

MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FOX CREEK FARM

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- Exhibit A - The Property
- Exhibit B - Allocated Interests
- Exhibit C - The Common Elements
- Exhibit D - Title Exceptions
- Exhibit E - Annexable Property

MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FOX CREEK FARM

THIS DECLARATION is made and entered into by FOX CREEK FARM, LLC, a Colorado limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in the County of Boulder, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference; and

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

WHEREAS, a common interest community may be created pursuant to the Act (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

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

ARTICLE I  
DEFINITIONS

1. "Act" means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et al., as amended.

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

3. "Allocated Interests" means the Common Expense Liability and votes in the Association allocated to each Unit. The Allocated Interest of each Unit shall be equal to a fraction, the numerator of which is 1 and the denominator of which is the total number of Units then within the Community. At the time of recording of this Declaration, the Allocated Interest of each Unit in the Community shall be as set forth on Exhibit B attached hereto and incorporated herein by this reference; provided that the Allocated Interest of each Unit is subject to decrease with the annexation of additional property to this Community as provided in Article XI, Section 5 hereof.

4. "Annexable Property" means the property which may be annexed to this Community as provided for in Article XI, Section 5 hereof, or as otherwise provided in this Declaration, and includes that property which is permitted to be annexed as provided in the Act. A portion of the Annexable Property is described on Exhibit E attached hereto and incorporated herein by this reference.

5. "Apartment Area" means, within the Community, any separate numbered or lettered lot or plot of land shown upon any recorded subdivision map, or any other real property, on which one or more Apartment Units are located or are planned to be constructed and including all appurtenances and related use areas, but excluding all Lots, Condominium Units, Cooperative Units or any combination thereof. "Apartment Area" shall also mean and refer to any unplatted real property which does not constitute Condominium Units, Cooperative Units, Lots or any combination thereof; provided, however, that upon platting or development of such property, the same shall become Lots, Condominium Units, Cooperative Units or Apartment Units, as applicable.

6. "Apartment Unit" means each area of an Apartment Area which is or maybe separately offered for rental or lease by the Owner thereof. The number of Apartment Units which shall be included in any Apartment Area shall be as set forth in the instrument that annexes such Apartment Area to this Declaration.

7. "Architectural Committee" or "Committee" means the committee appointed by the Declarant or by the Association to review requests for architectural approval and make recommendations to the Board of Directors for its approval or disapproval, as more fully provided in this Declaration.

8. "Association" means Fox Creek Farm Master Association, Inc., a unit owners' association organized under section 38-33.3-301 of the Act.

9. "Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, and in the Article of Incorporation and Bylaws of the Association, to act on behalf of the Association.

10. "Builder" means any Member other than Declarant who acquires (or has acquired prior to the annexation to this Declaration) one or more Lots, Apartment Areas, or other property, for the purpose of constructing one or more Units thereon, and who is designated as a Builder by Declarant in its sole discretion from time to time (including the right to withdraw such designation), with such designation to be made by a written instrument duly recorded in the office of the Clerk and Recorder of the County of Boulder, Colorado.

11. "Common Assessment" means annual assessments or charges, special assessments, other charges, fines, fees, interest, late charges, and all other amounts, all as provided in this Declaration and as established or assessed by the Board from time to time.

12. "Common Elements" means any real estate owned or leased by the Association other than a Unit. The Common Elements initially owned by the Association upon recording of this Declaration are described on Exhibit C attached hereto and incorporated herein by this reference.

13. "Common Expense Liability" means the liability for Common Expenses allocated to each Unit based on its Allocated Interest.

14. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

15. "Community" means real estate described in Exhibit A attached to this Declaration, as supplemented and amended from time to time, with respect to which a Person, by virtue of such Person's ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration. The Community is a planned community under the Act.

16. "Condominium" means a separate area of the Community, in which portions of the real estate therein are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions; an area of this Community is not a Condominium unless the undivided interests in the common elements that are in such area are vested in the owners within such area. "Condominium Unit" means a Unit within a Condominium.

17. "Cooperative" means an area of the Community in which the real property is owned by an association, each member of which is entitled by virtue of such member's ownership interest in such association to exclusive possession of a unit in the Cooperative. A "Cooperative Unit" means a Unit within a Cooperative.

18. "Declarant" means Fox Creek Farm, LLC, a Colorado limited liability company, and any other Person or group of Persons acting in concert, to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Unit not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any Special Declarant Right.

19. "Declaration" means this Master Declaration of covenants, Conditions and Restrictions and any other recorded instruments, however denominated, that create this Community, including any amendments to those instruments and also including, but not limited to, plats and maps.

20. "Design Guidelines" means that certain document entitled "Design Criteria Guidelines and Standards; Fine Policy" as approved and adopted by the Association, and as amended from time to time by the Board.

21. "Development Rights" means any right or combination of rights reserved by a Declarant in this Declaration to:

(a) Add real estate to the Community;

(b) Create Units within the Community;

(c) Subdivide Units; or

(d) Withdraw real estate from the Community.

22. "Improvements" means all exterior improvements, structures, and any appurtenances thereto or components thereof of



every type or kind, and all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting ~r other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, fences, screening walls, retaining walls, basketball hoops, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

23. "Lot" means any separate numbered lot or plot of land shown upon any recorded subdivision map of the Community, or any portion thereof, and on which has been or is planned .to be constructed an attached or detached single residential dwelling other than a Condominium Unit, Cooperative Unit or Apartment Unit.

24. "Member" means each Owner; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit.

25. "Owner" means the Declarant, a Builder, or other Person who owns a Unit, but does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the owner of each Unit provided for in this Declaration until that Unit is conveyed to another Person who may or may not be a Declarant.

26. "Period of Declarant Control" means a length of time expiring twenty (20) years after initial recording of this Declaration in Boulder County, Colorado; provided, that the Period of Declarant Control shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Units that May Be Created to Owners other than a Declarant, two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or two (2) years after any right to add new Units to the Declaration was last exercised.

27. "Person" means a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or any combination thereof.

28. "Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Article IV, Section 12, hereof, and, with respect to notice of cancellation or substantial modification

of certain insurance policies, to Article VI, Section 2, hereof, "Security Interest". shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of Boulder County, Colorado, show the Administrator as having the record title to the Unit.

29. "Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Article IV, Section 12 hereof, and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Article VI, Section 2 hereof, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records of the Clerk and Recorder of Boulder County, Colorado, show the said Administrator as having the record title to the Unit), or any successor to the interest of any such Person under such Security Interest.

