costs incurred to operate, maintain, insure or repair any Neighborhood Common Areas within such Neighborhood. Such Assessment shall be known as a Specific Assessment and shall be levied only after hearing and approval by the Board in accordance with the By-Laws following notice to the Member(s) owning Units within the Neighborhood given in a time and manner reasonably determined by the Board of Directors to be adequate under the circumstances but in any event in writing delivered to the Member owning Units within the Neighborhood at their Residences. Such Specific Assessment shall be levied equally against all Units within such Neighborhood. The amount of the Specific Assessment shall be due and payable to the Association thirty (30) days after notice to the Member(s) of the decision of the Board of Directors that the Specific Assessment is owing.

8.11. Late Charges and Interest. If any Common Assessment, Neighborhood Assessment, Special Assessment, or Specific Assessment or any installment thereof is not paid when due, the Member obligated to pay the Assessment may be required to pay a late charge at the level from time to time determined by the Board. Any Assessment or installment of an Assessment which is not paid when due shall bear interest from the due date at the rate of eighteen percent (18%) per annum or such other rate as may be established by the Board from time to time.

8.12. Attribution of Payments. All Assessment payments shall be credited first to any late fees, interest, attorneys' fees, and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by more current obligations.

8.13. Notice of Default and Acceleration of Assessments. If any Common Assessment, Neighborhood Assessment, Special Assessment, or Specific Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Board of Directors may mail a notice of default ("Notice of Default") to the Owner and to the holder (the "First Mortgagee") of the First Mortgage against the Unit if the First Mortgagee has requested a copy of the notice. The notice shall specify: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is mailed to the Member, by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment against the Unit of the Member. If the delinquent Assessment or installment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may (as to any Assessment payable in installments, including the Common Assessment) declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law in this Declaration, subject to the protection afforded to the First Mortgagee under this Declaration.

8.14. Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owners and Members (who shall be jointly and severally liable therefor) of the Unit against which the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Neighborhood, Special, or Specific, the Board may, in addition to any other remedies provided under this Declaration or by law,

enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

8.15. Lawsuit to Enforce Assessments. The Board may bring suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Owner or Member.

8.16. Lien to Enforce Assessments. All Assessments against a Unit (including late fees, interest, cost of collection, and attorneys' fees) shall constitute a lien on such Unit superior to all other liens and encumbrances, except the following (the "Priority Liens"): (a) liens and encumbrances Recorded before the Recording of the Declaration; (b) tax and special assessment liens in favor of any assessing governmental or quasi-governmental authority; and (c) all sums unpaid under the Mortgage encumbering the Unit that has first lien priority over any other Mortgage encumbering such Unit ("First Mortgage") if the First Mortgage was Recorded before the date on which the assessment sought to be enforced became delinquent, including any unpaid amounts remaining to be paid by the contract purchaser under an Installment Sale Contract, including any Installment Sale Contract in which the Administrator of the VA (as defined in Section 11.10 hereof) is seller, whether such contract is owned by the VA or its assigns, and whether Recorded or not. By acceptance of transfer of an interest in a Unit, the Owners of each Unit agree that the Assessment lien shall be prior to any homestead exemption or right and irrevocably waive any and all rights they or any of them may have to claim a homestead exemption against enforcement of the Assessment lien. Except as set forth in Sections 8.16 and 11.8 hereof or pursuant to Section 38-33.3-316 of the Colorado Revised Statutes, sale, foreclosure or transfer of any Unit shall not affect the Assessment lien. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens or assessments made by the Association.

In order to assert any such lien, the Association shall be required to Record a written notice setting forth the amount of such unpaid Assessments, the name of the Owner of the Unit, and the identification of the Unit. Such notice shall be signed by one member of the Board of Directors, an officer of the Association, or an agent appointed by the Board and shall be Recorded. Such notice shall not be required to be in any particular form. Such lien may be enforced by foreclosure on the defaulting Owner's Unit by the Association in the same manner as a mortgage on real property and shall encumber all rents and profits issuing from the Unit, which lien on rents and profits shall be subordinate only to the matters described in subparagraphs (a), (b), and (c) above. The Association shall have the power to bid at the foreclose sale and to acquire and hold, lease, mortgage, and convey the Unit.

8.17. Estoppel Certificates. Upon the written request of any Member and any Person with, or intending to acquire, any right, title, or interest in the Unit of such Member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to an Unit and the Owner thereof, and setting forth the amount of any Assessment levied against such Unit which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association

that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

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

8.19. User Fees. The Association may assess fees ("User Fees") charged to Members who use or derive special benefit from services provided by the Association and which are not used or which do not generally benefit all of the Members.

8.19.1. Special Services. In the event that the Association elects to provide services (such as, for example, a gated entrance to a Neighborhood with access limited electronically or by guard) which benefit only one Neighborhood or more than one but less than all Neighborhoods, the Association shall charge User Fees in the amount required to pay for such special services, and shall keep separate books for the cost and revenues with respect to such separate service. The User Fees shall be assessed on a per Unit basis for the Units in the Neighborhood deriving the special benefit from the special service.

8.19.2. Enforcement. Unpaid User Fees may be enforced as Specific Assessments or in any other manner reasonably determined by the Association.

8.20. Other Fees. The Association may impose other fees from time to time in uniform amounts for providing routine services to Owners and Members. Examples of such fees are transfer fees (for changing the names of the Owners of a Unit or Members with respect to a Unit upon the sale or other transfer of a Unit), handling fees (for accepting the contribution to the working capital of the Association from a new Owner of a Unit and refunding the working capital contribution of the transferring Owner), and fees for providing estoppel certificates, confirmations of the status of payment of Assessments, User Fees, and other fees to an existing or prospective purchaser or Mortgagee.

## ARTICLE 9 ARCHITECTURAL APPROVAL

9.1. Approval of Improvements Required. The approval of the Design Review Committee shall be required for any Improvement to Property on any Unit, except: (a) for any Improvement to Property made by Declarant (not including any Limited Declarant) and (b) where prior approval of Improvements to Property may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the Design Review Committee. Where the Design Review Committee has approved basic plans for any distinct or separate type or elevation of Residence for construction in the Subdivision by Declarant or any Limited Declarant, the Association or Design Review Committee may provide that its review of the plans for any Improvement shall be limited to, or may limit its review of any Improvement to, the elements of such Improvement changed from the basic plans previously approved; provided that any such limited



review shall also consider any impact of any such changes on the basic plans for such Improvement and, notwithstanding any provision or intention to limit its review, the power and authority of the Design Review Committee to review (and approve or reject) any part or all of the plans for such Improvement, including those approved as part of the basic plan, shall not be limited thereby.

9.2. Improvement to Property Defined. "Improvement to Property" requiring approval of the Design Review Committee shall mean and include, without limitation: (a) the construction, installation, erection, or expansion of any building, structure, or other Improvement, including utility facilities and fences; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (c) the landscaping, grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern, change of stream bed or change of established grade; and (d) any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture.

9.3. Membership of Committee.

9.3.1. During the Appointment Period, the Design Review Committee shall consist of three (3) members, all of whom shall be initially appointed by Declarant. Declarant shall have the continuing right to appoint all three (3) members during the Appointment Period (as hereinafter defined). During the period of development of the Community Area while Declarant has rights to appoint members of the Design Review Committee, Declarant shall give the Association written notice of the appointment or removal of any member of the Design Review Committee. The "Appointment Period" shall mean the period of time commencing as of the date of Recordation of this Declaration and continuing until the earlier of: (i) the expiration of the Declarant Control Period or (ii) when, in its discretion, Declarant voluntarily relinquishes such right by Recorded instrument specifically referring to this Section and specifically relinquishing such right. Members of the Design Review Committee may be but shall not be required to be Members of the Association.

9.3.2. After expiration of the Appointment Period, the Design Review Committee shall consist of five (5) members, two of which will be Neighborhood Design Representatives (the "Townhouse Lot Representatives") for all of the Neighborhoods containing Townhouse Lots and/or Multifamily Units and two of which will be Neighborhood Design Representatives (the "Single Family Representatives") for all of the Neighborhoods containing Lots, and the other member of which shall be an architect or other design professional appointed by the Board. Until additional Neighborhood Areas are annexed hereto pursuant to a Supplemental Declaration, each of the four Neighborhood Areas shall have its own Neighborhood Design Representative appointed by the Neighborhood Association from each Neighborhood or, as to any Neighborhood as to which no Neighborhood Association has been formed, by the Members in such Neighborhood. Upon creation of any additional Neighborhoods pursuant to a Supplemental Declaration whereupon the Townhouse Lot Representatives or the Single Family Representatives will then represent more than two Neighborhoods, the Townhouse Lot Representatives and/or the Single Family Representatives, respectively, shall thereupon be selected collectively by the Neighborhood Associations from those Neighborhoods or, as to any Neighborhoods as to which no Neighborhood Association has been formed, by the Members in such Neighborhoods.

9.3.3. Members of the Design Review Committee may be removed at any time by the Person(s) which have the power to appoint them, and shall serve for such term as may be designated by such Person(s) or until resignation or removal by such Person(s).

9.4. Address of Design Review Committee. The address of the Design Review Committee shall be at the principal office of the Association.

9.5. Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property (other than landscaping consistent with a landscaping plan previously approved by the Design Review Committee), the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Design Review Committee at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Applicant shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Design Review Committee of all required materials in connection with the proposed Improvement to Property, the Design Review Committee may postpone review of any materials submitted for approval. If a Neighborhood Design Committee exists as to the Unit for which an application is submitted, the Design Review Committee may require that, as a condition to the review of the application, the application previously has been submitted to and approved by the Neighborhood Design Committee. If a Neighborhood Design Committee exists as to the Unit for which an application is submitted and has approved the application, and if the application is for a remodeling or renovation or addition to an existing Improvement, the Design Review Committee may waive the requirement of Design Review Committee Approval of the Improvement.

9.6. Criteria for Approval. The Design Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Community Area as a whole; that the appearance, exterior design, materials and color of the proposed Improvement to Property will be in harmony with the surrounding areas of the Community Area and will be substantially consistent with the specific provisions or intent of the Design Guidelines; that the Improvement to Property will not detract from the beauty, wholesomeness, and attractiveness of the Community Area or the enjoyment thereof by Owners; that the proposed changes in topography properly relate to adjacent Units and the Community Area as a whole; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association. The Design Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Design Review Committee determines, in its judgment, reasonably exercised, are necessary to comply with this Section.

9.7. Design Guidelines; Design Standards.

9.7.1. Design Guidelines. The Design Review Committee may, from time to time, issue, revise, and reissue guidelines (the "Design Guidelines") to be applicable to all subsequent Improvements to Property. The Design Guidelines may specify substantive standards for styles of architecture, colors, and features which are required to be followed for submissions to the Design Review Committee for approval of proposed Improvements to Property and any additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property. So long as any differences in the Design Guidelines which are applicable to different Neighborhoods are limited to differences which are reasonably related to the differences in the size of Units and the size and cost of the Improvements to Property that are planned to be constructed in different Neighborhoods, the Design Guidelines may have requirements that vary from Neighborhood to Neighborhood, including without limitation Design Guidelines that require larger and more expensive Residences or other Improvements on Units in some Neighborhoods than on Units in other Neighborhoods. During the Appointment Period, any revision or amendment and restatement of the Design Guidelines shall be subject to the approval of the Declarant. After the Appointment Period, any change in the Design Guidelines applicable to any Neighborhood and which is not applicable to all of the Neighborhoods shall be subject to the approval of the member of the Design Review Committee representing such Neighborhood.

9.7.2. Design Standards. The Design Review Committee may, from time to time, issue, revise, and reissue standards or rules ("Design Standards") relating to the procedures, materials to be submitted, and fees in connection with the approval of any proposed Improvement to Property. The Design Standards may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. The Design Standards may provide for the waiver, until such provision is revised, of the requirement for approval of certain Improvements to Property or provide for the exemption, until such provision is revised, of certain Improvements to Property from the requirement for approval, if the Design Review Committee determines for the time being that such approval may not be reasonably required to carry out the purposes of this Declaration.

