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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

PARAMOUNT VILLAGE SUBDIVISION FILING NO. 1

AND

THE PARAMOUNT VILLAGE COMMUNITY ASSOCIATION

195

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONSFORPARAMOUNT VILLAGE SUBDIVISION FILING NO. 1ANDTHE PARAMOUNT VILLAGE COMMUNITY ASSOCIATIONPREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by Storck Development Corporation, a Colorado corporation, hereinafter referred to as "Declarant."

## WITNESSETH:

WHEREAS, Declarant is the owner of the following described property located in the City of Longmont, Boulder County, State of Colorado, more particularly described as follows:

Lots 1 - 31 and Tract A and a 28-foot access and water, sanitary, sewer and electrical utility easement (adjacent to Lots 5, 6 and 7 of the subdivision) of the Paramount Village Subdivision Filing No. 1, a residential subdivision of the City of Longmont, Boulder County, Colorado.

WHEREAS, this Declaration is executed pursuant to and in furtherance of a common and general plan (a) to protect and enhance the quality, value, desirability and attractiveness of all property which may be subject to this Declaration; (b) to provide for an association as a vehicle to perform certain functions for the benefit of owners of property which may become subject to this Declaration; (c) to define duties, powers and rights of the association; (d) to define certain duties, powers and rights of owners of property which may become subject to this Declaration with respect to the association and with respect to the functions undertaken by the association; and (e) to create a planned common interest community as defined in this Declaration; and

WHEREAS, Declarant, for itself, its successors and assigns, hereby declares that all property herein or hereafter made subject to this Declaration, in the manner hereinafter provided, and each part thereof shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration for the duration thereof, all of which shall run with the title to such property and be binding upon all parties having any right, title or interest in said property or any part thereof and upon their heirs, personal representatives, successors and assigns and shall inure to the benefit of each party having any such right, title or interest in said property or any part thereof.

NOW, THEREFORE, the Declarant with this Declaration states that the real property described in the Preamble is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth. Additionally, Declarant hereby submits the real estate identified above to the provisions of the Colorado Common Interest Ownership Act Sections 38-33.3-101 (the Act), et. seq., Colorado Revised Statutes, as it may be amended from time to time. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

ARTICLE I

DEFINITIONS

Section 1. "Architectural Review Committee" shall mean the committee that is formed by Article IX of these covenants.

Section 2. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may from time to time be amended.

SEE AMENDMENT

\*Section 3. "Association" shall mean and refer to The Devon Community Association, a Colorado corporation, not-for-profit, its successors and assigns.

Section 4. "Association Fences" shall mean the fences located or to be located on the Common Area. The precise locations of the Association Fences shall be as determined by Declarant.

Section 5. "Association Maintenance Areas" shall mean any portion of common area as defined in Section 10 of this Declaration or any portion of the Residential Lot maintained by the Association.

Section 6. "Assessment" shall mean and refer to any assessment levied, charged, or assessed against an Owner in accordance with the provisions of this Declaration.

Section 7. "Assessable Unit" shall mean and refer to any real property within the properties which is subject to assessments.

Section 8. "Board" shall mean the Executive Board of the Association.

Section 9. "Bylaws" shall mean and refer to the duly adopted Bylaws of the Association, as the same may from time to time be amended.

Section 10. "Common Area" shall mean and refer to all real property and Improvements owned or leased by the Association other than a unit which shall include, by way of example but without limitation, lift station, all exterior fencing, exterior lighting, benches, private street(s), parking areas, and walks owned by the Association. Said areas are intended to be devoted to the common use and enjoyment of Owners (subject to the provisions hereof) and are not dedicated for use by the general public except as indicated on the Subdivision Plat in the Real Estate Records of the Clerk and Recorder of Boulder County, Colorado. The definition of Common Area shall expressly exclude any public streets or alleys as shown on any Subdivision Plat required by the City of Longmont, Colorado. The common area shall be owned by the Association at the time of the conveyance of the first Lot as described in the Preamble alluded hereto and incorporated herein by this reference. Tract A, as shown on the subdivision plat of Paramount Village, is hereby designated as Common Area for purposes of this Declaration.

Section 11. "Declaration" shall mean the covenants, conditions, and restrictions, and all other provisions herein set forth in this entire document, as the same may from time to time be amended.

Section 12. "Developer" or Declarant shall mean and refer to Storck Development Corporation, a Colorado corporation, its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or which pass by operation of law.

Section 13. "Federal Mortgage Agencies" shall mean and refer to those Federal Agencies who have an interest in the properties, such as the Federal Housing Administration, the Veteran's

Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interest.