30. "Special Declarant Rights" means rights reserved for the benefit of a Declarant to perform the following acts: To build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, signs advertising the Community and sale of Units, and models; to use easements through the Common Elements for the purpose of making Improvements within the Community or within the Annexable Property; to merge or consolidate a Community of the same form of ownership; or to appoint or remove any officer of the Association or any Board of Directors member during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically on the earlier of the following events: (a) conveyance of the last Unit by Declarant to an Owner other than Declarant; or (b) twenty (20) years from the date of recordation of this Declaration, except with respect to the appointment of officers and directors which may only be exercised in accordance with Article III hereof.

31. "Subassociation" means any Colorado corporation and its successors and assigns, organized and established or authorized pursuant to, or in connection with, one or more Supplemental Declarations, the membership of which is composed of Owners of Units within the area covered by the Supplemental Declaration.

32. "Supplemental Declaration" means a written, recorded instrument, including without limitation a condominium declaration, containing covenants, conditions, restrictions, reservations, easements, or equitable servitudes, or any combination thereof, which affects any portion(s) of the Community.

33. "Unit" means any Apartment Unit, Condominium Unit, Cooperative Unit or Lot, which is now or hereafter included in the property described on the attached Exhibit A or on any other property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements, any property owned by a Subassociation, and any publicly dedicated property.

34. "Units that May Be Created" means one thousand one hundred fifty (1,150) Units, which shall be the maximum number of Units that may be subject to this Declaration, including those Units which may be added if all of the Annexed Property is annexed to this Declaration.

ARTICLE II  
MEMBERSHIP AND VOTING RIGHTS

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

2. One Class of Membership. The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Unit owned in accordance with the Allocated Interest attributable to such Unit, except that no votes allocated to a Unit owned by the Association may be cast; and further provided that the total votes of all Members who are Owners of Apartment Units shall not constitute more than forty-nine percent (49%) of all votes cast in connection with any matter voted on by the Members. The total number of votes which may be cast in connection with any matter shall be equal to the total of all Units then existing within the Community. Except as otherwise provided in Article III of this Declaration, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint and remove all officers and members of the Board of Directors which have been appointed by such Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the

Declarant, be approved by the Declarant before they become effective.

ARTICLE III  
BOARD OF DIRECTORS MEMBERS AND OFFICERS

1. Authority of Board of Directors. Except as provided in this Declaration, or the Articles of Incorporation or Bylaws of the Association, the Board of Directors may act in all instances on behalf of the Association.

2. Election of Board of Directors During Period of Declarant Control. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that May Be Created to Owners other than a Declarant or a Builder, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Owners other than the Declarant or a Builder. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that May Be Created to Owners other than a Declarant or a Builder, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant or a Builder.

3. Authority of Declarant: Termination of Period of Declarant Control. Except as otherwise provided in this Article III, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and directors and remove all officers and directors of the Board of Directors appointed by it. Not later than the termination of any Period of Declarant Control, the Owners must elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers. The Board of Directors members and officers shall take office upon election.

4. Budget. Within thirty (30) days after adoption by the Board of Directors of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary Unless at that meeting the vote of sixty-seven percent (67%) of the Allocated Interests rejects the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

ARTICLE IV  
COVENANT FOR COMMON ASSESSMENTS

1. Personal Obligation for Common Assessments. Each Owner, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association each Common Assessment, with the amount and terms for payment of each Common Assessment to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set off or deduction. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all Common Assessments attributable to their Unit. Each Common Assessment shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Common Assessment became due. The personal obligation for delinquent Common Assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on a Unit for Common Assessments shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Common Assessment lien.

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

3. Initial Annual Assessment. Until the effective date of an Association budget ratified by the Owners with a different amount for the annual assessment, as provided below, the amount of the annual assessment against each Unit shall not exceed One Hundred and No/100 Dollars (\$100.00) per Unit per annum.

4. Rate of Annual and Special Assessments. Annual and special assessments shall be fixed at a uniform rate for all Units sufficient to meet the expected needs of the Association. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles. All annual and special

assessments shall be assessed against all the Units in accordance with the Allocated Interests set forth in this Declaration. If the Common Expense Liability is reallocated, annual assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liability.

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

6. Special Assessments. In addition to the annual assessments authorized in this Article, the Board of Directors of the Association may at any time levy, in any fiscal year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of the Common Elements, or for repair or reconstruction of any damaged or destroyed Improvements, or for the funding of any operating deficit incurred by the Association. Any such special assessment shall be set against each Unit in accordance with the Allocated Interests set forth in this Declaration. Notwithstanding the foregoing, special assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

7. Lien for Common Assessments.

(a) The Association has a statutory lien on a Unit for any Common Assessment levied against that Unit. The amount of the lien shall include all those items which constitute a "Common Assessment," as defined above, from the time each such item becomes due. If any Common Assessment, or portion thereof, is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Common Assessments is required. However, the

Board of Directors or managing agent of the Association may prepare, and record in Boulder County, Colorado, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a lien is filed, the costs and expenses thereof shall be added to the Common Assessment for the Unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

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

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

8. Priority of Association Lien.

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

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

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

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

(b) A lien under this Section is also prior to the Security Interests described in the preceding subsection (a)(2) to the extent of an amount equal to the annual assessments based on a periodic budget adopted by the Association as provided above, which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section of an action or a non-judicial foreclosure either to enforce or to extinguish the lien.

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

9. Common Assessments/Charges for Services to Separate Areas of Community. The Association may, at any time from time to time,

provide services to any Subassociation or other area(s) of the Community. Any such services shall be provided, if at all, pursuant to an agreement in writing between the Association and such Subassociation or the Owners of the Units for which such service is to be provided. Such agreement shall provide, among other provisions, that such Owners shall pay to the Association, as Common Assessments, the costs, fees and expenses incurred by the Association in providing such services, including overhead expenses of the Association. Services which may be provided by the Association pursuant to this Section include, without limitation, (a) the construction, care, operation, management, maintenance, repair, replacement and renovation of Improvements or property owned by such Subassociation or Owner(s); (b) the provision of any services or functions to such area or Subassociation, such as trash removal; (c) the enforcement of the provisions of any Supplemental Declaration or any other document or agreement for, on behalf of, and in the name of the Subassociation or applicable Owners; (d) the collection of assessments for, in the name of, and on behalf of any Subassociation; (e) the payment of taxes or other amounts for a Subassociation or Owners with funds provided by such Subassociation or Owners; (f) the procurement of insurance for a Subassociation or Owners; (g) the collection of charges for use of facilities of a Subassociation; and (h) the appointment and supervision of a manager(s) for a Subassociation or area. The Association may, at its election, at any time from time to time, collect the aforesaid costs, fees, expenses and other charges in advance or arrears, in monthly or other installments, or in addition to or the same date for payment of, the Common Assessments.

10. Receiver. In any action by the Association to collect Common Assessments or to foreclose a lien for unpaid common Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Assessments.