9.8. Design Review Fee. The Design Review Committee may, in the Design Standards, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Design Review Committee shall provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property in accordance with a schedule of fees adopted by the Design Review Committee or that the fee shall be determined in any other reasonable manner, such as based upon the cost to the Association of the evaluation and response to the application.

9.9. Decision of Committee. The Design Review Committee shall approve or disapprove all requests for approval of any Proposed Improvement to Property within forty-five (45) days after receipt by the Design Review Committee of all materials required by the Design Review Committee in conjunction therewith, and, if the Design Review Committee requires the prior approval of the applicable Neighborhood Design Committee, the approval of such Neighborhood Design

Committee. If the Design Review Committee fails to approve or disapprove any request within sixty (60) days after complete submission of all materials and information with respect thereto, the Design Review Committee shall be deemed to have given its approval of such submission, provided that, if the Design Review Committee requires the prior approval of the applicable Neighborhood Design Committee, the request has been approved by the applicable Neighborhood Design Committee.

9.10. Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished promptly and diligently and in complete conformity with the description of the proposed Improvement to Property and any other materials submitted to the Design Review Committee in connection with the proposed Improvement to Property and with any conditions imposed by the Design Review Committee. If the Improvement to Property is not completed within eighteen (18) months after the date of approval or such shorter period as is specified in writing by the Design Review Committee in granting its approval, the approval granted shall automatically lapse.

9.11. Notice of Completion. Upon completion of the Improvement to Property, the Applicant shall give written Notice of Completion to the Design Review Committee; provided that the requirement of such notice shall be waived if the Applicant is the Declarant and the requirement of such notice may be waived by the Design Review Committee as to any Limited Declarant. Unless such notice is waived as or in the manner provided in this Section, until the date of receipt of such Notice of Completion, the Design Review Committee shall not be deemed to have notice of completion of such Improvement to Property.

9.12. Inspection of Work. The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion; provided that the right of inspection shall terminate thirty (30) days after the Design Review Committee has received a Notice of Completion from Applicant and the Design Review Committee has been provided access to inspect the Improvement to Property.

9.13. Notice of Noncompliance. If, as a result of inspections or otherwise, the Design Review Committee determines that any Improvement to Property has been made without obtaining the approval of the Design Review Committee or was not made in complete conformity with the description and materials furnished to, and any conditions imposed by, the Design Review Committee or was not completed within eighteen (18) months after the date of approval by the Design Review Committee or such shorter period as specified in writing by the Design Review Committee, the Design Review Committee shall notify the Applicant in writing of the noncompliance, which notice shall be given, in any event, within thirty (30) days after the Design Review Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and such action to be taken to remedy the noncompliance, which may include demolition of the Improvement to Property or remodeling of the Improvement to Property to comply with the plans for such Improvement to Property, if any, approved by the Design Review Committee.

9.14. Appeal to Board of Directors: Finding of Noncompliance. If the Design Review Committee gives any notice of noncompliance, the Applicant may appeal to the Board of Directors

by giving written notice of such appeal to the Board and the Design Review Committee within thirty (30) days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to submit a timely appeal to the Board or fails to commence diligently to remedy such noncompliance, the Design Review Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Association and the Applicant within sixty (60) days after delivery to the Applicant of a notice of noncompliance from the Design Review Committee. In either event, the Board of Directors shall hear the matter in accordance with the provisions of the By-Laws, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

9.15. Correction of Noncompliance. The Applicant shall remedy the noncompliance within thirty (30) days after notification thereof by the Design Review Committee, or, if a timely appeal to the Board was submitted by the Applicant or a request for a finding of noncompliance was submitted to the Board by the Design Review Committee, within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the real property on which the noncompliance exists, may enter upon such property and remove the noncomplying Improvement to Property, and/or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Association, the Board may levy a Specific Assessment against the Owner of the Unit for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration. The Applicant and Owner of the Unit shall have no claim for damages or otherwise on account of the entry upon the property and removal of the noncomplying Improvement to Property.

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

9.17. Committee Power to Grant Variances. The Design Review Committee may authorize variances from compliance with any of the provisions of this Declaration or the Design Guidelines, including restrictions upon height, size, floor area, or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental conditions may require. Such variances must be approved by the Design Review Committee in accordance with its regular procedures and shall not be effective until so approved and evidenced in writing executed by the Chairman or a majority of the members of the Design Review Committee. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however,

that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property, the particular Improvement to Property covered by the variance, and the particular provision hereof or of the Design Guidelines, covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

9.18. Meetings of Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval of any Improvement to Property, determination of non-compliance, and granting of variances. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the Design Review Committee shall constitute action of the Design Review Committee.

9.19. Estoppel Certificates. The Board of Directors shall, upon the reasonable request of any interested Person (and the payment of any fee established by the Board of Directors or the Design Review Committee therefor) and after confirming any necessary facts with the Design Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

9.20. Nonliability of Committee Action. There shall be no liability imposed on the Design Review Committee, any member of the Design Review Committee, any Committee Representative, the Association, any member of the Board of Directors, or Declarant for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee unless due to the willful misconduct of the party to be held liable. In reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of, any Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations. Members of the Design Review Committee shall be indemnified by the Association to the same extent as the Board of Directors of the Association, as set forth in the Articles of Incorporation or By-Laws of the Association.

9.21. Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, so long as construction is being prosecuted with reasonable diligence, the Design Review Committee shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent determined by the Design Review Committee to be necessary to permit such construction to proceed in a reasonable manner. Any such temporary suspension may be revoked by the Design Review Committee upon its determination that construction is not being diligently prosecuted. No

such temporary suspension shall permit anything to be done which will result in a violation of any of the provisions of this Declaration upon completion of construction or shall permit anything to be done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

9.22. Compliance with Planned Unit Development Plan. The height, floor area, materials and other attributes of all Improvements to Property constructed within the Community Area shall comply in all respects with the provisions of the Plat, as amended from time to time.

9.23. General. No Improvement to Property shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines and upon approval of the appropriate committee under Section 9.5 other than (a) any Improvement to a Unit made by Declarant and (b) where prior approval of Improvements to a Unit may be waived or certain Improvements to a Unit may be exempted in writing or under written guidelines or rules promulgated in accordance with this Article 9.

Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

## ARTICLE 10 DECLARANT'S RIGHTS AND RESERVATIONS

10.1. Period of Declarant's Rights and Reservations. Declarant shall have, and Declarant hereby retains, and reserves, certain rights as hereinafter set forth with respect to the Association and the Association Properties for a period of time (the "Declarant Control Period") commencing on the date hereof and ending: (a) sixty days after the date on which seventy-five percent (75%) of the Units no longer are owned by Declarant and Limited Declarants; or (b) two years after the conveyance by Declarant (or any Limited Declarant) of the last Unit conveyed by Declarant (or any Limited Declarant) in the ordinary course of business, whichever occurs first. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Association and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant whether or not specifically stated therein. The rights, reservations, and easements hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified,

amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other subsequent amendment.

10.2. Declarant's Right to Appoint Board of Directors. During the Declarant Control Period, Declarant shall have the right to appoint the members of the Board of Directors; provided that (i) not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant (including as Declarant any Limited Declarants), at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Owners other than the Declarant; (ii) not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant (including as Declarant any Limited Declarants), not less than thirty-three and one-third percent (33⅓%) of the members of the Board of Directors must be elected by Owners other than the Declarant; and (iii) not later than the termination of the Declarant Control Period, the Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom shall be Owners other than the Declarant or designated representatives of Owners other than Declarant. During the Declarant Control Period, the Articles and By-Laws and any amendment to either of them shall not be effective unless and until approved in writing by the Declarant.

10.3. Selection of Officers; Date for Taking Office. The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election.

10.4. Requirements for Turnover of Declarant Control. On or before the Turnover Date, the Declarant shall deliver to the Association all property of the Owners and the Association held by or controlled by the Declarant, including without limitation the following items:

10.4.1. The original or a certified copy of the recorded Declaration as amended, the Association's articles of incorporation, By-Laws, minute books, other books and records, and any Rules and Regulations which may have been promulgated.

10.4.2. An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Declarant Control Period 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 presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association; provided that, if then permitted by the Act, the Association rather than the Declarant shall pay for the audit. The requirement for an audit may be waived by the Declarant to the extent permitted by the Act.

10.4.3. The Association funds or control thereof.

10.4.4. All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or, to the extent required by the Act, 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 Areas, and inventories of these properties.

10.4.5. To the extent required by the Act, a copy of any plans and specifications used in the construction of any improvements which were completed within two (2) years before this Declaration was recorded.

10.4.6. All insurance policies then in force, in which the Owners, the Association or its members of the Board of Directors and officers are named as insured persons.

10.4.7. To the extent required by the Act, copies of any certificates of occupancy that may have been issued with respect to the Improvements located on Association Properties.

10.4.8. To the extent required by the Act, any other permits issued by governmental bodies applicable to the Subdivision and which are currently in force or which were issued within one year prior to the date on which the Declarant Control Period ended.

10.4.9. To the extent required by the Act, written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective.

10.4.10. A roster of Owners and First Mortgagees and the addresses and telephone numbers, if known, as shown on the Declarant's records.

10.4.11. Employment contracts in which the Association is a contracting party.

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

10.5. Right to Construct Additional Improvements on Association Properties. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey Association Properties to the Association and construct additional Improvements on Association Properties at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners. Declarant may convey or transfer such Improvements to the Association if Declarant has elected to construct such Improvements. The Association shall be obligated to accept title to, care for, and maintain the same as Association Properties as elsewhere provided in this Declaration. Association Properties and Improvements conveyed by Declarant to the Association shall be conveyed free and clear of any Mortgage or lien (other than a lien for any tax or assessment not yet due and payable) arising by reason of Declarant's promise or failure to pay any monetary obligation of Declarant

10.6. Declarant's Rights to Use Association Properties in Marketing of Community Area. Until Residences have been constructed on all of the Units and all of the Units have been sold by Declarant and the Limited Declarants to Owners for the purpose of occupancy of the Residences thereon, Declarant shall have and hereby reserves the right to reasonable use of the Association Properties and of services offered by the Association in connection with the promotion and

marketing of the Community Area. Without limiting the generality of the foregoing, until Residences have been constructed on all of the Units and all of the Units have been sold by Declarant and the Limited Declarants to Owners for the purpose of occupancy of the Residences thereon, Declarant may erect and maintain on any part of the Association Properties such signs, temporary buildings, and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development, and marketing of real property within the Community Area; may use vehicles and equipment on Association Properties for promotional purposes; may permit prospective purchasers of property within the boundaries of the Community Area who are not Owners or Members of the Association to use Association Properties at reasonable times and in reasonable numbers; and may refer to the Association Properties and to the Association and services offered by the Association in connection with the development, promotion, and marketing of property within the boundaries of the Community Area. Declarant shall pay any costs and expenses arising from its use of Association Properties in accordance with this Section 10.6.

10.7. Declarant's Rights to Complete Development of Community Area. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete development of property within the boundaries of the Community Area or elect not to complete development of any part of the Community Area; to develop Association Properties or to construct Improvements to Property thereon, whether or not required by the Plat or any other requirements imposed by the City in connection with the approval of the Plat; to construct or alter Improvements on any property owned by Declarant within the Community Area; to maintain model homes and offices for construction, sales purposes, or similar facilities on any property owned by Declarant within the Community Area; or to post signs or do any other act or thing incidental to development, construction, promotion, marketing, or sales of property within the boundaries of the Community Area. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals: (a) to excavate, cut, fill, or grade any property owned by Declarant or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant; (b) to use any structure on any property owned by Declarant as a construction office, model home, or real estate sales office in connection with the sale of any property within the boundaries of the Community Area; (c) to store construction materials, supplies, equipment, tools, waste or other items on property within the Community Area that is owned by Declarant; (d) to require Declarant to seek or obtain the approval of the Design Review Committee or of the Association for any such activity or Improvement to Property on any property owned by Declarant; or to develop Association Properties or to construct Improvements to Property thereon, whether or not required by the Plat or any other requirements imposed by the City in connection with the approval of the Plat, or to seek or obtain the approval of the Design Review Committee or the Association for any such activity or Improvement to Property. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

10.8. Declarant's Approval of Conveyances or Changes in Use of Association Properties. During the Declarant Control Period, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties, mortgage Association Properties, or use Association Properties other than solely for the benefit of Members or as specifically allowed hereunder.