Section 14. "First Mortgage" shall mean and refer to any unpaid mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of Boulder County, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage" 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 original seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by said 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 said Administrator as having the record title to the Lot.

Section 15. "First Mortgagee" shall mean and refer to an institutional lender who holds either a first deed of trust or a first mortgage on a Lot or Living Unit.

Section 16. "Improvements" shall mean and refer to all improvements now or hereafter constructed including, without limitation, all Association exterior boundary fencing, exterior lighting, benches, walks, landscaping, sprinkling systems, irrigations ditches and parking areas within the project owned by the Association.

Section 17. "Institutional Mortgagee" or "Institutional Lender" shall mean and refer to a First Mortgagee which is a federally or state chartered bank, a federal or state savings bank, or savings and loan institution, a real estate investment trust, or any corporation whose primary business is the making, purchasing, or placing of mortgage loans, who shall perfect a first priority security position as to any Lot or Living Unit constructed within the Project.

Section 18. "Limited Common Element" shall mean and refer to a portion of the Common Elements which is allocated by this Declaration for the exclusive use of one or more Lots but fewer than all the Lots described herein. The Limited Common Element created by this Declaration is as follows:

A 28-foot access and water, sanitary, sewer and electrical utility easement, which is for the exclusive use of Lots 5 and 6 as shown on the final subdivision plat recorded on the 27th day of Sept, 1993, in Plat Book \_\_\_\_\_ under Reception No. 1341308.  
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Section 19. "Living Unit" shall mean and refer to any structure situated upon the properties designed and intended for use and occupancy as a residence by a single family.

Section 20. "Lot" shall mean and refer to any numbered area of land shown as such upon any recorded final filing plat required by the City of Longmont, Colorado, with the exception of Common Area as heretofore defined. "Lot" shall also mean a "Unit" as defined in C.R.S. §38.33-103(30) as originally enacted or subsequently amended.

Section 21. "Member" shall mean and refer to the Person designated as such pursuant to Article III.

Section 22. "Mortgage" shall mean and refer to a mortgage, deed of trust, or other similar security instrument held or owned by a Mortgagee which encumbers any Lot and/or Living Unit.

Section 23. "Mortgagee" shall mean and refer only to a Mortgagee under a Mortgage or a beneficiary under a deed of trust or similar security instrument. For the purpose of this Declaration



and the Bylaws, no Person shall be deemed a Mortgagee until written notice of such interest has been given to the Association together with the name and address of the Mortgagee.

Section 24. "Notice" shall mean and refer to (i) written notice delivered personally or mailed to the last known address of the intended recipient, or (ii) notice through a Association publication which is delivered to the Living Units. "Notice to Mortgagee" shall mean and refer to only written notice delivered personally or mailed to the last known address of the intended recipient and not notice through a Association publication.

Section 25. "Owner" means any person, corporation, partnership, association, contract sellers or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots and shall include the purchaser under any executory land sales contract wherein the Administrator of Veteran's Affairs is seller, whether recorded or not, and whether owned by said Administrator or his assigns. The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 26. "Person" shall mean an individual, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Section 27. "Project or Properties" shall mean and refer to all real property which is subject to the Declaration.

Section 28. "Quorum of Owners" shall mean the representation by presence or proxy of Members who hold fifty percent (50%) of the outstanding votes entitled to be cast on any issue.

Section 29. "Registered Notice" shall mean and refer to any notice which has been signed for by a recipient or has been certified by the U.S. Postal Service or other entity as having been delivered to the address of the intended recipient. Failure by refusal of an intended recipient to acknowledge such Notice shall nevertheless constitute receipt when such refusal is witnessed by one other person.

Section 30. "Related User" shall mean any member of the Family of an Owner who resides with such Owner; guests and invitees of an Owner; employees and agents of an Owner; and occupants, tenants and contract purchasers residing in a Living Unit of an Owner who claim by, or through an Owner.

Section 31. "Single Family" shall have the same meaning as that term is defined in the zoning ordinance of the City of Longmont, County of Boulder, Colorado, as of the date of the recording of this Declaration or as amended in the future by the governing body of the City of Longmont, County of Boulder, Colorado.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1 - Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Longmont, Boulder County, State of Colorado and includes Lots 1 through 31 and Tract A and a 28-foot access and water, sanitary, sewer and electrical utility easement (adjacent to Lots 5, 6 and 7) of the Paramount

Village Subdivision Filing No. 1, which has been platted in accordance with the subdivision procedures of the City of Longmont, Colorado and is located in Boulder County, Colorado. Additional property may be made subject to this Declaration in accordance with the procedures set forth in Article XIII, Section 4 of this Declaration, and the Declarant expressly reserves the right to expand the real property which is subject to this Declaration in accordance with those procedures. The maximum number of Living Units that may be built within the subdivision, including the original and expansion properties, total 62 units.