11. Certificate of Status of Common Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security Interest or its designee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Common Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or Security Interest Holder or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for



unpaid Common Assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

12. Effect of Non-Payment of Common Assessments. Remedies of the Association. Any Common Assessment not paid within ten (10) days after the due date thereof may bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may assess thereon a late charge not in excess of Thirty-Five Dollars (\$35.00) per month. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Unit. If a judgment or decree is obtained, including, without limitation, in a foreclosure action, such judgment or decree shall include interest on the Common Assessment and a reasonable attorney's fee to be fixed by the court, together with the costs of the action, and may include interest and late charges, as above provided. Each Owner is liable for Common Assessments made against such Owner's Unit during the period of ownership of such Unit. No Owner may be exempt from liability for payment of any Common Assessment by abandonment of the Unit against which the Common Assessments are made. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure.

13. Surplus Funds. Any surplus funds of the Association, including, but not limited to, working capital funds remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves, shall be retained by the Association and need not be paid to the Owners in proportion to their Common Expense Liability or paid to them to reduce their future Common Assessments.

14. Working Capital Fund. The Association, Declarant or a Builder, shall require the first Owner of any Unit (other than Declarant or a Builder) who purchases that Unit from Declarant or a Builder, to make a non-refundable contribution to the Association in an amount equal to Two Hundred and No/100 Dollars (\$200.00) for each Unit (regardless of whether or not annual assessments have commenced as provided in Section 5 of this Article). Said contribution shall be collected and transferred to the Association at the time of closing of the applicable sale of each Unit and shall, until use, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Common Assessments as the same become due. Upon the transfer of his Unit, an Owner shall not be entitled to reimbursement by the Association of any portion of his

payment to the working capital fund (but may seek reimbursement from the purchaser of his Unit).

15. Common Assessments for Misconduct. If the Association incurs any costs or expenses due to the misconduct of any Owner, the Association may assess such costs and expenses exclusively against such Owner and his Unit. The amount(s) so assessed shall be a Common Assessment.

ARTICLE V  
ARCHITECTURAL COMMITTEE

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

2. Review by Committee. No Improvements shall be constructed, erected, placed, planted, applied or installed upon any Unit unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee), shall have been first submitted to and approved by the Architectural Committee; provided, however, that the Declarant shall be exempt from seeking or obtaining Architectural Committee approval during Declarant's development of, construction on, or sales of any Unit or residences on any Unit. The Architectural Committee shall exercise its reasonable judgment to the end that all Improvements: conform to and harmonize with the existing surroundings, residences, landscaping and structures; and are in compliance with the Design Guidelines, the recorded Final Plat for Fox Creek Farm First Filing, and all other documents for the Community which are now or may hereafter be approved for all or any portion of the Community, as applicable. In addition, the Committee will request input from the adjacent Owners, which input shall be one consideration of the Committee but which shall not, by itself, be binding or conclusive. In its review of such plans, specifications

and other materials and information, the Architectural Committee may require that the applicant(s) reimburse the Committee for its costs and expenses. Such amounts, if any, shall be levied as part of the Common Assessments against the Unit for which the request for architectural approval was made, and shall be subject to the Association's lien for Common Assessments and subject to all other rights of the Association for the collection of Common Assessments.

3. Approval by Subassociation Architectural Committee(s). In addition to the approval of any Improvements by the Architectural Committee, the approval of any Improvement shall also be required by the architectural review committee of any applicable Subassociation or of any architectural review committee established under any applicable Supplemental Declaration if and to the extent set forth in the Supplemental Declaration. Notwithstanding the foregoing, the Architectural Committee may, in its discretion from time to time: elect to abide by the decision(s) of any such architectural review committee on specified matter(s) over which such architectural review committee has jurisdiction; accept from, and act on behalf of, any such architectural review committee with respect to specified matter(s); cooperate with any such architectural review committee with respect to any matter(s) which is subject to the jurisdiction of both such architectural review committee and the Architectural Committee; and/or take any other action with respect to any matter(s) which is subject to the jurisdiction of both such architectural review committee and the Architectural Committee. Any or all of the foregoing may be accomplished by the Architectural Committee, at any time from time to time, by general resolution(s) or decision(s), or on a case-by-case basis.

4. Procedures. The Architectural Committee shall decide each request for approval within forty-five (45) days after the complete submission of the plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Architectural Committee fails to decide any request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, approval shall not be required and this Article shall be deemed to have been fully complied with.

5. Vote and Appeal. A majority vote of the Architectural Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Architectural Committee decides a request for architectural approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Committee, upon a request therefor submitted to the Committee within thirty (30) days after such decision by the Committee's representative.

6. Prosecution of Work After Approval. After approval of a request for architectural approval, the work to complete the same shall be accomplished as promptly and diligently as possible and in complete conformity with the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application therefor, or to complete the Improvement in accordance with the description, materials and other matters furnished to the Committee and with the conditions imposed with such approval, shall constitute a violation of this Article.

7. Inspection of Work. The Architectural Committee or its duly authorized representative shall have the right to inspect any Improvement at any time(s) prior to, during or after completion of the same, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with this Article and any approval therefor granted by the Committee. However, unless the Committee expressly states, in a written document, that an Improvement is being completed or has been completed in conformance with the approval therefor, no such conformance shall be implied from inspection of the Improvement either during the work or after completion thereof.

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

9. Liability. The Architectural Committee and the member(s) thereof, as well as any representative of the Committee appointed to act on its behalf, shall not be liable in damages to any Person submitting request(s) for approval or to any owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter within its jurisdiction hereunder.

10. Variance. The Architectural Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

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

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

12. Design Guidelines. The Committee shall ensure that any and all improvements conform to the provisions of the Design Guidelines. The Board may, at any time from time to time, modify, amend, repeal, re-enact, supplement, or otherwise change the Design Guidelines. All Improvements proposed to be constructed, and all guidelines, standards or rules that are adopted, shall be done in accordance with the provisions of this Article and shall not be inconsistent with this Article.

ARTICLE VI  
INSURANCE

1. Insurance. The Association shall maintain the following types of insurance on the Common Elements, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any of the Agencies with respect to their insurance, guaranty, or purchase of Security Interests.

(a) Property insurance for broad form covered causes of loss; except that the total amount of insurance must not be less than the full insurable replacement cost of all insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, excavations and other items normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board of Directors, the Association, any managing agent, and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board of Directors. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, Owners, trustees and employees of the

Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who controls or disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate annual assessments on the Units, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

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

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

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

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

2. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security

Interest Holder and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. Any such shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

3. Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, shall be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the parties sharing in a joint duty of repair and maintenance, or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question, in such amounts as the Board of Directors may deem appropriate, and the Association may collect the amount(s) from said Owner(s) in the same manner as any Common Assessment.

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

5. Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the

Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any Common Assessment.

6. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of delegates, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

7. Insurance to be Maintained by Owners. Unless otherwise expressly provided in this Declaration, an insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Unit and the Improvements thereon, as well as on the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Unit, shall be the responsibility of the Owner of such Unit.

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

9. Notice of Cancellation. If the insurance described in Section 1 of this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association



promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

ARTICLE VII  
DAMAGE OR DESTRUCTION

1. Damage or Destruction.

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

(1) The Community is terminated;

(2) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(3) Eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild; or

(4) Prior to the conveyance of any Unit to a Person other than the Declarant, the Security Interest Holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Common Expense Liability of all the Units. If the Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned as provided in Article XI, Section 12 hereof, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting such reallocations

2. Units. Any damage to or destruction of any structure located on a Unit shall, except as hereafter provided, be promptly repaired and reconstructed by the Owner thereof using insurance proceeds and personal funds of such Owner. "Repaired and reconstructed," as used in this Section 2, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. However, if a residence is destroyed or so damaged that the residence is no longer habitable,

then the Owner of the Unit on which the residence is located shall, within a reasonable time not to exceed 120 days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the residence or demolish the same. Demolition of a residence shall include removal of any foundation slab, basement walls and floors, regrading of the Unit to a level condition, and the installation of such landscaping as may be required by the Architectural Committee pursuant to a plan submitted to and approved by said Committee. If the Owner of a Unit does not either commence repair, reconstruction or demolition activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Committee, then the Association may, in its reasonable discretion, after providing the notice required in Article VIII, Section 2 hereof, enter upon the Unit for the purpose of demolishing the residence and then landscape the Unit in conformance with approved plans. The cost and expenses related to such demolition and landscaping shall be the personal obligation of the Owner of the Unit on which such work is performed and shall be subject to all the terms and provisions applicable to Common Assessments as provided in Article IV hereof, including without limitation, interest, late charges and lien rights.

ARTICLE VIII  
EXTERIOR MAINTENANCE

1. General.

(a) Maintenance, repair and replacement of the Common Elements and all Improvements located thereon, and any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. Further, the Association may provide such other maintenance and repair as the Board of Directors may determine in its discretion from time to time, including, without limitation, property owned by other Person(s) and Improvements located thereon (such as street medians, landscaping, entry monuments, and detention ponds). The costs to be expended for the maintenance, repair, replacement and servicing described in this Section 1 shall, subject to Section 4 of this Article, be collected by the Association as Common Assessments.

(b) In addition to the foregoing, the Association shall maintain, repair and replace all fencing which has been installed by the Declarant on or adjacent to arterial and/or collector roads,

and shall maintain, repair and replace underdrains in the Community.

(c) The maintenance, repair and replacement of each Unit, and the Improvements thereon, including, but not limited to the interior thereof, shall be the responsibility of the Owner of such Unit, unless the Supplemental Declaration therefor provides for the applicable Subassociation or other entity to provide such maintenance, repair or replacement or unless the Association has agreed to perform such maintenance, repair and replacement. The Association and each Owner, and their agents and contractors, are hereby granted an easement for the purpose of maintenance and repair of the Owner's Unit on, over, across, under and through any Unit upon reasonable notice to the Owner thereof. Any damage occurring to such Unit or the Improvements thereon in performing such repairs or maintenance shall be the responsibility of the party performing or authorizing such repairs or maintenance.

2. Association's Right to Repair, Maintain, Restore and Demolish. In the event any owner shall fail to perform his maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Board, enter upon said Unit subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or restoration or, pursuant to Article VII, Section 2 hereof, to demolish a residence. The cost of such maintenance, repair, reconstruction and/or demolition shall be the personal obligation of the Owner of the Unit on which such work is performed, and shall be a Common Assessment against such Owner and his Unit.

3. Access Easement. Each Owner shall afford to the Association and the other Owners, and to their agents or employees, access through such Owner's Unit reasonably necessary for maintenance, repair and replacement of any Common Elements and any other property or Improvements maintained, repaired or replaced by such Person(s). If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Unit through which access is taken, the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. Further, each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Unit, except that no such notice shall be required of the Association in connection with any fence or landscape maintenance, repair and replacement, and except that in emergency situations entry upon a Unit may be made at any time provided that the Owner or occupants of each affected Unit shall be warned of impending

emergency entry as early as is reasonably possible. The interior of any residence located on a Unit shall not be subject to such easements as provided for in this Section 3.

4. Owner's Misconduct. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Elements, any other property, or any Improvements located thereon, is caused by the misconduct of any Owner, or by the misconduct of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Person(s) under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be part of the Common Assessments payable by such Owner to the Association and to which such Owner's Unit is subject. A determination of the misconduct of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

5. Cooperation with Subassociations and Districts. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any Subassociation(s) and/or any district(s) to share the costs and/or responsibility for any maintenance, repair, reconstruction, or other matters, to perform maintenance, repair or reconstruction for any such Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association and/or any Subassociation and/or any district, or to otherwise cooperate with any Subassociation or district, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any Subassociation and/or any such district, as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any Subassociation(s) to collect assessments, other charges, or other amounts which may be due to any Subassociation and to permit any Subassociation to collect assessments, other charges, or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such Subassociation of any amounts collected by the Association or to the Association of any amounts collected by such Subassociation.

ARTICLE IX  
RESTRICTIONS

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

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

3. Residential Use. Subject to Section 4 of this Article, Units shall be used for residential use only, including rental and other similar uses which may customarily be made of an Apartment Area, and including uses which are customarily incident to any of the foregoing, but such residential use shall exclude uses (other than the foregoing) which are for business, commercial or professional purposes; provided however, that an Owner may use his Unit for professional or home occupation(s) so long as the applicable zoning permits such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Units is created thereby.

4. Declarant's and Builder's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and Builders, and their respective employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Units, such facilities as Declarant deems reasonably necessary or incidental to development of the Community and the Annexable Property, and Construction and sale of Improvements and Units, specifically including, without limiting the generality of the foregoing, locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as Declarant may determine in its reasonable discretion from time to time. Notwithstanding the foregoing, neither Declarant nor any Builder shall perform any activity or maintain any facility on any portion of the Units in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees of and to his Unit and to a public right-of-way. Any real estate used as a sales office, management office or a model, shall be a Unit.

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

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

7. Miscellaneous Improvements.

(a) No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Unit other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House" or "For Rent" sign of not more than five (5) square feet. Notwithstanding the foregoing: reasonable signs, advertising, or billboards used by the Declarant or any Builders in connection with the sale or rental of the Units, or otherwise in connection with development of or construction on the Units, shall be permissible; and signage in any Apartment Area may deviate from the aforesaid provisions of this subsection (a) if approved in advance by the Architectural Committee.