10.9. Declarant's Rights to Grant and Create Easements. Until Residences have been constructed on all of the Units and all of the Units have been sold by Declarant and the Limited Declarants to Owners for the purpose of occupancy of the Residences thereon, Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, water, and other purposes incident to development and sale of the Community Area located in, on, under, over, and across: (a) Association Properties; (b) the five (5) feet of each Unit adjoining each of the exterior boundaries of such Unit; and (c) the portions of the Community Area affected by the easements reserved on the recorded plats for the Community Area. Declarant may, at any time, grant or create temporary or permanent easements on Units owned by Declarant. Within these easements, including any easements previously granted under the Declaration, unless the consent of the holder of such easement rights is obtained, no structure, planting or other improvements or material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change or adversely affect Established Drainage Patterns or the direction and flow of drainage, or obstruct or retard the flow of water as contemplated by the Established Drainage Pattern. The easement area of each Unit and all improvements in it shall be maintained continuously by the Owner of the Unit on which said easement is located, except for those improvements for which a public authority or private utility company is responsible. Declarant's right to grant and create easements as described herein shall be transferred and shall devolve upon the Association upon conveyance by Declarant or a Limited Declarant of the last Unit owned by Declarant or a Limited Declarant to the first Owner (other than Declarant or a Limited Declarant).

10.10. Declarant's Rights to Convey Property to Association. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey real property and Improvements thereon to the Association at any time and from time to time in accordance with this Declaration.

10.11. Declarant's Right to Annex Additional Property to Community Area. Declarant shall have, and hereby reserves the right, but shall not be obligated, from time to time, to annex to the Community Area any part or all of the real property described on Exhibit E attached hereto and by this reference made part hereof (the "Additional Property"); provided that Declarant shall not be entitled to annex portions of the Additional Property (other than those dedicated for public use) not owned by Declarant without the consent of the owner thereof. In order to annex any part or all of the Additional Property to the Community Area, the Declarant shall be required to execute and record a Notice of Annexation which describes the real property being annexed, refers to this Declaration, including the date and reception number of the Recordation of this Declaration, states that the Additional Property (or specified portion thereof) is, by such Notice of Annexation, being annexed to the Community Area, and specifying the Neighborhood or Neighborhoods in which such Additional Property is located and, if located in more than one Neighborhood, the portions of such Additional Property located in each such Neighborhood. If the Additional Property or portion thereof being annexed by such Notice of Annexation is not owned by Declarant, the Notice of Annexation shall also be required to be executed by the owner thereof. Such annexation shall not require the consent of the Owners or Mortgagees of any other Units but shall, if Declarant desires to attempt to obtain FHA or VA approval of the property being annexed, be subject to a determination by FHA or VA that the annexation is in accord with a 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. Any portion of the Additional Property so annexed to the Community Area shall be subject to the terms and conditions of this Declaration from and after the date of the recording of the Notice of Annexation annexing such portion of the Additional Property to the Community Area.

10.12. Neighborhood Designations for Additional Property. Each Supplemental Declaration filed to subject any part or all of the Additional Property to this Declaration shall assign each portion of the Additional Property annexed thereby to the Community Area to a Neighborhood, which Neighborhood may be then existing or newly created. During the Declarant Control Period, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries; provided, that, if one or more Lots, Townhome Lots, Condominium Lots, or Multifamily Units have been transferred to a Person other than Declarant or a Limited Declarant, no such amendment shall have the effect of moving any such Lot, Townhome Lot, Condominium Lot, or Multifamily Unit into or a way from a Neighborhood without the written consent of the Owners of such sold Lots, Townhome Lots, Condominium Lots, or Multifamily Units.

## **ARTICLE 11 MISCELLANEOUS**

11.1. Term of Declaration. Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect until December 31, 2019, and thereafter shall be automatically extended indefinitely unless and until terminated. Any such termination may be adopted by the Recording of a written statement of termination executed by the Owners holding at least seventy-five percent (75%) of the Units. The termination shall be effective on Recording of such instrument or on such later date as is specifically stated in such instrument. No such instrument shall be required to be in any particular form.

### 11.2. Amendments by Declarant.

11.2.1. Amendments Before Conveyances. Until the first Unit subject to this Declaration is conveyed by Declarant to the first Owner (other than Declarant or any Limited Declarant), any of the provisions contained in the Declaration may be amended or terminated by Declarant by the Recordation of an amendment, executed by Declarant, setting forth such amendment or termination.

11.2.2. Technical Amendments. Declarant further reserves and is granted the right and power to make and Record technical amendments of the Declaration, and the Articles and By-Laws of the Association at any time prior to the earlier of the conveyance by the Declarant (or any Limited Declarant) of the last Unit owned by Declarant (or any Limited Declarant) to the first Owner (other than Declarant or any Limited Declarant) or five (5) years from the date of Recordation of this Declaration, whichever occurs first. Such amendments shall be permitted for the purposes of correcting spelling, grammar, dates, cross references, or typographical errors or as may otherwise be required to clarify the meaning of any provision of any and all such documents. No such amendment shall be permitted to make any substantive change in the provisions of this Declaration.

11.2.3. Amendments for Exercise of Reserved Rights. The Declarant may make amendments to this Declaration as necessary and as required by the Act in connection with the exercise of any rights reserved by the Declarant under this Declaration.

11.2.4. Amendments by Association. The Association may make amendments to this Declaration as necessary and as required by the Act in connection with the approval of any lot line or boundary adjustment under Section 3.20.

11.3. Amendment of Declaration by Members. Except as otherwise provided in this Declaration, including Section 6.1, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision of this Declaration, including without limitation any covenant, condition, restriction, or equitable servitude contained in this Declaration, may be amended or repealed at any time and from time to time by the Recording of a written statement of amendment or repeal executed by the Owners of at least seventy-five percent (75%) of the Units or by the vote of Members owning at least seventy-five percent (75%) of the Units at duly constituted meetings of the Members and the Recording of a certificate of such vote of amendment or repeal executed by on behalf of the Association by the President of the Association or any Member of the Board of Directors. The amendment or repeal shall be effective on Recording of such instrument or on such later date as is specifically stated in such instrument. No such instrument shall be required to be in any particular form.

11.4. Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provisions of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate upon the conveyance by the Declarant (or any Limited Declarant) of the last Unit owned by Declarant (or any Limited Declarant) to the first Owner of such Unit (other than Declarant or any Limited Declarant) or five (5) years from the date of Recording this Declaration, whichever occurs first.

11.5. Amendment of Articles and By-Laws. The Articles of Incorporation and By-Laws may be amended in accordance with the provisions set forth in such instruments or, in the absence of such provisions, in accordance with applicable provisions of the Colorado Nonprofit Corporation Act.

11.6. Special Rights of First Mortgagees. The First Mortgagee as to any Unit in the Community Area, upon filing a written request therefor with the Association, shall be entitled to: (a) written notice from the Association of any default by the Mortgagor of such Unit in the performance of the Mortgagor's obligations under this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; and (b) examine the books and records of the Association during normal business hours.

11.7. First Mortgagee Exemption from Rights of First Refusal. Any such First Mortgagee who obtains title to any Unit pursuant to the remedies provided in the Mortgage held by such First Mortgagee or pursuant to any foreclosure of Mortgage or by deed or assignment in lieu of foreclosure shall be exempt from any right of first refusal if any such right of first refusal is ever contained in this Declaration or any Supplement to this Declaration.

11.8. Priority of First Mortgage Over Assessments. The First Mortgagee as to any Unit who obtains title to such Unit pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure shall take title to the Unit free and clear of any claims for unpaid Assessments or charges against such Unit which accrued prior to the time such holder acquires title to such Unit.

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

11.10. Amendment Required by Government Mortgage Agencies. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or to the Articles of Incorporation or By-Laws of the Association shall be necessary in order for existing or future Mortgages to be acceptable to any Government Mortgage Agencies, such amendments may be made solely by Declarant. "Government Mortgage Agencies" shall mean the FHA, the VA, the FHLMC, the GNMA, the FNMA, 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 such entities. "FHA" shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development, including such department or agency of the United States Government as shall succeed to the FHA in insuring notes secured by mortgages and deeds of trust on residential real estate. "VA" shall mean the Veterans Administration of the United States of America, including such department or agency of the United States Government as shall succeed to the VA in its present function of issuing guarantees with respect to notes secured by Mortgages on residential Lots. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, including any successor thereto. "FNMA" shall mean the Federal National Mortgage Association, a governmental-sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto. "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successor thereto. Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment shall be made, if at all, by Declarant prior to the conveyance of the last Unit owned by Declarant to the first Owner (other than Declarant or any Limited Declarant) and each such amendment shall be subject to the written approval of the VA or FHLA.

11.11. HUD or VA Approval. During the Declarant Control Period, the following actions shall require the prior approval of HUD, the FHA or the VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee on one or more Mortgages encumbering a Unit: (a) annexation of additional real property into the Association; (b) amendment of this Declaration or material amendment of the Articles of Incorporation or By-Laws of the Association; (c) termination of the Community Area; or (d) merger or consolidation of the Association.

11.12. Notices. Any notice permitted or required to be given under this Declaration or under the By-Laws, including any notice by the Association to any Member or Owner and any notice by any Member or Owner to another Member or Owner required by this Declaration or the By-Laws, shall, unless otherwise specified in this Declaration or in the By-Laws, be in writing and may be given either personally, by regular mail, certified mail, registered mail, local or national commercial courier or delivery service, successful and confirmed facsimile transmission, or by any other means that is then commonly in use in the United States as a means of giving important notices and which is designated by the Board of Directors as an appropriate means for giving notices hereunder. All notices given by regular mail shall be deemed to have been received on the third business day after being mailed and all other notices shall be deemed to have been received on the date actually delivered unless the Board of Directors shall adopt a universally applicable rule as to any specific method of giving notices, in which case such rule shall be applicable to all notices given by such method. All notices shall be to any Person at the address given by such Person to the Association for the purpose of service of such notice or to the Unit of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association; provided that all such notices shall be at addresses located in the United States and no more than two Persons and addresses (other than the First Mortgagee) may be designated as being entitled to notices with respect to any Unit. If directions for notice are given to the Association that are inconsistent with the foregoing, the Association may ignore such directions.

11.13. Persons Entitled to Enforce Declaration. The Association, acting by authority of the Board, and any Member of the Association shall have the right to enforce any or all of the provisions, covenants, conditions, easements, restrictions, and equitable servitudes contained in this Declaration against any property within the Community Area and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Declaration.

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

11.15. Enforcement by Self-Help. Declarant (for so long as Declarant as a Member of the Association is entitled to enforce the Declaration) or the Association, or any authorized agent of either of them, may enforce, by self-help, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration. Violation of the provisions of covenants

contained in Section 3 by an Owner shall permit the Association to enter onto the Unit of the Owner and cure the violation or cause compliance with this provision and to levy and collect a **Specific Assessment** for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of a Residence without the consent of the Owner thereof or court order unless a clear emergency exists.

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

11.17. Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

11.18. Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees.