ARTICLE III

ASSOCIATION STRUCTURE AND FORMAT

Section 1 - Organization. The Association is a nonprofit, nonstock corporation organized and existing under the laws of Colorado, charged with the duties and vested with the powers prescribed by law and set forth in the Articles of Incorporation and Bylaws, as such may be amended from time to time, provided that the Articles of Incorporation and Bylaws shall not for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2 - Membership.

(a) Basis. Membership shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Declaration, Articles of Incorporation or Bylaws.

(b) Member's Rights and Duties. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles of Incorporation or Bylaws.

(c) Voting Rights. The Association shall have one (1) class of voting membership:

Class A: Class A members shall be all Owners of Lots as defined in Article I, Section 25. Class A Members shall be entitled to one (1) vote for each Lot owned.

(d) Exercise of Vote. Class A Membership shall be appurtenant to and may not be separated from record ownership of a Lot, and such membership shall automatically transfer to the new Owner upon any sale, transfer, or other disposition of a Lot subject to the provisions of this Declaration and any Supplements thereto. There shall not be more than one (1) Class A Member for any Lot within the Project. Upon transfer, sale, or other disposition of all or some of the fee interest in a Lot, the then Owner shall automatically become the Class A Member with respect to such Lot. The vote for any Membership, which is held by more than one (1) person may only be exercised by one (1) person, or if the Owner is a corporation, by an officer of such corporation. A written notice subscribed to by all of such persons or by such corporation, as the case may be, designating one (1) of such persons or an officer of such corporation as the person entitled to cast the vote with respect to such Lot shall be delivered to the Secretary of the Association prior to the start of any annual or special meeting of the Association. Without this written notice, the vote for the Membership shall not be counted.

Section 3 - Executive Board.

(a) Composition. The number of Directors shall be as provided in the Articles of Incorporation and Bylaws.

(b) Extent of Power.

(1) The Executive Board shall have all powers for the conduct of the affairs of the Association which are enabled by law or the Declaration of Covenants or the Articles of Incorporation and its Bylaws which are not specifically reserved to Members, the Declarant or the Architectural Review Committee by said Documents.

(2) The Executive Board shall exercise its powers in accordance with this Declaration of Covenants, Articles of Incorporation and its Bylaws.

ARTICLE IV

DUTIES AND POWERS OF THE PARAMOUNT VILLAGE COMMUNITY ASSOCIATION

Section 1 - General Duties and Powers of Association. The Association has been formed to further the common interests of the Members of the Association. The Association, acting through its Executive Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members of the Association, to maintain, improve and enhance the Common Area and to improve and enhance the attractiveness and desirability of the Project.

Section 2 - Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept the title to any Common Area, including any Improvements thereon, Association Fences, if any, and personal property or equipment transferred to the Association by Declarant, together with the responsibility to perform any and all of the functions set forth in this Declaration in connection therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Real property interests transferred by Declarant to the Association shall consist of fee simple title to the Common Area, Association Fences and the easements therefor as contained herein. Except as otherwise specifically approved by resolution of the Executive Board of the Association, no real property transferred to the Association by Declarant and no personal property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant nor any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge or fee. The interest in property transferred to the Association by Declarant shall not impose any unreasonable or special burden on the Association other than the duties set forth hereinafter.

Section 3 - Duty to Manage and Care for the Association Fences. Upon commencement of the Common Assessments and following the installation of the Association Fences, if any, the Association shall manage, operate, care for, maintain, repair and replace the Association Fences and keep the Association Fences, if any, in a neat, attractive and desirable condition.

Section 4 - Duty to Pay Taxes and Assessments. The Association shall be obligated to pay all taxes and assessments levied on any property or facilities transferred to or acquired and owned by the Association except taxes and assessments applicable to the period prior to transfer of such property or facilities by Declarant which shall be prorated as of the time of such transfer and paid by Declarant. The Association may contest the validity or applicability of any such taxes, assessments or impositions so long as such contest does not jeopardize the title of the Association to any such property or facilities.

Section 5 - Duty to Prepare Budgets. The Association shall prepare budgets as elsewhere provided in this Declaration.

Section 6 - Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 7 - Duty to Provide Audit. The Association may provide for an annual audit of the accounts of the Association. If required by a Government Mortgage Agency such audit may be an independent audit. Copies of the report of the audit will be made available to any Member who requests a copy of the same upon payment of such Member of the reasonable cost of copying the same.