(b) No clotheslines, chain-linked (or other) dog runs, drying yards, service yards, wood piles or storage areas shall be

so located on any Unit as to be visible from a street or from the ground level of any other Unit.

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

(d) Except as may otherwise be permitted by the Architectural Committee, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type, shall be placed, erected or maintained on any Unit, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant or by any Builder (with the prior, written consent of Declarant) during its sales or construction in the Community; and provided further, however, that the requirements of this subsection (d) shall not apply to those antenna which are specifically covered by the Telecommunications Act of 1996, as amended from time to time. As to antenna which are specifically covered by the Telecommunications Act of 1996, as amended, the Association shall be empowered to adopt rules and regulations governing the types of antenna that are permissible in the Community and, to the extent permitted by the Telecommunications Act of 1996, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

(e) Subject to design standards or other requirements as may be established by the Architectural Committee from time to time, fences up to a maximum height of six feet (6') may be permitted in the Community in locations as may be established by the Committee from time to time. No fences shall be permitted except with the prior written approval of the Architectural Committee or as may be constructed by the Declarant in its development of or construction in the Community; provided, however, that the Architectural Committee may at any time, from time to time, promulgate and publish guidelines, rules or regulations regarding the permitted types, locations, materials, and other matters having to do with fences.

(f) No wind generators of any kind shall be constructed, installed, erected or maintained on a Unit.

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

(h) Any permitted construction, repair or maintenance of the Units shall, subject to Article V, conform to the requirements

set forth in this Declaration and the Design Guidelines, as the same may be amended from time to time.

8. Vehicular Parking Storage and Repairs.

(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (larger than 3/4 ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored in the Community unless such parking or storage is within the garage area of any Unit, or is behind a fence on the Unit and the vehicle or equipment cannot be seen over such fence. This restriction, however, shall not restrict trucks or other commercial vehicles which are necessary for construction or for the maintenance, repair or replacement of any property in the Community, or any Improvements located thereon; nor shall such restriction prohibit vehicles that may be otherwise parked as a temporary expedient for loading, delivery or emergency, and in no event shall such temporary parking exceed seventy-two (72) hours.

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

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

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



or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

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

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

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

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

13. Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor

violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Unit immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines or Unit lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

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

15. Units to be Maintained: Hazardous Materials or Chemicals. Each Unit shall at all times be kept in a clean, sightly and wholesome condition by the Owner of the Unit. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Unit except as necessary during the period of construction or as provided in Section 12 of this Article. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Unit except as such may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

16. Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Unit, or any portion thereof, as along as all leases provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under such lease.

17. Management Agreements and Other Contracts. Any agreement for professional management of the Association's business or other contract providing for services of the Declarant shall have a maximum term of three (3) years and any such agreement shall

provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the Period of Declarant Control shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, VA has a guarantee(s) or HUD has insurance on one or more Security Interests, and shall terminate absolutely, in any event, no later than thirty (30) days after termination of the Period of Declarant Control.

18. Maintenance of Grade and Drainage; Easements for Drainage and Utilities.

(a) Each Owner shall maintain the grading upon his Unit, and the Association shall maintain the grading upon the Common Elements, at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes. Each Owner and the Association agree, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with the established drainage pattern over any such real property, from adjoining or other property. In the event that it is necessary or desirable to change the established drainage over any Unit or Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Committee for its review and approval, in accordance with the provisions of Article V of this Declaration. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading of a Unit or Common Elements, as applicable, is completed.

(b) Easements for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the recorded plats, as amended, affecting the Units, or as established by any other instrument of record. Declarant hereby reserves, for itself and the Association, a drainage easement across the entirety of each Unit, except the portion covered by the residence on such Unit, for the purpose of installing and maintaining drainage swales and other facilities. As more fully provided above in this Section, no Improvements shall be placed or permitted to remain on any Unit, nor shall any change in grading be permitted to exist, which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such drainage easements. Declarant reserves to itself and to the Association the right at any time to enter in and upon each drainage easement, and at any time to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time (without having any obligation to take any such actions or perform any such work).

19. Use of Common Elements by Declarant and Builders. An easement is hereby granted to the Declarant and Builders on, over and through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights. Subject to the immediately preceding sentence:

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

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

(c) The use of the Common Elements shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors.

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

20. Notice and Release as to Detention Pond. Flooding. The Community includes a Tract which will contain a detention pond for purposes of water runoff and collection. Owners should be aware of the presence and location of this Tract, and take whatever steps they reasonably believe are necessary to ensure the safety of themselves, their family members, guests, tenants, invitees and any related personal and/or real property. In addition, some areas of the Community may be adjacent to the Spring Gulch Floodway and Primary Greenway. Again, reasonable precautions should be taken by Owners to prevent injury to themselves, their family members, guests, tenants, invitees and personal and/or real property.

21. Easement for Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for the encroachment exists.

ARTICLE X  
PROPERTY RIGHTS IN THE COMMON ELEMENTS

1. Owners' Easements. Subject to the provisions of Article IX, Section 19 hereof and to this Article X, every Owner shall have a non-exclusive right and easement for the purpose of access to their Units and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Unit.

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

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

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

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

(d) The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Unit remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Association's rules and regulations; and

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

(f) The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, tenants, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

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

3. No Construction on Common Elements. Other than Declarant incidental to its completion of the Community and other than the Association, no Person shall be permitted: to construct any structure(s), or place any permanent Improvement(s), upon the Common Elements; nor to enclose any portion of the Common Elements.

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

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

6. Conveyance or Encumbrance of Common Elements.

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

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

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

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

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

(f) A conveyance or encumbrance of Common Elements pursuant to this Section does not affect the priority or validity of preexisting encumbrances.

ARTICLE XI  
GENERAL PROVISIONS

1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the articles of incorporation, bylaws or rules and regulations of the Association, as amended, may be by any proceeding at law or in equity against any Person violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. For each claim, including, but not limited to counterclaims, cross-claims and third-party claims, in any legal proceeding to enforce the provisions of the Act or of the Declaration, the Association bylaws, articles of incorporation or rules and regulations, the court shall award to the party prevailing on such claim the prevailing party's reasonable costs and attorneys' fees and any Person who is adversely affected by another Person's failure to comply with any of the aforesaid documents may require reimbursement for reasonable costs and attorney's fees for such failure to comply, without the necessity of commencing a legal proceeding. Failure by the Association or any Owner to enforce any covenants, restriction or other provision herein contained, or any other provisions of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

2. Severability. All provisions of the Declaration, the articles of incorporation and bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

3. Conflict of Provisions. In case of any conflict between this Declaration and any Supplemental Declaration, this Declaration shall control. In case of any conflict between this Declaration, the articles of incorporation or bylaws of the Association, this Declaration shall control. In case of any conflict between the articles of incorporation and the bylaws of the Association, the articles of incorporation shall control.