11.19. Limitation on Liability. The Association, the Board of Directors, the Design Review Committee, Declarant, each Limited Declarant, and any member, agent, or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

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

11.21. Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

11.22. Conflict of Provisions. Except to the extent any provision of this Declaration is inconsistent with the Act, in case of any conflict between this Declaration, the Articles of Incorporation, or By-Laws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the By-Laws of the Association, the Articles will control.

11.23. Governing Law. The validity and effect of this Declaration shall be determined in accordance with the laws of the State of Colorado.

11.24. Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.



11.25. Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

11.26. Disclaimer Regarding Safety. DECLARANT AND EACH LIMITED DECLARANT HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY AREA. ANY OWNER OF PROPERTY WITHIN THE COMMUNITY AREA ACKNOWLEDGES THAT DECLARANT IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION AND BYLAWS, AND IS NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY AREA.

11.27. Disclaimer Regarding Oil and Gas Operations. DECLARANT AND EACH LIMITED DECLARANT HEREBY DISCLAIM ANY AND ALL OBLIGATIONS REGARDING, RELATING TO OR ARISING OUT OF THE PRESENT, PAST OR FUTURE PRESENCE OF OIL AND GAS WELLS, TANKS, PIPELINES, STORAGE FACILITIES, WHETHER ABANDONED, OPERATIONAL OR NOT, ON COMMON AREAS WITHIN THE COMMUNITY AREA OR ON PROPERTIES NEAR OR ADJACENT TO THE COMMUNITY AREA. EACH OWNER OF PROPERTY WITHIN THE COMMUNITY AREA ACKNOWLEDGES THAT THERE ARE OIL AND GAS WELLS, TANKS, STORAGE FACILITIES, PIPELINES, AND/OR RELATED EQUIPMENT, SUPPLIES AND FACILITIES, BOTH OPERATIONAL AND NON-OPERATIONAL, LOCATED ON COMMON AREAS WITHIN THE COMMUNITY AREA OR ON PROPERTIES NEAR OR ADJACENT TO THE COMMUNITY AREA, AND ACKNOWLEDGES THAT DECLARANT AND EACH LIMITED DECLARANT SHALL NOT BE OBLIGATED TO DO ANY ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY AREA IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THE OPERATION OR PRESENCE OF SUCH OIL AND GAS WELLS, TANKS, STORAGE FACILITIES, PIPELINES, RELATED EQUIPMENT, SUPPLIES OR FACILITIES, WHETHER OPERATIONAL OR NOT, WITHIN THE COMMUNITY AREA OR ON PROPERTIES NEAR OR ADJACENT TO THE COMMUNITY AREA. ALL OWNERS OF PROPERTY WITHIN THE COMMUNITY AREA FURTHER ACKNOWLEDGE THAT DECLARANT AND EACH LIMITED DECLARANT SHALL NOT HAVE ANY RESPONSIBILITY FOR OR OBLIGATION TO DO ANY ACTS OF ANY KIND OR NATURE WITH RESPECT TO ANY NOISE, ODOR, OR OTHER EMISSION (INCLUDING ANY EMISSIONS GOVERNED BY ANY AND ALL ENVIRONMENTAL OR HAZARDOUS MATERIALS LAWS, REGULATIONS, RULES, ORDINANCES, OR STATUTES) ARISING OUT OF OR RELATING TO THE OPERATION OR PRESENCE OF SUCH OIL AND GAS WELLS, TANKS, STORAGE FACILITIES, PIPELINES, RELATED EQUIPMENT, SUPPLIES OR FACILITIES, WHETHER OPERATIONAL OR NOT, WITHIN THE COMMUNITY AREA OR ON PROPERTIES NEAR OR ADJACENT TO THE COMMUNITY AREA.

11.28. Use of the Words "McKay Landing". No Person shall use the words "McKay Landing" or any derivative or any other term which Declarant may select as the name of this

development or any component thereof in any printed or promotional material without the Declarant's prior written consent during the Declarant Control Period, or the Association's prior written consent thereafter. However, Owners may use the words "McKay Landing" in printed or promotional matter solely to specify that particular property is located within the Community Area, and the Association shall be entitled to use the words "McKay Landing" in its name.

5 IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this day of November, 2000.

DECLARANT:

MCKAY LANDING LLC, a Colorado limited liability company

By: James Construction Co. Inc., a Colorado corporation, manager

By: [Signature]  
James G. Postle, President

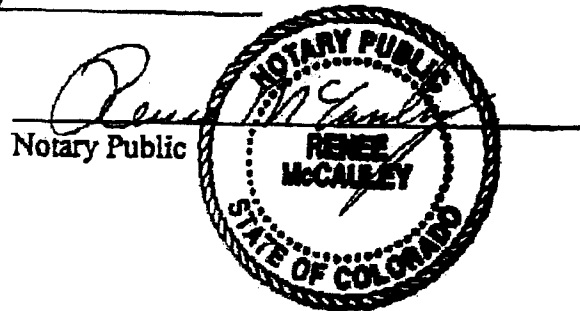
Address: 2919 Valmont Road, Suite 204  
Boulder, Colorado 80301

STATE OF COLORADO )  
                                      ) ss.  
COUNTY OF Boulder )

The foregoing instrument was acknowledged before me this 27 day of November, 2000 by James G. Postle as President of James Construction Co. Inc., a Colorado corporation, manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1-25-04



My Commission Expires 01-25-2004

**EXHIBIT "A"**

**Neighborhood Area I**

**Summer Bay**

**Lots 1-85, 88-102, and 115-126, Block 3,  
Lots Limited Common Elements 1-126, Block 3, and  
Tract Z, Block 3,  
McKay Landing Filing No. 1,  
City of Broomfield, County of Adams, State of Colorado,**

**and**

**Lots 86, 87, and 103-109, Block 3,  
McKay Landing Filing No. 1, Replat C,  
City of Broomfield, County of Adams, State of Colorado,**

**and**

**Lots 104-108, Block 3,  
McKay Landing Filing No. 1, Replat B,  
City of Broomfield, County of Adams, State of Colorado,**

**and**

**Lots 110-114, Block 3,  
McKay Landing Filing No. 1, Replat A,  
City of Broomfield, County of Adams, State of Colorado,**

**EXHIBIT "B"**

**Neighborhood Area II**

**Lakesong**

**Lots 1-26, Block 2,  
McKay Landing Filing No. 1,  
City of Broomfield, County of Adams, State of Colorado,**

**and**

**Lots 27-30, Block 2  
McKay Landing Filing No. 1, Replat D,  
City of Broomfield, County of Adams, State of Colorado,**

**EXHIBIT "C"**

**Neighborhood Area III**

**Lake Isle**

**Lots 1-88, Block 4, and  
Tracts W, X and Y, Block 4,  
McKay Landing Filing No. 1,  
City of Broomfield, County of Adams, State of Colorado.**

**EXHIBIT "D"**

**Neighborhood Area IV**

**Sky Cove**

**Lots 1-73, Block 1, and  
Tracts M and O, Block 1,  
McKay Landing Filing No. 1,  
City of Broomfield, County of Adams, State of Colorado.**

**EXHIBIT "E"**

**Neighborhood Common Areas**

**I. For the exclusive use of Neighborhood Area I:**

**Tract Z, Block 3,  
McKay Landing Filing No. 1,  
City of Broomfield,  
County of Adams,  
State of Colorado.**

**II. For the exclusive use of Neighborhood Area III:**

**Tracts W and Y, Block 4,  
McKay Landing Filing No. 1,  
City of Broomfield,  
County of Adams,  
State of Colorado.**

**III. For the primary use of Neighborhood Area III:**

**Tract X, Block 4,  
McKay Landing Filing No. 1,  
City of Broomfield,  
County of Adams,  
State of Colorado.**

**IV. For the primary use of Neighborhood Area IV:**

**Tracts M and O, Block 1,  
McKay Landing Filing No. 1,  
City of Broomfield,  
County of Adams,  
State of Colorado.**

EXHIBIT "F"

Additional Property

LEGAL DESCRIPTION

A parcel of land located in a part of the east one-half of Section 20, T 1 S, R 68 W, of the 6<sup>th</sup> PM., City of Broomfield, County of Adams, State of Colorado.

Commencing at the north  $\frac{1}{4}$  corner of Section 20;

Thence S00°00'56"W, along the west line of said NE  $\frac{1}{4}$  section, 30.00 feet to the south right-of-way line of 144<sup>th</sup> Avenue, being the POINT OF BEGINNING;

Thence N89°56'01"E along said south right-of-way line, 2599.02 feet to the west right-of-way line of Zumi Street being 30.00 feet west of the east line of said section;

Thence S00°01'57"W along said west right-of-way line, 889.85 feet;

Thence along the west line of McKay Lake as recorded in book A48, page 594, as recorded at said County through the following six courses;

1) S63°07'00"W, 60.96 feet;

2) S43°11'00"W, 281.00 feet;

3) S00°32'00"E, 233.90 feet;

4) S23°13'00"W, 433.60 feet;

5) S48°12'00"E, 511.90 feet;

6) S48°46'00"E, 44.03 feet returning to said west right-of-way line;

Thence S00°01'57"W, along said west right-of-way line, 510.58 feet to the south line of said NE  $\frac{1}{4}$ ;

Thence S00°02'38"W along said west right-of-way line, 1332.15 feet to the south line of the north half of the SE  $\frac{1}{4}$  of Section 20;

Thence N89°42'00"W along last said south line, 2597.61 feet to the west line of said SE  $\frac{1}{4}$ ;

Thence N00°00'56"E along last said west line, 3951.03 feet to the POINT OF BEGINNING.

Except that portion described as McKay Landing Filing No. 1 as platted in the records of said County.

Containing 6,060,088 square feet or 139.12 acres, more or less.

BASIS OF BEARINGS

The east line of the NE  $\frac{1}{4}$  of Section 20, T 1 S, R 68 W, of the 6<sup>th</sup> P.M., monumented at the east  $\frac{1}{4}$  corner of said section by a 1-1/2" illegible aluminum cap, and at the NE corner by an axel in range box with 2" aluminum cap attached stamped T 1 S R 68 W 17/16/21/S20 1994 LS 23904. Said line known to bear N00°00'56"E per the Adams County GIS Control Network.



**LIMITATIONS OF ACTIONS AGAINST LAND SURVEYORS:**

According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

I, James T. Jones, a professional land surveyor in the State of Colorado, do hereby state that the above legal description and attached exhibit were prepared under my responsible charge, and on the basis of my knowledge, information and belief, is correct.

---

James T. Jones, P.L.S.  
Colorado No. 19606  
For and on behalf of JR Engineering, LLC  
6020 Greenwood Plaza Blvd.  
Englewood, CO 80111

---

Date

**SUPPLEMENT TO DESIGNATION OF LIMITED DECLARANTS**  
**UNDER**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**MCKAY LANDING**  
**CITY OF BROOMFIELD**  
**COUNTY OF ADAMS, COLORADO**

THIS SUPPLEMENT TO DESIGNATION OF LIMITED DECLARANTS (this "Supplement"), is made as of this 13 day of February, 2001, by McKay Landing LLC, a Colorado limited liability company ("McKay").

**RECITALS:**

A. The legal description attached as Exhibit B to the Designation of Limited Declarants under Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "Designation"), executed by McKay, dated November 29, 2000, and recorded February 7, 2001, at Reception No. CO759023, describes the James Lots, as defined in the Designation.

B. The legal description of the James Lots described in Exhibit B of the Designation contains an error.

C. McKay wants to execute this Supplement to correct the legal description of the James Lots as described in Exhibit B of the Designation.

**SUPPLEMENT**

The legal description contained in Exhibit B of the Designation is hereby replaced with the legal description attached hereto as Exhibit A.

Except as specifically amended by this Supplement, the Designation shall not be amended or modified hereby. As amended by this Supplement, the Designation shall continue in full force and effect.

IN WITNESS WHEREOF, McKay has executed this Supplement on the day and year first above written.