Section 8 - Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, and the use of any property within the project. Any such rules and regulations shall be reasonable and uniformly applied. Such rules and regulations shall be effective only upon adoption by resolution of the Executive Board of the Association. Notice of the adoption, amendment or repeal of any rule or regulation shall be given in writing to each Member of the Association at the address for notices to Members as elsewhere provided in this Declaration or the Bylaws of the Association, and copies of the currently effective rules and regulations will be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such rules and regulations and shall see that Related Users comply with such rules and regulations. Such rules and regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the rules and regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 9 - Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Association Declaration and of its rules and regulations and shall take such action as the Executive Board of the Association deems necessary or desirable to cause such compliance by each Member of the Association and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of rules and regulations of the Association by any one or more of the following means: (a) by entry upon any property within the Association Area (when a bona fide emergency exists), without liability to the Owner thereof, for the purpose of enforcement or causing compliance with this Declaration or rules and regulations of the Association; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the rules and regulations of the Association, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the rules and regulations of the Association; (d) by suspension, after notice and hearing of the voting rights of a Member of the Association during and for up to sixty (60) days following any breach by such Member or a Related User of such member of this Declaration or such rules and regulations, unless the breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues; (e) by levying and collecting, after notice and hearing a Reimbursement Assessment against any member of the Association for breach of this Declaration or such rules and regulations by such Member or a Related User of such member; and (f) by levying and collecting, after notice and hearing as defined in this Declaration, reasonable and uniformly applied fines and penalties, established in advance in the rules and regulations of the Association, from any Member of the Association for breach of

or failure to comply with this Declaration or such rules and regulations by such Member or a Related User of such member.

Section 10 - Power to Provide Special Services for Members. The Association shall have the power to provide services to a Member or group of members. Any service or services to a Member or group of Members shall be provided pursuant to an agreement in writing, or through one or more special service contract(s), which shall provide for payment to the Association by such Member or group of Members of the reasonably estimated costs and expenses of the Association of providing such services, including a fair share of the overhead expenses of the Association, and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Member or group of Members and that the payment for such services shall be secured by a lien on the property of the Member or group of Members.

Section 11 - Power to Employ Managers. The Association shall have the power to retain and pay for the services of a Manager or Managers to undertake any of the management or functions for which the Association has responsibility under this Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to any such Manager. Any contract or agreement with any such Manager shall be terminable by the Association for cause on no more than thirty (30) days' prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety (90) days' prior written notice. Any such contract or agreement shall be for a term of no more than one (1) year but may be subject to renewal for succeeding terms of no more than one (1) year each. Notwithstanding any delegation to a Manager of any duties, powers or functions of the Association, the Association and its Executive Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions. Any agreement or contract with a Manager may contain any other provisions which are required to be contained therein by any Government Mortgage Agency.

Section 12 - Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

Section 13 - General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws of the Association. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Declaration or the Articles of Incorporation and Bylaws of the Association and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles of Incorporation and Bylaws of the Association.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

Section 1 - General. The Association shall have the power to levy Assessments against the Lots and the Owners thereof, and each Owner, and, if more than one (1) Person, all such Persons, jointly and severally, by acceptance of the deed to a Lot, whether or not it shall be expressed in any such deed, shall be deemed to covenant

and agree expressly in any such deed to pay all such Assessments in the manner and for the purposes provided herein. Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including the power and authority to determine where, when, and how Assessments shall be paid to the Association, and each Owner shall comply with such determination.

Section 2 - Method of Assessment. All Assessments shall be levied by the Association against Lots and collected and disbursed by the Association. The Executive Board shall fix the amount of the Assessments as provided hereinafter and set the date or dates such Assessments shall become due.

Section 3 - Relationship of the Association Lien to Mortgages. Except as provided in C.R.S. §38-33.3-316 as originally enacted or as subsequently amended by the Colorado Legislature, the lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage, including any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is the seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. The lien of such assessments shall be superior to any homestead exemption or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien. Sale or transfer of any Lot shall not affect the liens for said charges except that sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including a deed in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract shall extinguish the lien of such charges as to payments which became due prior to such sale, transfer, cancellation or forfeiture of executory land sales contract. No sale, transfer, cancellation or forfeiture of executory land sales contract shall relieve such Lot from liability for any such charges thereafter becoming due or from the lien thereof; provided, however, that in the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrue prior to the acquisition of title to the Lot in question by such First Mortgagee except to the extent C.R.S. §38-33.3-316 grants a superior priority to liens of the Association in relationship to a first mortgage.

Section 4 - General Assessments.