4. Conflict with Act. In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

5. Annexation.

(a) Additional property may be annexed to this Declaration with the consent of the Members having two-thirds (2/3) of the Allocated Interests. Notwithstanding the foregoing, the Declarant may annex to this Declaration all or any portion of the Annexable Property, at any time(s) from time to time, until that date which is twenty (20) years after the date of recording of this Declaration in Boulder County, Colorado, without consent of any other Owners, Security Interest Holders, or any other Person; provided that, if the Declarant seeks to obtain HUD or VA approval of the property being annexed, then any such annexation shall be subject to a determination by HUD or VA that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements. Each such annexation shall be effected, if at all, by recording of a plat or map of the property to be annexed (unless such plat or map has previously been recorded), and by recording an Annexation of Additional Land in the Office of the Clerk and Recorder of Boulder County, Colorado, which document shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land, shall state that the Declarant is the owner of the Units thereby created, shall assign an identifying number to each new Unit, shall describe any Common Elements within the property being annexed, shall reallocate the Allocated Interests among all Units, and may include such other provisions as Declarant deems appropriate. In addition, an Annexation of Additional Land may impose on the annexed property described therein covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions, which may be in addition to those set forth in this Declaration, taking into account the unique and particular aspects of the proposed development of or construction on such annexed property and/or taking into account such other matters as the Declarant may deem appropriate or desirable. All provisions of this Declaration, including, but not limited to, those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon recording an Annexation of Additional Land with respect thereto, as



aforesaid In addition to the foregoing, the Declarant may amend this Declaration at any time during the twenty (20) year period noted hereinabove, in order to add additional real estate to the Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Community pursuant to this sentence, and not described in the attached Exhibit E, does not exceed ten percent (10%) of the total area described in the attached Exhibits A and E.

(b) Each portion of the Community which is annexed to this Declaration by the Declarant, as provided in the preceding subsection (a), shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, the Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community which has been annexed to this Declaration, upon the first conveyance of any Unit in such annexed portion of the Community to any Person other than the Declarant.

(c) The Declarant may exercise its development rights in all or any portion of the Annexable Property over which such rights have not already been exercised, and no assurances are made as to the boundaries or order of exercise of any such development rights.

#### 6. Duration, Revocation. and Amendment.

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

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

(c) Every amendment to the Declaration must be recorded in Boulder County, Colorado, and is effective only upon recordation.

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

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

7. Registration of Mailing Address. Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association and, except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, whether by the Association or any Owner, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such person or entity at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the Period of Declarant Control shall be sent by registered or certified mail, postage prepaid, c/o Fox Creek Farm, LLC, 11031 Sheridan Boulevard, Westminster, Colorado 80020, unless such address is changed by the Association during the Period of Declarant Control; subsequent to termination of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

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

9. Description of Units. It shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Unit.

10. Termination of Community. Except in the case of a taking of all the Units by eminent domain, this Community may be terminated only by agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and in accordance with the Act.

11. Transfer of Special Declarant Rights. A Special Declarant Right created or reserved under this Declaration may be transferred only in accordance with the Act and only by an instrument evidencing the transfer recorded in Boulder County, Colorado. The instrument is not effective unless executed by the transferee.

12. Eminent Domain. The taking by eminent domain of a Unit(s) or Common Element(s), or any portion thereof, shall be done in accordance with applicable law, including without limitation the Act.

13. Association as Trustee. With respect to a third Person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third Person is not bound to inquire whether the Association has the power to act as trustee or is properly exercising trust powers. A third Person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third Person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

14. Dedication of Common Elements. Declarant, in recording this Master Declaration of Covenants, Conditions and Restrictions, has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities. The Common Elements owned by the Association. is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Master Declaration of Covenants, Conditions and Restrictions.

15. Limitation on Liability. The Association, the Board of Directors, the Architectural Committee, 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 unless the action or failure to act was not in good faith and was done or withheld with malice.

16. 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 its agents or employees in connection with any portion of the Community, 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.

17. Disclaimer Regarding Safety. DECLARANT AND THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION,

AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

18. Run with Land; Binding upon Successors. The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon the Community and all real property and Improvements which are now or hereafter become a part of the Community. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of, the Declarant, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 24<sup>th</sup> day of November, 1996.

DECLARANT:  
FOX CREEK FARM, LLC, a Colorado limited liability company, By MELODY HOMES, INC., Managing Member

By: \_\_\_\_\_  
Its: Division President

STATE OF COLORADO     )  
                                  ) SS.  
COUNTY OF JEFFERSON )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of November, 1996, by David L. Oyler as Division President of Fox Creek Farm, LLC, a Colorado limited liability company, By Melody Homes, Inc., Managing Member

Witness my hand and official seal.

(Seal)

\_\_\_\_\_  
Notary Public  
My Commission expires: 2-10-98

EXHIBIT A  
TO  
MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FOX CREEK FARM

Lots 1 through 5, inclusive, Block 1  
Lots 1 through 10, inclusive, Block 2  
Lot 1, Block 3,  
Lots 1 through 14, inclusive, Block 4  
Lots 1 through 18, inclusive, Block 5  
Lots 1 through 13, inclusive, Block 6  
Lots 1 through 3, inclusive, Block 7  
Lots 1 through 24, inclusive, Block 8  
Lots 1 through 8, inclusive, Block 9  
Lots 1 through 10, inclusive, Block 10  
Lots 1 through 11, inclusive, Block 11,

all as shown on the plat of Fox Creek Farm First Filing, recorded at Plan File No. P-37, F-2, #1 and 2, in the office of the Clerk and Recorder of Boulder County, Colorado, as amended.

EXHIBIT B  
 TO  
 MASTER DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS  
 OF  
 FOX CREEK FARM

<u>Lot Number*</u>	<u>Block Number</u>	<u>Allocated Interest</u>
Lot 1	Block 1	1/117
Lot 2	Block 1	1/117
Lot 3	Block 1	1/117
Lot 4	Block 1	1/117
Lot 5	Block 1	1/117
Lot 1	Block 2	1/117
Lot 2	Block 2	1/117
Lot 3	Block 2	1/117
Lot 4	Block 2	1/117
Lot 5	Block 2	1/117
Lot 6	Block 2	1/117
Lot 7	Block 2	1/117
Lot 8	Block 2	1/117
Lot 9	Block 2	1/117
Lot 10	Block 2	1/117
Lot 1	Block 3	1/117
Lot 1	Block 4	1/117
Lot 2	Block 4	1/117
Lot 3	Block 4	1/117
Lot 4	Block 4	1/117
Lot 5	Block 4	1/117
Lot 6	Block 4	1/117
Lot 7	Block 4	1/117
Lot 8	Block 4	1/117
Lot 9	Block 4	1/117
Lot 10	Block 4	1/117
Lot 11	Block 4	1/117
Lot 12	Block 4	1/117
Lot 13	Block 4	1/117
Lot 14	Block 4	1/117
Lot 1	Block 5	1/117
Lot 2	Block 5	1/117
Lot 3	Block 5	1/117
Lot 4	Block 5	1/117
Lot 5	Block 5	1/117

\* All Lots are in Fox Creek Farm First Filing, as shown on the plat thereof, recorded at Plan File No. P-37, F-2, #1 and 2, in the office of the Clerk and Recorder of Boulder County, Colorado, as amended.