MCKAY LANDING LLC, a Colorado limited liability company

By: James Construction Company, Inc., manager

By: [Signature]  
James G Postle, President

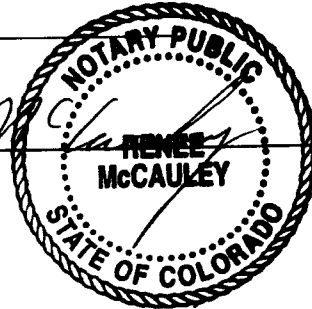
STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of February, 2001 by James G. Postle as President of James Construction Company, Inc., a Colorado corporation, as manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1-25-04

[Signature]  
Notary Public



My Commission Expires 01-25-2004

EXHIBIT A

Legal Description

James Lots

Lots 1 through 85, 88 through 102, and 115 through 126,  
Limited Common Elements 1 through 126, and  
Tract Z,  
all in Block 3; and

Lots 1 through 88, and  
Tracts W, X, and Y,  
all in Block 4,

McKay Landing Filing No. 1, the plat of which was recorded May 16, 2000 on File 18,  
Map 223 at Reception No. CO670915, and Affidavit of Correction recorded June 1, 2000 in  
Booko 6145 at Page 747, County of Adams, State of Colorado,

and

Lots 86, 87, 105, and 109, Block 3,  
McKay Landing Filing No. 1, Replat C,  
recorded January 31, 2001 on File 18, Map 365 at Reception No. CO756437,  
County of Adams, State of Colorado,

and

Lots 103, 104, 106, 107 and 108, Block 3,  
McKay Landing Filing No. 1, Replat B,  
recorded January 31, 2001 on File 18, Map 364 at Reception No. CO756436  
County of Adams, State of Colorado,

and

Lots 110 through 114, Block 3,  
McKay Landing Filing No. 1, Replat A,  
recorded January 31, 2001 on File 18, Map 363 at Reception No. CO756435,  
County of Adams, State of Colorado.

**SUPPLEMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**MCKAY LANDING  
CITY OF BROOMFIELD  
COUNTY OF ADAMS, COLORADO**

THIS SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MCKAY LANDING, CITY OF BROOMFIELD, COUNTY OF ADAMS, COLORADO (this "Supplement"), is made as of this 13 day of February, 2001, by McKay Landing LLC, a Colorado limited liability company ("McKay").

**RECITALS:**

A. The legal description attached as Exhibit "A" to the Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "Declaration"), recorded February 7, 2001, at Reception No. C0759022, describes Neighborhood Area I, as defined in the Designation.

B. The legal description of Neighborhood Area I described in Exhibit "A" of the Declaration contains an error.

C. McKay, as Declarant under the Declaration, wants to execute this Supplement to correct the legal description of Neighborhood Area I, as described in Exhibit "A" of the Declaration.

**SUPPLEMENT**

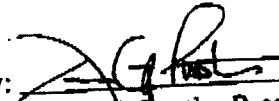
The legal description contained in Exhibit "A" of the Declaration is hereby replaced with the legal description attached hereto as Exhibit A.

Except as specifically amended by this Supplement, the Declaration shall not be amended or modified hereby. As amended by this Supplement, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, McKay has executed this Supplement on the day and year first above written.

MCKAY LANDING LLC, a Colorado limited liability company

By: James Construction Company, Inc., manager


By:   
(James G. Postle, President)

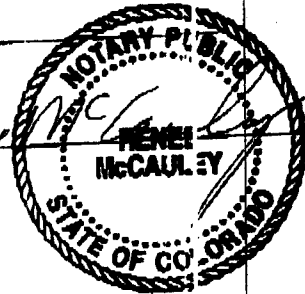
STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of February, 2001 by James G. Postle as President of James Construction Company, Inc., a Colorado corporation, as manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1-25-04

  
Notary Public



My Commission Expires 01-25-2004

EXHIBIT A.

Legal Description

Neighborhood Area I

Lots 1 through 85, 88 through 102, and 115 through 126,  
Limited Common Elements 1 through 126, and  
Tract Z,  
all in Block 3; and

Lots 1 through 88, and  
Tracts W, X, and Y.  
all in Block 4,

McKay Landing Filing No. 1, the plat of which was recorded May 16, 2000 on File 18,  
Map 223 at Reception No. CO670915, and Affidavit of Correction recorded June 1, 2000 in  
Booko 6145 at Page 747, County of Adams, State of Colorado,

and

Lots 86, 87, 105, and 109, Block 3.  
McKay Landing Filing No. 1, Replat C,  
recorded January 31, 2001 on File 18, Map 365 at Reception No. CO756437,  
County of Adams, State of Colorado.

and

Lots 103, 104, 106, 107 and 108, Block 3,  
McKay Landing Filing No. 1, Replat B.  
recorded January 31, 2001 on File 18, Map 364 at Reception No. CO756436  
County of Adams, State of Colorado,

and

Lots 110 through 114, Block 3.  
McKay Landing Filing No. 1, Replat A.  
recorded January 31, 2001 on File 18, Map 363 at Reception No. CO756435,  
County of Adams, State of Colorado.



2004005769 04/22/2004 03:31P COV  
1 of 2 R 11.00 D 0.00 City&Cnty Broomfield

**DESIGNATION OF LIMITED DECLARANT  
UNDER  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MCKAY LANDING  
CITY AND COUNTY OF BROOMFIELD  
COLORADO**

THIS DESIGNATION OF LIMITED DECLARANT (this "Designation"), is made as of this 11<sup>th</sup> day of March, 2004, by McKay Landing LLC, a Colorado limited liability company ("McKay").

RECITALS:

A. McKay, as the owner of the real property lying within the boundaries of the subdivision plat (the "Plat") of McKay Landing Filing No. 1 Recorded on May 16, 2000 as Reception No. C0670915 in the real property records for the County of Adams, State of Colorado, except the portions thereof dedicated by the Plat to the City or the County, recorded the Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado, as amended from time to time thereafter (collectively, the "Declaration"). McKay is the Declarant under the Declaration.

B. The Declaration provides for the status of Limited Declarant.

C. JamesCompany, a division of TOUSA Homes, Inc., a Florida corporation ("James") has acquired Lot 1, Block 1, McKay Landing Filing No. 5, City and County of Broomfield, Colorado (the "James Lot"), from McKay and would like to be designated as Limited Declarant as to the James Lot under the Declaration.

DESIGNATION

Pursuant to McKay's authority as Declarant to do so under the Declaration, McKay does hereby designate James as Limited Declarant as to the James Lot.

[Remainder of page intentionally left blank.]



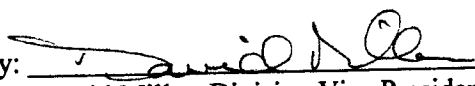


2004005769 04/22/2004 03:31P COV  
2 of 2 R 11.00 D 0.00 City&Cnty Broomfield

IN WITNESS WHEREOF, McKay has executed this Declaration on the day and year first above written.

MCKAY LANDING LLC, a Colorado limited liability company

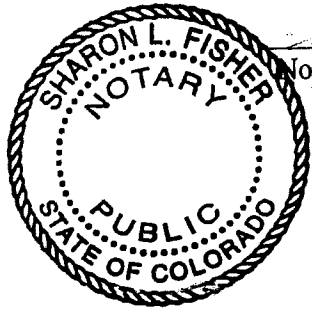

By: TOUSA Homes, Inc., a Florida corporation, manager

By:   
David Miller, Division Vice President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of March, 2004 by David Miller as Division Vice President of TOUSA Homes, Inc., a Florida corporation, as manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal. My Commission Expires 5/26/2004  
My commission expires: \_\_\_\_\_

   
Notary Public

**SECOND SUPPLEMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR**

**MCKAY LANDING  
CITY OF BROOMFIELD  
COUNTY OF ADAMS, COLORADO**

THIS SECOND SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MCKAY LANDING, CITY OF BROOMFIELD, COUNTY OF ADAMS, COLORADO (this "Supplement"), is made as of this 29<sup>th</sup> day of May, 2001, by McKay Landing LLC, a Colorado limited liability company (AMcKay≅).

RECITALS:

A. The Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the AOriginal Declaration≅), was recorded February 7, 2001, at Reception No. CO759022 in the real property records of the County of Adams, State of Colorado. A Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the AFirst Supplement≅), was recorded February 15, 2001 at Reception No.C0759023, in the real property records of the County of Adams, State of Colorado. All references herein to the ADeclaration≅, shall mean the Original Declaration as amended by the First Supplement.

B. Any capitalized terms used herein, unless specifically defined herein, shall have the meaning provided in the Declaration.

C. Substantially all of the Units located in Neighborhood Area IV (Sky Cove) are designed to have driveways which feed onto the alleys located within Neighborhood Area IV. The contemplated improvements for the majority of the Units within Neighborhood Area IV include driveways which would be shorter than sixteen (16) feet from the alley gutter pan to the garage.

D. Parking of vehicles in driveways which are less than sixteen (16) feet in length from the alley gutter pan to the garage could result in portions of the vehicles extending into the alleys and could restrict the vision of drivers of vehicles within the alley area. The City of Broomfield, Colorado (the ACity≅) has therefore required that parking within Neighborhood Area IV alleys be restricted for the safety of traffic through the alleys within Neighborhood Area IV.

E. McKay, as Declarant under the Declaration, and Engle, as Limited Declarant under the Declaration, wish to execute this Supplement to restrict parking within Neighborhood Area IV.

## SUPPLEMENT

Except as specifically amended by this Supplement, the Declaration shall not be amended or modified hereby. As amended by this Supplement, the Declaration shall continue in full force and effect.

1. Parking within Alleys. No car, truck (of any size), motorcycle, boat, camper (on or off supporting vehicles), trailer, tractor, towed trailer unit, snowmobile, disabled, junked, or abandoned vehicle, motor home, mobile home, camper, recreational vehicle, or any other motor vehicle or other vehicle of the types described above (all of which shall herein be described as the Vehicles) shall be parked or stored in, on, or about any alley within Neighborhood Area IV. The Association shall have the right to enter, remove and store, at the Owner's expense, any Vehicle in violation of this restriction. The City and any other governmental body having jurisdiction over the Community Area shall have the right to regulate or restrict parking within the Neighborhood Area IV alleys, including, but not limited, to the right to tow or remove any Vehicle so parked.

2. Parking within Lots. No Vehicle parking of any kind will be allowed in, on or about the driveway of any Neighborhood Area IV Unit unless the driveway, from the alley gutter pan to the garage located on the Lot is equal to or greater than sixteen (16) feet in length, or the length of the Vehicle is less than the length of the driveway as measured from the alley gutter pan to the garage located on the Lot, or within the garage located on any such Lot. The Association shall have the right to enter any Owner's Unit, remove and store, at the Owner's expense, any Vehicle in violation of this restriction.

IN WITNESS WHEREOF, McKay and Engle have executed this Supplement on the day and year first above written.

MCKAY LANDING LLC, a Colorado limited liability company

By: James Construction Company, Inc., manager

By: [Signature]  
James G. Postle, President

ENGLE HOMES/COLORADO, INC., a Florida corporation

By: [Signature]  
Eric Eckberg, President

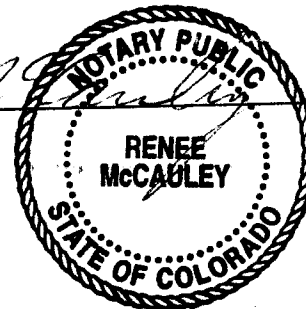
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Boulder )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2001 by James G. Postle as President of James Construction Company, Inc., a Colorado corporation, as manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1-25-04

[Signature]  
Notary Public



My Commission Expires 01-25-2004

**THIRD SUPPLEMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MCKAY LANDING  
CITY AND COUNTY OF BROOMFIELD  
COLORADO  
AND NOTICE OF ANNEXATION**

THIS THIRD SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MCKAY LANDING, CITY AND COUNTY OF BROOMFIELD, COLORADO AND NOTICE OF ANNEXATION (this "Supplement"), is made as of this 18 day of March, 2002, by McKay Landing LLC, a Colorado limited liability company ("McKay").