(a) Purpose. The General Assessment shall be used exclusively to promote the welfare of the Members and in particular to improve, maintain, and operate the Common Areas and facilities, including funding of an adequate reserve fund for maintenance, repair, replacement of those elements of the Common Areas that must be replaced on a periodic basis, and to pay annual insurance costs necessary to the Association, all tax liabilities assessed by any federal, state or local tax authority relating to the common areas, as well as any professional fees incurred by the Association. The Owners of Lots 5 and 6 shall be subject to an additional assessment in an amount the Board deems necessary for the maintenance of the access easement which provides access to those Lots and is designated as a Limited Common Element in this Declaration. The Association may collect from the Owners of Lots 5 and 6 those sums necessary for maintenance, repair and snow removal performed on the access easement. The Association may also expressly delegate the responsibility to the Owners of Lots 5 and 6 for the maintenance, repair and snow removal for the access easement.

(b) Basis for Assessment. For General Assessment purposes all Lots shall be assessed at one hundred percent (100%) of the General Assessment rate.

(c) Increase in Maximum Lot Assessment. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant, the maximum annual assessment shall be Fifty Dollars (\$50.00) per Lot, per year.

(1) From and after January 1 of the year immediately following the conveyance of the first Lot by Declarant, the maximum annual assessment may be increased effective January 1 each year in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding twelve month period.

(2) From and after January 1 of the year immediately following the conveyance of the first Lot by Declarant, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the Members for the next succeeding one (1) year and at the end of each such one (1) year period, for such succeeding period of one (1) year, provided that any such increase shall have obtained the prior written consent of at least sixty seven percent (67%) of all classes of Members and 67% of the First Mortgagees of Lots within the Association. The Executive Board of the Association may, after consideration of the current maintenance costs and the financial requirements of the Association, fix the actual annual assessment at an amount less than the maximum.

(d) Procedure for Annual Assessments Below Maximum Assessment. It is anticipated that the initial annual assessment shall be estimated to be between Twenty-five and no/100 Dollars (\$25.00) and Fifty and no/100 Dollars (\$50.00) per year based upon budget projections of the Declarant. It should be understood that the general annual assessment may be raised by the Association Executive Board during the period of declarant control or during the operation of the Association after the period of declarant control without prior approval of assessable Lot owners until it reaches the maximum level described in subparagraph c of this Section 4.

(e) Method of Assessment. By vote of a majority of the Executive Board, the Board shall fix the General Assessment at an amount not in excess of the current maximum assessment, provided, however, that the General Assessment shall be sufficient to meet the obligations imposed by the Declaration. In the event the Board fails to fix an Assessment for any fiscal year, then each Assessment established for the prior year shall automatically be continued until such time as the Board acts.

(f) Date of Commencement of General Assessments. All General Assessments shall be either an unimproved lot assessment or an improved lot assessment. The unimproved lot assessment shall commence on the first day of the month following the recording of the subdivision plat by the Developer/Declarant. The improved lot assessment shall commence on the first day of the month following the issuance of a Certificate of Occupancy for the Living Unit on a Lot by the City of Longmont, Colorado.

Section 5 - Budget Process. To determine the amount required to be raised by General Assessments for any fiscal year, the Executive Board shall prepare an Annual Budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by the Budget, the estimated costs and expenses which will be payable, and the estimated income and the funds which will be available in that fiscal year, and the estimated total amount of money required to be raised by the General Assessment to cover such costs and expenses and to provide a reasonable reserve. The total

amount of money required to be raised by the General Assessment for such fiscal year shall be the amount as determined by the Board necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in the coming fiscal year, including the payment of debts from prior fiscal years, providing reasonable reserves, and providing a reasonable carry-over reserve for the following fiscal year. Within thirty (30) days after adoption of any proposed budget for the common interest community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Lot Owners and shall set a date for a meeting of the Lot 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 a majority of all Lot Owners present at the meeting, in person or by proxy, rejects the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners must be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board.

Section 6 - Supplementary Assessments. In the event that the Board shall determine, at any time or from time to time, that the amount of the General Assessment is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more Supplementary Assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each Supplementary Assessment, the Board shall revise the annual budget for such fiscal year provided in Article V, Section 5, or prepare a new budget, a copy of which shall be furnished to any Owner, or on request, to any Mortgagee. Based on such revised or new Budget, the Board may make a Supplementary Assessment for such fiscal year against each Lot, the amount of which shall be determined by the Board as provided in Section 5 of this Article, including the notice to owners and owners meeting for ratification.

Section 7 - Special Assessments. Special Assessments may be made for the purposes of raising funds for capital improvements and for any other Association purpose for which General Assessments may not or have not been made. Whether to make a Special Assessment and the amount thereof per Lot shall be determined by the Board; provided that no Special Assessment shall be valid unless approved by a majority vote of the Members present and voting in person or by proxy at any Annual Meeting of the Members of the Association or at any Special Meeting thereof called for the purpose of considering such Special Assessment.