## EXHIBIT B (CONTINUED)

<u>Lot Number*</u>	<u>Block Number</u>	<u>Allocated Interest</u>
Lot 6	Block 5	1/117
Lot 7	Block 5	1/117
Lot 8	Block 5	1/117
Lot 9	Block 5	1/117
Lot 10	Block 5	1/117
Lot 11	Block 5	1/117
Lot 12	Block 5	1/117
Lot 13	Block 5	1/117
Lot 14	Block 5	1/117
Lot 15	Block 5	1/117
Lot 16	Block 5	1/117
Lot 17	Block 5	1/117
Lot 18	Block 5	1/117
Lot 1	Block 6	1/117
Lot 2	Block 6	1/117
Lot 3	Block 6	1/117
Lot 4	Block 6	1/117
Lot 5	Block 6	1/117
Lot 6	Block 6	1/117
Lot 7	Block 6	1/117
Lot 8	Block 6	1/117
Lot 9	Block 6	1/117
Lot 10	Block 6	1/117
Lot 11	Block 6	1/117
Lot 12	Block 6	1/117
Lot 13	Block 6	1/117
Lot 1	Block 7	1/117
Lot 2	Block 7	1/117
Lot 3	Block 7	1/117
Lot 1	Block 8	1/117
Lot 2	Block 8	1/117
Lot 3	Block 8	1/117
Lot 4	Block 8	1/117
Lot 5	Block 8	1/117
Lot 6	Block 8	1/117
Lot 7	Block 8	1/117
Lot 8	Block 8	1/117
Lot 9	Block 8	1/117
Lot 10	Block 8	1/117

\* All Lots are in Fox Creek Farm First Filing, as shown on the plat thereof, recorded at Plan File No. P-37, F-2, #1 and 2, in the office of the Clerk and Recorder of Boulder County, Colorado, as amended.

## EXHIBIT B (CONTINUED)

<u>Lot Number*</u>	<u>Block Number</u>	<u>Allocated Interest</u>
Lot 11	Block 8	1/117
Lot 12	Block 8	1/117
Lot 13	Block 8	1/117
Lot 14	Block 8	1/117
Lot 15	Block 8	1/117
Lot 16	Block 8	1/117
Lot 17	Block 8	1/117
Lot 18	Block 8	1/117
Lot 19	Block 8	1/117
Lot 20	Block 8	1/117
Lot 21	Block 8	1/117
Lot 22	Block 8	1/117
Lot 23	Block 8	1/117
Lot 24	Block 8	1/117
Lot 1	Block 9	1/117
Lot 2	Block 9	1/117
Lot 3	Block 9	1/117
Lot 4	Block 9	1/117
Lot 5	Block 9	1/117
Lot 6	Block 9	1/117
Lot 7	Block 9	1/117
Lot 8	Block 9	1/117
Lot 1	Block 10	1/117
Lot 2	Block 10	1/117
Lot 3	Block 10	1/117
Lot 4	Block 10	1/117
Lot 5	Block 10	1/117
Lot 6	Block 10	1/117
Lot 7	Block 10	1/117
Lot 8	Block 10	1/117
Lot 9	Block 10	1/117
Lot 10	Block 10	1/117
Lot 1	Block 11	1/117
Lot 2	Block 11	1/117
Lot 3	Block 11	1/117
Lot 4	Block 11	1/117
Lot 5	Block 11	1/117
Lot 6	Block 11	1/117
Lot 7	Block 11	1/117

\* All Lots are in Fox Creek Farm First Filing, as shown on the plat thereof, recorded at Plan File No. P-37, F-2, #1 and 2, in the office of the Clerk and Recorder of Boulder County, Colorado, as amended.



EXHIBIT B (CONTINUED)

Lot Number*	Block Number	Allocated Interest
Lot 8	Block 11	1/117
Lot 9	Block 11	1/117
Lot 10	Block 11	1/117
Lot 11	Block 11	1/117

\* All Lots are in Fox Creek Farm First Filing, as shown on the plat thereof, recorded at Plan File No. P-37, F-2, #1 and 2, in the office of the Clerk and Recorder of Boulder County, Colorado, as amended.

EXHIBIT C  
TO  
MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FOX CREEK FARM

There are no Common Elements in the Community at the time of recording of this Declaration in Boulder County, Colorado.

EXHIBIT D  
TO  
MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FOX CREEK FARM

If recorded, the following documents are recorded in the office of the Clerk and Recorder of Boulder County, Colorado:

1. TAXES AND ASSESSMENTS FOR THE YEAR OF RECORDING OF THE DECLARATION AND FOR SUBSEQUENT YEARS, NOT YET DUE OR PAYABLE.
2. EASEMENT AND RIGHTS OF WAY FOR 17TH AVENUE AND PACE ROAD.
3. IRRIGATION LATERALS AS EVIDENCED ON MAP OF PACE ROAD ANNEXATION #2 RECORDED FEBRUARY 17, 1981, UNDER RECEPTION NO. 434320.
4. THE EFFECT, IF ANY, OF THE MAP OF THE HEWLETT-PACKARD ANNEXATION RECORDED MAY 13, 1994, UNDER RECEPTION NO. 1427002 AND THE ORDINANCE THERETO RECORDED JUNE 21, 1994, UNDER RECEPTION NO. 1438761.
5. TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED ON JANUARY 03, 1992 UNDER RECEPTION NO. 1152235.
6. EASEMENTS AS SHOWN ON THE RECORDED PLAT OF FOX CREEK FARM FIRST FILING, RECORDED AT PLAN FILE NO. P-37, F-2, #1 AND 2.
7. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, AS CONTAINED ON THE PLAT OF FOX CREEK FARM FIRST FILING.