**RECITALS:**

A. The Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "Original Declaration"), was recorded February 7, 2001, at Reception No. CO759022 in the real property records of the County of Adams, State of Colorado. A Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "First Supplement"), was recorded February 15, 2001 at Reception No. C0761522, in the real property records of the County of Adams, State of Colorado and a Second Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, State of Colorado (the "Second Supplement"), was recorded June 11, 2001 at Reception No. C0812050, in the real property records of the County of Adams, State of Colorado. All references herein to the "Declaration", shall mean the Original Declaration as amended by the First Supplement and Second Supplement.

B. Any capitalized terms used herein, unless specifically defined herein, shall have the meaning provided in the Declaration.

C. McKay, as Declarant under the Declaration, wishes to add to the real property included in the Subdivision and encumbered by the Declaration the real property lying within the boundaries of the plat of McKay Landing Filing No. 2, City of Broomfield, County of Adams, State of Colorado, Recorded on April 13, 2001 in the real property records of the County of Adams, State of Colorado at File 18, Map 421 (the "Filing No. 2 Plat"), all of which real property is owned by McKay, except the portions thereof dedicated by the Filing No. 2 Plat to the City. The real property lying within the boundaries of the Filing No. 2 Plat is Additional Property as such term is defined in the Declaration.



D. Pursuant to Section 10.11 of the Declaration, the real property lying within the boundaries of the Filing No. 2 Plat may be annexed to the Community Area and made subject to the terms and provisions of the Declaration through the unilateral action of the Declarant.

SUPPLEMENT AND NOTICE OF ANNEXATION

In accordance with the foregoing, and the covenants and conditions contained herei, Declarant hereby declares that the Declaration shall be supplement as follows:

1. Annexation of Filing No. 2 Plat. Pursuant to and in accordance with Section 10.11 of the Declaration, the real property lying with the boundaries of the Filing No. 2 Plat is hereby annexed as of the date hereof into the Subdivision and Community Area, as such terms are defined in the Declaration. The real property lying within the boundaries of the Filing No. 2 Plat is hereby deemed to be subject to the terms and provisions of the Declaration.
2. Effect of Annexation. All references to the Subdivision and Community Area within the Declaration shall include the real property lying within the boundaries of the Filing No. 2 Plat and the terms Unit, Association Properties, Common Area, Neighborhood, Neighborhood Area, or Neighborhood Common Area shall include those areas depicted as such on the Filing No. 2 Plat or otherwise provided for herein. All Units shall be deemed subject to the terms and conditions of the Declaration and all Owners of Units shall be deemed to be Members of the Association in accordance with the terms of the Declaration and the Bylaws. Pursuant to the Declaration, Common Assessments for Units within the boundaries of the Filing No. 2 Plat shall commence as of the date of this annexation and shall be prorated as of such date.
3. Designation of Neighborhood Areas. The real property described on Exhibit A is hereby annexed into Neighborhood Area II (Lakesong) as defined in the Declaration; all references in the Declaration to Neighborhood Area II (Lakesong) shall include the real property described on Exhibit A. The real property described on Exhibit B is hereby annexed into Neighborhood Area IV (Sky Cove) as defined in the Declaration; all references in the Declaration to Neighborhood Area IV (Sky Cove) shall include the real property described on Exhibit B.
4. Neighborhood Common Areas. Section 4.2 of the Declaration is hereby amended to include the real property described on Exhibit C, attached hereto as Neighborhood Common Areas for the exclusive or primary use of the Neighborhoods as specifically set forth on Exhibit C.
5. Maintenance Easement. Declarant does hereby grant and convey to the Association and its successors and assigns an easement (the "Easement") affecting Tracts T and 10A, McKay Landing Filing No. 2, City and County of Broomfield, State of Colorado (the "Easement Property") for the construction, reconstruction, repair, and maintenance of landscaping and community recreation facilities on the Easement Property in accordance with the Site Development Plan for McKay Landing Filing No. 2 dated \_\_\_\_\_, as amended, together with all rights necessary or desirable to the use of the Easement, including without limitation the right of the Association and its successors and assigns (and their respective employees, agents,

contractors, and other delegates) to enter onto the Easement Property from time to time as is reasonable in connection with the exercise of their rights under the Easement.

6. Amendment of Section 1.4.1 of Declaration. Section 1.4.1 of the Declaration is hereby amended to add the following sentence:

The total number of Units in the Community Area shall be 839.

7. Amendment of Declaration Except as specifically amended by this Supplement, the Declaration shall not be amended or modified hereby. As amended by this Supplement, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, McKay has executed this Supplement on the day and year first above written.

MCKAY LANDING L.L.C, a Colorado limited liability company

By: James Construction Company, Inc., manager

By: [Signature]  
James G. Postle, President

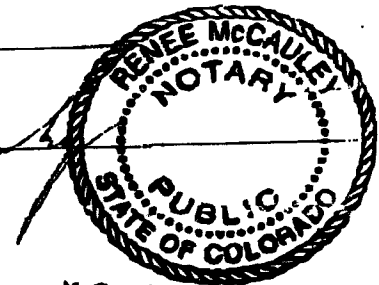
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Boulder )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of March, 2002 by James G. Postle as President of James Construction Company, Inc., a Colorado corporation, as manager of McKay Landing L.L.C, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1.25.04

[Signature]  
Notary Public



My Commission Expires 1/25/2004

Return to:  
Catherine A. Mance  
Davis Graham & Stubbs LLP  
1550 Seventeenth Street, Suite 300  
Denver, CO 80202

**EXHIBIT A**

**Legal Description**

**Engle Lots**

Lots 1 through 65, Block 1,  
Lot 1, Block 2,  
Lots 1 through 109, Block 3,  
Tracts 1 through 9, and  
Tracts 12 and 13,  
McKay Landing Filing No. 2,  
City and County of Broomfield,  
State of Colorado.



**EXHIBIT B**

**NEIGHBORHOOD AREA IV (Sky Cove)**

Lots 1 through 109, Block 3,  
Tracts 1 through 10,  
Tract 13, and  
Tracts Q, R, S, U-1, U-2, U-3, U-4, and U-5,  
McKay Landing Filing No. 2,  
City and County of Broomfield,  
State of Colorado.

**EXHIBIT C**

**NEIGHBORHOOD COMMON AREAS**

I. For the primary use of Neighborhood Area II:

Tracts AA, BB, CC, DD, D-2, and FF,  
McKay Landing Filing No. 2,  
City and County of Broomfield,  
State of Colorado.

II. For the primary use of Neighborhood Area IV:

Tracts Q, R, S,  
McKay Landing Filing No. 2,  
City and County of Broomfield,  
State of Colorado.

III. For the exclusive use of Neighborhood Area IV:

Tracts U-1, U 2, U-3, U-4, and U-5,  
McKay Landing Filing No. 2,  
City and County of Broomfield,  
State of Colorado.

**DESIGNATION OF LIMITED DECLARANTS  
UNDER  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MCKAY LANDING  
CITY AND COUNTY OF BROOMFIELD  
COLORADO**

THIS DESIGNATION OF LIMITED DECLARANTS (this "Designation"), is made as of this 17<sup>th</sup> day of March, 2002, by McKay Landing LLC, a Colorado limited liability company ("McKay").

**RECITALS:**

A. McKay, as the owner of the real property lying within the boundaries of the subdivision plat (the "Plat") of McKay Landing Filing No. 1 Recorded on May 16, 2000 as Reception No. C0670915 in the real property records for the County of Adams, State of Colorado, except the portions thereof dedicated by the Plat to the City or the County, recorded the Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado, as amended by the Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado recorded February 15, 2001 at Reception No. C0761522 in the real property records of the County of Adams, State of Colorado, the Second Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado recorded June 11, 2001 at Reception No. C0812050 in the real property records of the County of Adams, State of Colorado, and the Third Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City and County of Broomfield, Colorado recorded March \_\_, 2002 at Reception No. \_\_\_\_\_ in the real property records of the City and County of Denver, State of Colorado (collectively, the "Declaration"). McKay is the Declarant under the Declaration.

B. The Declaration provides for the status of Limited Declarant.

C. Engle Homes/Colorado, Inc., a Florida corporation ("Engle") has acquired the real property more particularly described on Exhibit A, attached hereto and incorporated herein by this reference, and located within McKay Landing Filing No. 2, City and County of Broomfield, Colorado (the "Engle Lots"), from McKay and would like to be designated as a Limited Declarant as to the Engle Lots under the Declaration.



DESIGNATION

Pursuant to McKay's authority as Declarant to do so under the Declaration, McKay does hereby designate Engle as a Limited Declarant as to the Engle Lots.

IN WITNESS WHEREOF, McKay has executed this Declaration on the day and year first above written.

MCKAY LANDING LLC, a Colorado limited liability company

By: James Construction Company, Inc., manager

By: [Signature]  
James G. Postle, President

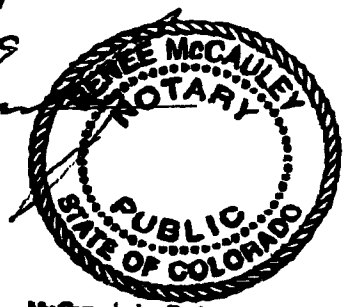
STATE OF COLORADO )  
COUNTY OF Boulder ) ss.

The foregoing instrument was acknowledged before me this 17 day of March, 2002 by James G. Postle as President of James Construction Company, Inc., a Colorado corporation, as manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1-25-04

[Signature]  
Notary Public



My Commission Expires 1/25/2004

Return to:  
Catherine A. Hance  
Davis Graham & Stubbs LLP  
1550 Seventeenth Street, Suite 500  
Denver, CO 80202

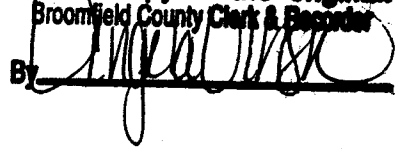


**FOURTH SUPPLEMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**MCKAY LANDING  
CITY AND COUNTY OF BROOMFIELD  
COLORADO**

**AND NOTICE OF ANNEXATION**

Date 8/2/04  
Clerk and Recorder  
County of Broomfield, Colorado  
Certified to be a full, true and  
correct copy of the original.  
Broomfield County Clerk & Recorder  
By 

THIS FOURTH SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MCKAY LANDING, CITY AND COUNTY OF BROOMFIELD, COLORADO AND NOTICE OF ANNEXATION (this "Supplement"), is made as of this 27<sup>th</sup> day of September, 2002, by McKay Landing LLC, a Colorado limited liability company ("McKay").

**RECITALS:**

A. The Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "Original Declaration"), was recorded February 7, 2001, at Reception No. CO759022 in the real property records of the County of Adams, State of Colorado. A Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "First Supplement"), was recorded February 15, 2001 at Reception No. C0761522, in the real property records of the County of Adams, State of Colorado, a Second Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, State of Colorado (the "Second Supplement"), was recorded June 11, 2001 at Reception No. C0812050, in the real property records of the County of Adams, State of Colorado, and a Third Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City and County of Broomfield, State of Colorado (the "Third Supplement"), was recorded March 25, 2002 at Reception No. 2002003896, in the real property records of the City and County of Broomfield, State of Colorado. All references herein to the "Declaration", shall mean the Original Declaration as amended by the First Supplement, Second Supplement and Third Supplement.

B. Any capitalized terms used herein, unless specifically defined herein, shall have the meaning provided in the Declaration.