Section 8 - Reimbursement Assessments. The Executive Board of the Association may, subject to the provisions hereof, levy an Assessment against any Member if (a) the willful or negligent failure of the Member or Related User of the Member to comply with this Declaration, the Articles of Incorporation, the Bylaws of the Association, rules and regulations adopted by the Association, or guidelines or rules adopted by the Association Architectural Review Committee have resulted in the expenditure of funds to cause such compliance, or (b) if a Member or a Related User of the Member shall fail to pay any fines or penalties established in the rules and regulations of the Association for breach of or failure to comply with this Declaration or such rules and regulations. Such Assessments shall be known as Reimbursement Assessments. The amount of the Reimbursement Assessments shall be due and payable to the Association thirty (30) days after notice to the Member of the decision of the Executive Board of the Association that the Assessment is owing.

Section 9 - Differential Assessments. Each Owner, including the Declarant, shall have the obligation to pay the General Assessment for each Lot owned within the Association. There shall be two (2) levels of General Assessments for Lots within the



Association. One level of assessment shall be based upon Lots which are unimproved. "Unimproved Lots" shall be defined to mean Lots within the Association, for which water and sewer services, curb, gutter, sidewalk, and street paving improvements have been completed but upon which no residential construction has started as of the due date of the assessment. Unimproved Lots shall pay an assessment which includes these expense items incurred by the Association: general liability insurance costs, weed control costs and general administrative overhead necessary to operate the Association. <sup>owner removal</sup> The second level of assessment by the Association shall be for Improved Lots. "Improved Lots" shall be defined to <sup>owner</sup> mean any Lot upon which residential construction has been completed as of the date the assessment is due. The Improved Lot assessment shall include those costs incurred by the Association for: general liability insurance costs, dwelling insurance, common area lawn maintenance and sprinkler system operation and maintenance costs, and general administrative overhead necessary to operate the Association. The identification of costs in this Section 9 is not meant to be exhaustive, and the Executive Board may identify additional costs to be included as costs to be paid by either an unimproved or improved Lot. No Owner, including the Declarant/Developer, shall be exempt from General Assessments for Lots within the Association, and all Owners shall pay either an Unimproved Lot assessment or an Improved Lot assessment on each Lot owned from the date said Owner acquires title. The concept of differential assessment shall also include additional assessments to Lots 5 and 6 in order to allow the maintenance, repair and snow removal of a 28-foot access easement which serves Lots 5 and 6, and it is the Declarant's intent that Lots 5 and 6 may be assessed all costs of repair, maintenance and snow removal for the access easement because the access easement provides access from those Lots to public streets within the development.

Section 10 - Time for Payments. The General Assessment for each Lot shall be payable either on an annual, semi-annual or quarterly basis, as determined by the Executive Board of the Association. The Executive Board shall issue written notice to each Lot Owner at least thirty (30) days in advance of the due date of the assessment. All assessments shall be due and payable upon the due date identified by the Executive Board. Special and Supplementary Assessments shall be payable as provided in the resolutions authorizing the same. All installments of General, Supplementary, and Special Assessments shall be due and payable without notice or demand, and all Assessments shall be paid without any setoff or diminution of any kind. Any Assessment or installment thereof or other amount payable pursuant to this Section or under the Articles of Incorporation or its Bylaws which is not paid when due shall bear interest from the delinquency date until paid at the maximum rate permitted by law for interest as provided in Colorado Revised Statutes §38-33.3-315(2) or any subsequent amendment thereto or such lesser rate as the Board shall determine and/or may be subject to a late charge as may be set and uniformly applied by the Board. All payments on account shall be first applied to interest and late charges and then to the Assessment payment due.

Section 11 - Lien for Assessments and Other Amounts. The Association shall have a lien against each Lot to secure payment of any Assessment and other amounts due and owing to the Association with respect to that Lot which shall be created and enforced as provided in Colorado Revised Statutes §38-33.3-316 or any subsequent amendment thereto.

Section 12 - Estoppel Certificate. Upon payment of a reasonable fee and upon written request of any Owner, or First Mortgagee, or any person with any right, title or interest in a Lot or intending to acquire any right, title, or interest in a Lot, the Association shall furnish a written statement stating forth the amount of any Assessments, if any, due or accrued and then unpaid with respect to such Lot and the amount of the Assessments for the

current fiscal period of the Association payable with respect to the Lot, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association, for all purposes, that no greater or other amounts were then due or accrued and unpaid.

Section 13 - No Abatement. No diminution or abatement of Assessments shall be allowed or claimed for any reason including, without limitation, from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance, or order of a governmental authority.