EXHIBIT E  
TO  
MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FOX CREEK FARM

PARCEL A:

ALL THAT PORTION OF THE NORTH HALF OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF LONGMONT, COUNTY OF BOULDER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 36, THENCE ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 36, NORTH 88 DEGREES 15'25" EAST 850.52 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTH LINE, NORTH 88 DEGREES 15'25" EAST 1806.16 FEET TO THE NORTH ONE-QUARTER CORNER OF SECTION 36; THENCE ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 36, NORTH 88 DEGREES 10'21" EAST 146.05 FEET; THENCE SOUTH 30 DEGREES 22'34" EAST 580.95 FEET; THENCE SOUTH 30 DEGREES 22'34" EAST 580.95 FEET; THENCE SOUTH 38 DEGREES 01'45" EAST 416.46 FEET; THENCE SOUTH 44 DEGREES 56'58" EAST 301.83 FEET; THENCE SOUTH 23 DEGREES 01'35" EAST 53.27 FEET; THENCE SOUTH 72 DEGREES 34'42" WEST 200.91 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT (SAID CURVE HAVING A RADIUS OF 375.00 FEET, A CENTRAL ANGLE OF 13 DEGREES 13'31", THE CHORD OF SAID ARC BEARS SOUTH 79 DEGREES 11'28" WEST 86.37 FEET) A DISTANCE OF 86.56 FEET; THENCE SOUTH 85 DEGREES 48'13" WEST 353.46 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT (SAID CURVE HAVING A RADIUS OF 375.00 FEET, A CENTRAL ANGLE OF 21 DEGREES 39'10", CHORD OF SAID ARC BEARS SOUTH 74 DEGREES 58'38" WEST 140.88 FEET) A DISTANCE OF 141.72 FEET; THENCE SOUTH 64 DEGREES 09'02" WEST 135.43 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT (SAID CURVE HAVING A RADIUS OF 400.00 FEET, A CENTRAL ANGLE OF 25 DEGREES 50'58", CHORD OF SAID ARC BEARS SOUTH 12 DEGREES 55'29" EAST 178.94 FEET) A DISTANCE OF 180.46 FEET; THENCE SOUTH 00 DEGREES 00'00" WEST 258.55 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT (SAID CURVE HAVING A RADIUS OF 375.00 FEET, A CENTRAL ANGLE OF 22 DEGREES 23'13", CHORD OF SAID ARC BEARS SOUTH 11 DEGREES 11'36" WEST 145.59 FEET) A DISTANCE OF 146.52 FEET; THENCE SOUTH 22 DEGREES 23'13" WEST 232.73 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT (SAID CURVE HAVING A RADIUS OF 400.00 FEET, A CENTRAL ANGLE OF 22 DEGREES 23'42", CHORD OF SAID ARC BEARS SOUTH 11 DEGREES 11'22" WEST 155.35 FEET) A DISTANCE OF 156.35 FEET; THENCE SOUTH 00 DEGREES 00'30" EAST 88.84 FEET; THENCE NORTH 88 DEGREES 17'28" EAST 1120.56 FEET; THENCE SOUTH 51 DEGREES 30'13" EAST 176.23 FEET; THENCE SOUTH 46 DEGREES 54'20" EAST 187.07 FEET; THENCE SOUTH 33 DEGREES 54'53" EAST 112.58 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH HALF OF SECTION 36; THENCE ALONG SAID SOUTH LINE, SOUTH 88 DEGREES

EXHIBIT E (CONTINUED)

17'28" WEST 4022.01 FEET TO A POINT WHENCE THE WEST ONE QUARTER CORNER OF SECTION 36 BEARS SOUTH 88 DEGREES 17'28" WEST 30.01 FEET; THENCE PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 36, NORTH 00 DEGREES 01'14" EAST 1859.77 FEET; THENCE NORTH 88 DEGREES 15'25" EAST 934.99 FEET; THENCE NORTH 34 DEGREES 57'13" EAST 934.99 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT (SAID CURVE HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 53 DEGREES 18'12", CHORD OF SAID ARC BEARS NORTH 28 DEGREES 23'41" WEST 403.71 FEET; A DISTANCE OF 418.64 FEET; THENCE NORTH 01 DEGREES 44'35" WEST 311.60 FEET TO THE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.

PARCEL B:

A TRACT OF LAND LOCATED IN THE NORTH HALF OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 69 WEST OF THE 6H PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 36, THENCE ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36, NORTH 88 DEGREES 17'28" EAST 2,594.01 FEET, WHENCE THE CENTER QUARTER CORNER OF SAID SECTION 36 BEARS NORTH 88 DEGREES 17'28" EAST 63.27 FEET; THENCE LEAVING SAID SOUTH LINE, NORTH 00 DEGREES 00'30" WEST 341.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 00'30" WEST 88.94 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT (RADIUS OF SAID CURVE BEING 400.00 FEET, A CENTRAL ANGLE OF 22 DEGREES 23'42", AND A CHORD WHICH BEARS NORTH 11 DEGREES 11'22" EAST 155.35 FEET) A DISTANCE OF 156.35 FEET; THENCE NORTH 22 DEGREES 23'13" EAST 232.73 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT (RADIUS OF SAID CURVE BEING 375.00 FEET, A CENTRAL ANGLE OF 22 DEGREES 23'13" AND A CHORD WHICH BEARS NORTH 11 DEGREES 11'36" EAST 145.59 FEET) A DISTANCE OF 146.52 FEET; THENCE NORTH 00 DEGREES 00'00" EAST 258.55 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT (RADIUS OF SAID CURVE BEING 400.00 FEET, A CENTRAL ANGLE OF 25 DEGREES 50'58", AND A CHORD WHICH BEARS NORTH 12 DEGREES 55'29" WEST 178.94 FEET) A DISTANCE OF 180.46 FEET; THENCE NORTH 64 DEGREES 09'02" EAST 135.43 FEET; THENCE ALONG A CURVE BEING 375.00 FEET, A CENTRAL ANGLE OF 21 DEGREES 39'10", AND A CHORD WHICH BEARS NORTH 74 DEGREES 58'38" EAST 140.88 FEET) A DISTANCE OF 141.72 FEET; THENCE NORTH 85 DEGREES 48'13" EAST 353.46 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT (RADIUS OF SAID CURVE BEING 375.00 FEET, A CENTRAL ANGLE OF 13 DEGREES 13'31", AND A CHORD WHICH

EXHIBIT E ( CONTINUED)

BEARS NORTH 79 DEGREES 11'28" EAST 86.37 FEET) A DISTANCE OF 86.56 FEET; THENCE NORTH 72 DEGREES 34'42" EAST 200.91 FEET; THENCE SOUTH 12 DEGREES 24'39" EAST 404.68 FEET; THENCE SOUTH 01 DEGREES 56'42" WEST 150.06 FEET; THENCE SOUTH 00 DEGREES 15'49" EAST 122.14 FEET; THENCE SOUTH 26 DEGREES 32'52" EAST 129.20 FEET; THENCE SOUTH 88 DEGREES 17'28" WEST 1120.56 FEET TO THE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO.

Excepting and excluding the property described on Exhibit A To this Declaration.