C. McKay, as Declarant under the Declaration, wishes to add to the real property included in the Subdivision and encumbered by the Declaration the real property lying within the boundaries of the plat of McKay Landing Filing No. 3, City and County of Broomfield, State of Colorado, Recorded on February 22, 2002 in the real property records of the City and County of

Broomfield, State of Colorado at Reception No. 200202418 (the "Filing No. 3 Plat"), all of which real property is owned by McKay, except the portions thereof dedicated by the Filing No. 3 Plat to the City. The real property lying within the boundaries of the Filing No. 3 Plat is Additional Property as such term is defined in the Declaration.

D. Pursuant to Section 10.11 of the Declaration, the real property lying within the boundaries of the Filing No. 3 Plat may be annexed to the Community Area and made subject to the terms and provisions of the Declaration through the unilateral action of the Declarant.

#### SUPPLEMENT AND NOTICE OF ANNEXATION

In accordance with the foregoing, and the covenants and conditions contained herei, Declarant hereby declares that the Declaration shall be supplement as follows:

1. Annexation of Filing No. 3 Plat. Pursuant to and in accordance with Section 10.11 of the Declaration, the real property lying with the boundaries of the Filing No. 3 Plat is hereby annexed as of the date hereof into the Subdivision and Community Area, as such terms are defined in the Declaration. The real property lying within the boundaries of the Filing No. 3 Plat is hereby deemed to be subject to the terms and provisions of the Declaration.

2. Effect of Annexation. All references to the Subdivision and Community Area within the Declaration shall include the real property lying within the boundaries of the Filing No. 3 Plat and the terms Unit, Association Properties, Common Area, Neighborhood, Neighborhood Area, or Neighborhood Common Area shall include those areas depicted as such on the Filing No. 3 Plat or otherwise provided for herein. All Units shall be deemed subject to the terms and conditions of the Declaration and all Owners of Units shall be deemed to be Members of the Association in accordance with the terms of the Declaration and the Bylaws. Pursuant to the Declaration, Common Assessments for Units within the boundaries of the Filing No. 3 Plat shall commence as of the date of this annexation and shall be prorated as of such date.

3. Designation of Neighborhood Areas. The real property described on Exhibit A is hereby declared to be Neighborhood Area V (Park Place) and shall be included in the definition of Neighborhood Areas as defined in the Declaration. All Units within Neighborhood Area V shall be subject to the Common Assessments assessed against Lots and all references in Article 9 of the Declaration to Lots shall mean and include the Units within Neighborhood Area V.

4. Neighborhood Common Areas. Section 4.2 of the Declaration is hereby amended to include the real property described on Exhibit B attached hereto as Neighborhood Common Areas for the exclusive or primary use of the Neighborhoods as specifically set forth on Exhibit B.

5. Maintenance Easement. Declarant does hereby grant and convey to the Association and its successors and assigns an easement (the "Easement") across Lots 22, 23, 24, and 25, McKay Landing Filing No. 3, City and County of Broomfield, State of Colorado, in the area (the "Easement Area") depicted on Exhibit C attached hereto and incorporated herein by this reference. for the construction, reconstruction, repair, and maintenance of a drainage channel (the

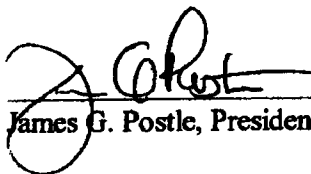
"Drainage Channel"), together with all rights necessary or desirable to the use of the Easement, including without limitation the right of the Association and its successors and assigns (and their respective employees, agents, contractors, and other delegates) to enter on to the Easement Property from time to time as is reasonable in connection with the exercise of their rights under this Easement.

6. Amendment of Declaration. Except as specifically amended by this Supplement, the Declaration shall not be amended or modified hereby. As amended by this Supplement, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, McKay has executed this Supplement on the day and year first above written.

MCKAY LANDING LLC, a Colorado limited liability company

By: James Construction Company, Inc., manager


By:   
James G. Postle, President

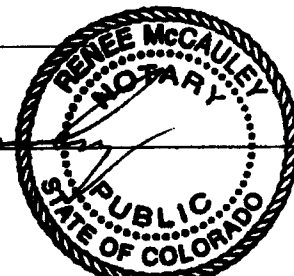
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Boulder )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of September, 2002 by James G. Postle as President of James Construction Company, Inc., a Colorado corporation, as manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1-25-04

  
Notary Public



My Commission Expires 1/25/2004

Return to:  
Catherine A. Hance  
Davis Graham & Stubbs LLP  
1550 Seventeenth Street, Suite 500  
Denver, CO 80202

**EXHIBIT A**

**Neighborhood Area V (Park Place)**

**Lots 1 through 60,  
McKay Landing Filing No. 3,  
City and County of Broomfield,  
State of Colorado.**



**EXHIBIT B**

**NEIGHBORHOOD COMMON AREAS**

**I. For the primary use of Neighborhood Area V:**

Tracts J and K,  
McKay Landing Filing No. 3,  
City and County of Broomfield,  
State of Colorado.

**II. For the exclusive use of Neighborhood Area V:**

Tracts A, B, C, D, E, H, and I,  
McKay Landing Filing No. 3,  
City and County of Broomfield,  
State of Colorado,

and

Drainage Channel (as depicted on Exhibit C) located on the rear of  
Lots 22, 23, 24, and 25,  
McKay Landing Filing No. 3,  
City and County of Broomfield,  
State of Colorado.

**EXHIBIT C**

**EASEMENT AREA**

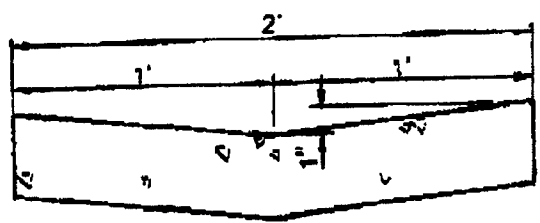
Easement Area is the 5 foot wide utility easement area created by the Filing No. 3 Plat running the length of the rear property line of Lots 22, 23, 24, and 25, McKay Filing No. 3, City and County of Broomfield, State of Colorado, in which a 2 foot wide drainage cross plan will be installed, a diagram of which is attached hereto as Schedule 1.

00-11-02 01:25PM FROM-

T-018 P.02/02 P-071

**LOTS 22-25 CROSSPAN DRAINAGE DETAIL**  
REFER TO CIVIL CONSTRUCTION PLANS GR2 AND GR3 TO SEE  
THE PROPOSED LOCATION ON LOTS 22, 23, 24 AND 25

SCHEDULE |



**2' WIDE CROSS PAN**

NOT TO SCALE

2002018393 12/02/2002 03:28P COV  
7 of 7 R 36.00 D 0.00 City&Cnty Broomfield

2' CROSS PAN  
MCKAY LANDING NO. 3  
JOB NO. 4247.07  
9/10/02  
SHEET 1 OF 1



**J-R ENGINEERING**  
A Subsidiary of STANTEC

6320 Greenwood Plaza Blvd - Englewood, CO 80150  
303-701-8888 • Fax 303-701-8889 • www.jrengineering.com

**SPECIAL WARRANTY DEED**

(Statutory Short Form - C.R.S. § 38-30-115)

**MCKAY LANDING LLC**, a Colorado limited liability company ("Grantor"), whose street address is 2919 Valmont Road, Suite 204, Boulder, Colorado, 80301, of the County of Boulder and State of Colorado, for good and valuable consideration, in hand paid, hereby sells and conveys to **MCKAY LANDING HOMEOWNERS ASSOCIATION, INC.**, a Colorado non-profit corporation, whose street address is 2535 South Wadsworth Boulevard, Lakewood, Colorado, 80227, of the County of Jefferson and State of Colorado, all of the Grantor's right, title and interest in the following real property in the City and County of Broomfield and State of Colorado, to wit:

Tracts A through M, inclusive,  
McKay Landing Filing No. 4,  
City and County of Broomfield, State of Colorado

with all its appurtenances and warrants the title to the same against all persons claiming under it, subject to the general real property taxes for the year 2003, a lien not yet due and payable, and subject to all matters of record.

Signed this 10<sup>th</sup> day of September, 2003.

**MCKAY LANDING LLC**, a Colorado limited liability company

By: TOUSA Homes, Inc., a Florida corporation, manager

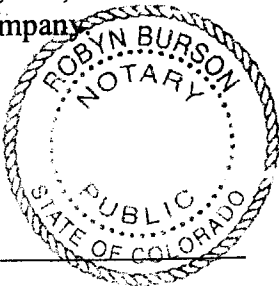
By: [Signature]  
J. Eric Eckberg, Division President

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF Arapahoe    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of September, 2003, by J. Eric Eckberg as Division President of TOUSA Homes, Inc., a Florida corporation, manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 5/20/09  
[Signature]  
Notary Public



**FIFTH SUPPLEMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MCKAY LANDING  
CITY AND COUNTY OF BROOMFIELD  
COLORADO  
AND NOTICE OF ANNEXATION**

THIS FIFTH SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MCKAY LANDING, CITY AND COUNTY OF BROOMFIELD, COLORADO AND NOTICE OF ANNEXATION (this "Supplement"), is made as of this 10<sup>th</sup> day of September, 2003, by McKay Landing LLC, a Colorado limited liability company ("McKay").

RECITALS:

A. The Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "Original Declaration"), was recorded February 7, 2001, at Reception No. CO759022 in the real property records of the County of Adams, State of Colorado. A Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "First Supplement"), was recorded February 15, 2001 at Reception No. C0761522, in the real property records of the County of Adams, State of Colorado, a Second Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "Second Supplement"), was recorded June 11, 2001 at Reception No. C0812050, in the real property records of the County of Adams, State of Colorado, a Third Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City and County of Broomfield, Colorado (the "Third Supplement"), was recorded March 25, 2002 at Reception No. 2002003896, in the real property records of the City and County of Broomfield, State of Colorado, and a Fourth Supplement to Declaration of Covenants, Conditions and Restrictions for McKay Landing, City and County of Broomfield, Colorado (the "Fourth Supplement"), was recorded December 2, 2002 at Reception No. 2002018393, in the real property records of the City and County of Broomfield, State of Colorado. All references herein to the "Declaration", shall mean the Original Declaration as amended by the First Supplement, Second Supplement, Third Supplement and Fourth Supplement.

B. Any capitalized terms used herein, unless specifically defined herein, shall have the meaning provided in the Declaration.

C. McKay, as Declarant under the Declaration, wishes to add to the real property included in the Subdivision and encumbered by the Declaration the real property lying within the boundaries of the plat of McKay Landing Filing No. 4, City and County of Broomfield, State of Colorado, Recorded on September 8, 2003 in the real property records of the City and County of Broomfield, State of Colorado at Reception No. 2003017837 (the "Filing No. 4 Plat"), all of which real property is owned by McKay, except the portions thereof dedicated by the Filing No. 4 Plat to the City. The real property lying within the boundaries of the Filing No. 4 Plat is Additional Property as such term is defined in the Declaration.

D. Pursuant to Section 10.11 of the Declaration, the real property lying within the boundaries of the Filing No. 4 Plat may be annexed to the Community Area and made subject to the terms and provisions of the Declaration through the unilateral action of the Declarant.

### SUPPLEMENT AND NOTICE OF ANNEXATION

In accordance with the foregoing, and the covenants and conditions contained herein, Declarant hereby declares that the Declaration shall be supplemented as follows:

1. Annexation of Filing No. 4 Plat. Pursuant to and in accordance with Section 10.11 of the Declaration, the real property lying with the boundaries of the Filing No. 4 Plat is hereby annexed as of the date hereof into the Subdivision and Community Area, as such terms are defined in the Declaration. The real property lying within the boundaries of the Filing No. 4 Plat, including Tracts A through M, inclusive, McKay Landing Filing No. 4, City and County of Broomfield, State of Colorado, is hereby deemed to be subject to the terms and provisions of the Declaration.