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\* Section 14 - Rights of First Mortgagees. Any First Mortgagee of a Lot within the Project may jointly or severally pay any tax or other charge which is in default and which may have become a charge or a lien against any common area of the Association, and any First Mortgagee may jointly or severally pay any overdue premium on hazard insurance policies or secure new hazard insurance coverage on the lapse of any such policy, upon common area of the Association, and any First Mortgagee(s) making such payments shall be entitled to immediate reimbursement therefor from The Devon Community Association.

Section 15 - Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, a charge and lien created herein: (a) All properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use; (b) all Common Areas; and (c) all properties exempted from taxation by the State or County Government on the terms and to the extent of such legal exemption.

ARTICLE VI

USE AND OTHER RESTRICTIONS

Section 1 - Nuisances. No nuisance shall be permitted to exist or operate upon any property so as to jeopardize property values or to be detrimental to the well being of any other Member of the Association.

Section 2 - Restriction on Further Subdivision. No Lot upon which a Living Unit has been constructed shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.

Section 3 - Single-Family Residences. No Living Unit shall be used for any other purpose other than as a single-family residence, and no business or commercial activity shall be carried on or within the Project other than those home occupations defined as such in the City of Longmont Zoning Code.

Section 4 - Common Area Restriction. All use and occupancy of the Common Area shall be subject to and governed by the Rules and Regulations adopted by the Association. No damage or waste shall be committed to the Common Area or Improvements located thereon.

Section 5 - No Imperiling of Insurance. Nothing shall be done or kept in or on any portion of the Project which might result in an increase in the premiums with respect to insurance obtained for all or any portion of the Project or which might cause cancellation of such insurance except with the prior written consent of the Association.

Section 6 - No Violation of Law. Nothing shall be done or kept in or on any portion of the Project which would be in

violation of any Statute, Rule, Ordinance, Regulations, Permit, or validly imposed requirement of any governmental body.

Section 7 - Appearance. All parts of the Project shall be kept in a clean, safe, and attractive condition, and no rubbish or refuse, or garbage shall be allowed to accumulate.

Section 8 - Restrictions on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the Project (including, without limitation, any Lot) without the prior written approval of the Architectural Review Board of the Association.

Section 9 - Conditions for Architectural Control. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot, Living Unit, Common Area or the improvements located thereon from its natural or improved state existing on the date such property was first subject to this Declaration shall be made or done without compliance with the procedures set forth in Article IX of this Declaration regarding Architectural control.

Section 10 - Rules and Regulations. Every Owner or guests or members of the family, or related user, and employees shall strictly adhere to the Rules and Regulations adopted from time to time by the Association. The Board may adopt general rules, including but not limited to, rules to regulate potential problems relating to the use of the property and the well-being of the members, such as keeping of animals, storage items, and the use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, signs, trash, trash containers, maintenance, and removal of vegetation on the properties.

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*SEE AMENDMENT*  
\*Section 11 - Restrictions on Parking and Storage. Except as expressly heretofore provided, no Lot, including the private drives, or parking areas, unless specifically designated by the Association therefor, shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor-driven cycle, truck, automobile, self-contained motorized vehicle, or any type of van except as a temporary expedience for loading, delivery, or emergency. The same shall be stored, parked, or maintained within the garage area of a Living Unit. This restriction, however, shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction of residential dwellings or the maintenance of the Common Area or Lots.

*SEE AMENDMENT*  
\*Section 12 - Animals Within Project. No animals shall be kept or harbored within the Project except that any Owner may keep a reasonable number of household pets, subject to existing ordinances of the City of Longmont, Colorado. Any such household pet shall be kept in the interior of any Living Unit. Such pet must be kept at all times on a leash if the pet is taken from the interior of any Living Unit. It shall be the obligation of each Owner owning a pet to control it in accordance with existing ordinances of the City of Longmont, Colorado. It shall be the responsibility of each owner to maintain any Lot or Common Area used in any manner by any pet to avoid any noise or odor or nuisance to any other owner within the Association. The Executive Board of the Association may, at any time, create rules and regulations regarding the keeping of animals within the subdivision, and all Owners shall be subject to this covenant which requires that the Owners comply with the terms and conditions of those rules and regulations regarding animals within the project. Any rules and regulations regarding animals shall be established in accordance with the Bylaws of the Association.

Section 13 - Control of Antennas and Receiving Equipment. Exterior television receiving or transmitting devices of any type

including receiving or transmission equipment for microwave transmissions and any radio receiving or transmitting devices of any type are expressly prohibited unless approved in writing by the Architectural Review Committee of the Association.