2. Effect of Annexation. All references to the Subdivision and Community Area within the Declaration shall include the real property lying within the boundaries of the Filing No. 4 Plat and the terms Unit, Association Properties, Common Area, Neighborhood, Neighborhood Area, or Neighborhood Common Area shall include those areas depicted as such on the Filing No. 4 Plat or otherwise provided for herein. All Units shall be deemed subject to the terms and conditions of the Declaration and all Owners of Units shall be deemed to be Members of the Association in accordance with the terms of the Declaration and the Bylaws. Pursuant to the Declaration, Common Assessments for Units within the boundaries of the Filing No. 4 Plat shall commence as of the date of this annexation and shall be prorated as of such date.

3. Designation of Neighborhood Areas. The real property described on Exhibit A is hereby declared to be Neighborhood Area VI (Spring Harbor) and shall be included in the definition of Neighborhood Areas as defined in the Declaration. All Units within Neighborhood Area VI shall be subject to the Common Assessments assessed against Lots and all references in Article 9 of the Declaration to Lots shall mean and include the Units within Neighborhood Area VI. The real property described on Exhibit B is hereby declared to be Neighborhood Area VII (Bay Point) and shall be included in the definition of Neighborhood Areas as defined in the Declaration. All Units within Neighborhood Area VII shall be subject to the Common



Assessments assessed against Lots and all references in Article 9 of the Declaration to Lots shall mean and include the Units within Neighborhood Area VII.

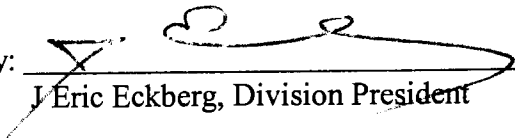
4. Neighborhood Common Areas. In accordance with the rights reserved to Declarant pursuant to Section 4.2 of the Declaration, whereby Declarant has the right during the Declarant Control Period to amend designations of Neighborhood Common Areas so as to be able to dedicate such Neighborhood Common Areas for the use of other or additional Neighborhoods within the Community Area, Section 4.2 of the Declaration is hereby amended to cause all real property heretofore designated as Neighborhood Common Areas pursuant to the Declaration, other than the Neighborhood Common Areas conveyed to the Lake Isle Townhomes Homeowners Association, Inc. (Tracts W, X, and Y, Block 4, McKay Landing Filing No. 1, City and County of Broomfield, Colorado) and to the Summer Bay Townhomes Homeowners Association, Inc. (Tract Z, Block 3, and Lots Limited Common Elements 1 through 126, inclusive, Block 3, McKay Landing Filing No. 1, City and County of Broomfield, Colorado) (collectively, the "Excluded Areas"), to be designated for use by all Neighborhoods within the Community Area, and to hereafter constitute Common Area, as such term is defined in the Declaration. Such re-designation is made regardless of any prior designation of the Neighborhood Common Areas (other than the Excluded Areas) as being for the exclusive or primary use of any Neighborhood. The foregoing dedication of the Neighborhood Common Areas other than the Excluded Areas shall not alter any prior dedication of the Excluded Areas as Neighborhood Common Areas.

5. Amendment of Declaration. Except as specifically amended by this Supplement, the Declaration shall not be amended or modified hereby. As amended by this Supplement, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, McKay has executed this Supplement on the day and year first above written.

MCKAY LANDING LLC, a Colorado limited liability company

By: TOUSA Homes, Inc., a Florida corporation, manager

By:   
Eric Eckberg, Division President



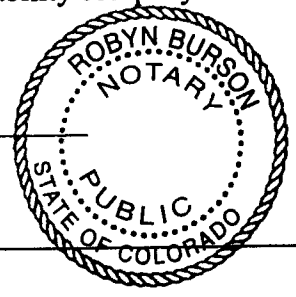
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of September, 2003 by J. Eric Eckberg as Division President of TOUSA Homes, Inc., a Florida corporation, as manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 5/20/07

[Signature]  
Notary Public





2003018027 09/09/2003 04:00P SI  
5 of 6 R 31.00 D 0.00 City&Cnty Broomfield

**EXHIBIT A**

**Neighborhood Area VI (Spring Harbor)**

Lots 1 through 52,  
McKay Landing Filing No. 4,  
City and County of Broomfield,  
State of Colorado.

**EXHIBIT B**

**Neighborhood Area VII (Bay Point)**

Lots 53 through 124,  
McKay Landing Filing No. 4,  
City and County of Broomfield,  
State of Colorado,



**SIXTH SUPPLEMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MCKAY LANDING  
CITY AND COUNTY OF BROOMFIELD  
COLORADO  
AND NOTICE OF ANNEXATION**

THIS SIXTH SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MCKAY LANDING, CITY AND COUNTY OF BROOMFIELD, COLORADO AND NOTICE OF ANNEXATION (this "Supplement"), is made as of this 17<sup>th</sup> day of March, 2004, by McKay Landing LLC, a Colorado limited liability company ("McKay").

RECITALS:

A. The Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "Original Declaration"), was recorded February 7, 2001, at Reception No. CO759022 in the real property records of the County of Adams, State of Colorado, and a total of five supplements to the Original Declaration have been recorded from time to time thereafter prior to the recording of this Supplement. All references herein to the "Declaration", shall mean the Original Declaration as amended by the five supplements thereto preceding this Supplement.

B. Any capitalized terms used herein, unless specifically defined herein, shall have the meaning provided in the Declaration.

C. McKay, as Declarant under the Declaration, wishes to add to the real property included in the Subdivision and encumbered by the Declaration the real property lying within the boundaries of the plat of McKay Landing Filing No. 5, City and County of Broomfield, State of Colorado, Recorded on March 24, 2004 in the real property records of the City and County of Broomfield, State of Colorado at Reception No. 2004004159 (the "Filing No. 5 Plat"), all of which real property is owned by McKay, except the portions thereof dedicated by the Filing No. 5 Plat to the City. The real property lying within the boundaries of the Filing No. 5 Plat is Additional Property as such term is defined in the Declaration.

D. Pursuant to Section 10.11 of the Declaration, the real property lying within the boundaries of the Filing No. 5 Plat may be annexed to the Community Area and made subject to the terms and provisions of the Declaration through the unilateral action of the Declarant.

SUPPLEMENT AND NOTICE OF ANNEXATION

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In accordance with the foregoing, and the covenants and conditions contained herein, Declarant hereby declares that the Declaration shall be supplemented as follows:

1. Annexation of Filing No. 5 Plat. Pursuant to and in accordance with Section 10.11 of the Declaration, the real property lying within the boundaries of the Filing No. 5 Plat is hereby annexed as of the date hereof into the Subdivision and Community Area, as such terms are defined in the Declaration. The real property lying within the boundaries of the Filing No. 5 Plat, is hereby deemed to be subject to the terms and provisions of the Declaration.

2. Effect of Annexation. All references to the Subdivision and Community Area within the Declaration shall include the real property lying within the boundaries of the Filing No. 5 Plat and the terms Unit, Association Properties, Common Area, Neighborhood, Neighborhood Area, or Neighborhood Common Area shall include those areas depicted as such on the Filing No. 5 Plat or otherwise provided for herein. All Units shall be deemed subject to the terms and conditions of the Declaration and all Owners of Units shall be deemed to be Members of the Association in accordance with the terms of the Declaration and the Bylaws. Pursuant to the Declaration, Common Assessments for Units within the boundaries of the Filing No. 5 Plat shall commence as of the date of this annexation and shall be prorated as of such date.

3. Designation of Neighborhood Areas. The real property described on Exhibit A is hereby declared to be Neighborhood Area VIII (Fair Wind) and shall be included in the definition of Neighborhood Areas as defined in the Declaration. All Units within Neighborhood Area VIII shall be subject to the Common Assessments assessed against Condominium Lots and all references in Article 9 of the Declaration to Condominium Lots shall mean and include the Units within Neighborhood Area VIII.

4. Neighborhood Common Areas. All Common Areas within Neighborhood Area VIII shall be and are hereby dedicated as Neighborhood Common Areas for the exclusive use of Owners of Condominium Lots within Neighborhood Area VIII.

5. Amendment of Declaration. Except as specifically amended by this Supplement, the Declaration shall not be amended or modified hereby. As amended by this Supplement, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, McKay has executed this Supplement on the day and year first above written.



2004005768 04/22/2004 03:31P SI  
3 of 4 R 21.00 D 0.00 City&Cnty Broomfield

MCKAY LANDING LLC, a Colorado limited liability company

By: TOUSA Homes, Inc., a Florida corporation, manager

By: *David Miller*  
David Miller, Division Vice President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Boulder )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of March, 2004 by David Miller as Division Vice President of TOUSA Homes, Inc., a Florida corporation, as manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission Expires  
5/26/2004

My commission expires: \_\_\_\_\_

*[Signature]*  
Notary Public



2004005768 04/22/2004 03:31P SI  
4 of 4 R 21.00 D 0.00 City&Cnty Broomfield

**EXHIBIT A**

**Neighborhood Area VIII (Fair Wind)**

Lot 1, Block 1,  
McKay Landing Filing No. 5,  
City and County of Broomfield,  
State of Colorado.

**SEVENTH SUPPLEMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MCKAY LANDING  
CITY AND COUNTY OF BROOMFIELD  
COLORADO**

THIS SEVENTH SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MCKAY LANDING, CITY AND COUNTY OF BROOMFIELD, COLORADO (this "Supplement"), is made as of this 30<sup>th</sup> day of September, 2004, by McKay Landing LLC, a Colorado limited liability company ("McKay") and McKay Landing Homeowners Association, Inc., a Colorado nonprofit corporation (the "HOA").

RECITALS:

A. The Declaration of Covenants, Conditions and Restrictions for McKay Landing, City of Broomfield, County of Adams, Colorado (the "Original Declaration"), was recorded February 7, 2001, at Reception No. CO759022 in the real property records of the County of Adams, State of Colorado, and a total of six supplements to the Original Declaration have been recorded from time to time thereafter prior to the recording of this Supplement. All references herein to the "Declaration", shall mean the Original Declaration as amended by the six supplements thereto preceding this Supplement.

B. Any capitalized terms used herein, unless specifically defined herein, shall have the meaning provided in the Declaration.

C. McKay, as Declarant under the Declaration, and the HOA, as the Association under the Declaration, wishes to correct an error within the Declaration and to make certain other amendments to the Declaration.

SUPPLEMENT

In accordance with the foregoing, and the covenants and conditions contained herein, Declarant and HOA hereby declare that the Declaration shall be amended and supplemented as follows:

1. Section 9.10. Section 9.10 of the Declaration is amended to add the following sentence at the end of Section 9.10:

*Robyn Burson  
Engle Homes  
10700 E. Cradles Hill Dr  
Englewood CO 80112*

Notwithstanding the foregoing, all landscaping must be installed within the time period required by Section 3.30 of this Declaration.

2. Section 3.12. Section 3.12 of the Declaration is hereby amended to allow an aggregate of not more than three (3) domesticated dogs or cats in Neighborhoods II and IV. Such animals must otherwise fully comply with the provisions of Section 3.12 of the Declaration.

3. Amendment of Declaration. Except as specifically amended by this Supplement, the Declaration shall not be amended or modified hereby. As amended by this Supplement, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, McKay and the HOA have executed this Supplement on the day and year first above written.

MCKAY LANDING LLC, a Colorado limited liability company

By: TOUSA Homes, Inc., a Florida corporation, manager

By: David Miller  
David Miller, Division Vice President

MCKAY LANDING HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation

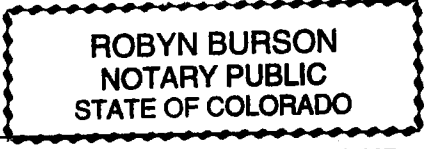
By: Rakyn Burson  
Print Name: Rakyn Burson  
Its: President



STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of September, 2004 by David Miller as Division Vice President of TOUSA Homes, Inc., a Florida corporation, as manager of McKay Landing LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_



My Commission Expires 05/20/2007

[Signature]  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of September, 2004 by Robyn Burson as President of McKay Landing Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires: 6/3/2007

[Signature]  
Notary Public