Section 14 - Underground Electric Lines. All electric, television, radio, telephone line installations and connections from any property line of a Lot to a Living Unit or other structures shall be placed underground, except that during the construction of a Living Unit the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

Section 15 - No Hazardous Activities. No activities shall be conducted on the project and on improvements constructed on the project which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the project and no open fires shall be lighted or permitted on the project except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

Section 16 - No Annoying Light, Sound or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others.

Section 17 - Dog Runs, Clotheslines and Storage Areas. Any clothesline, dog run, drying yards, storage area or wood pile shall be screened and located within the confines of enclosures such as a privacy fence or wall located within a pad site so as to conceal them from the view of neighboring units or any public or private street and shall be subject to the provisions of this Declaration regarding Architectural Control.

Section 18 - Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, and not on any Lots unless placed in a container suitably located, solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition.

Section 19 - Repair. 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 on any Lot unless it is done within completely enclosed structures located in the Living Unit which screen the sight and sound of the activity from the street and from adjoining property nor shall any such activity be performed on the Common Area. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

Section 20 - Storage. No tanks for the storage of gas, fuel, oil, or other materials shall be erected, placed, or permitted above or below the surface of the Lot.

Section 21 - Trash Burning. Trash, leaves, and other similar materials shall not be burned within the Project.

Section 22 - Owner's Obligation Upon Resale of Lot. The deed or instrument transferring title to any Lot shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration, as well as any applicable Supplementary Declarations.

Section 23 - Leases. Any lease agreements between an Owner and a tenant shall provide that the tenant shall comply in all respects to the provisions of this Declaration, the Articles of

Incorporation, Bylaws and rules and regulations of the Association, and that any failure by the tenant to comply with the terms and provisions of such documents shall be a default under the lease. The Board may require information forms to be completed and security deposits to be made by tenants. Further, all leases shall be in writing, and a copy thereof shall be provided upon request to the Executive Board, which may require the use of its approved lease form or the insertion of particular provisions. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has violated any provision of this Declaration, the Articles of Incorporation or the Bylaws. No short-term leases (i.e., for terms less than month-to-month) shall be permitted and no time-sharing or such other forms of interval ownership shall be permitted.

Section 24 - Covenants Run with Land. It is expressly understood and agreed that all covenants, conditions, and restrictions contained herein are intended to and shall run with the land, and Declarant hereby agrees, for itself and its successors and assigns, that such covenants, individually and collectively, touch and concern the land and shall be binding, fully and in all respects, upon Declarant's successors in title to the land, regardless of how succession of title may be accomplished.

## ARTICLE VII

### INSURANCE

Section 1 - Insurance. All insurance, other than title insurance, carried in connection with the Common Area, Lots, Living Units, Improvements, and Project shall be governed by the provisions of this Article VII.

Section 2 - Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability, and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do insurance business in the State of Colorado.

To the extent possible, the casualty, property, and liability insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, and members; (ii) provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees, and agents; (iii) provide that the policy of insurance shall not be terminated, canceled, or substantially modified without at least thirty (30) days' prior written notice to the Association; and (iv) provide for a standard Mortgagee's Clause in favor of all First Mortgagees who have an interest within the project.

Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and which shall be consistent with the requirements of any First Mortgagees. Any loss falling within the deductible portion of a policy shall be paid by the Association, but may be recovered from the Lot Owner(s) whom the Association determines to be responsible for the loss. The cost and expense of all insurance obtained by the Association shall be paid out of Association funds collected by Assessments and otherwise as elsewhere provided in this Declaration.

Section 3 - Insurance for Common Area and Fidelity Insurance. The Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance, to the

extent that such insurance is reasonably available from a carrier with a Best's Insurance Rating of Class X-B or better:

(a) A policy of property insurance covering all insurable improvements located on the Common Area, with coverage sufficient to obtain a replacement cost endorsement providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and/or coverage on personal property owned by the Association. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire and other hazards covered by the standard all risk form; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

(b) A comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association in an amount not less than \$1,000,000 covering bodily injury, personal injury and property damage liability arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobile and, if applicable, garagekeeper's liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

(c) A policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association. Such fidelity coverage or bonds shall meet the following requirements:

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

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

(3) the amount of coverage shall not be less in aggregate than two (2) months current assessments plus reserves, as calculated from the current budget of the Association or such amount that is subsequently required by legislative amendment to C.R.S. §38-33.3-313

All policies of insurance in this section 2 shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Association and shall provide that the policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the insured, as well as to the First Mortgagees of Living Unites who have requested notice of cancellation or modification from the Association. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of any Living Unit upon written request. The insurance shall be carried in blanket form naming the Association, as the insured, as trustee and attorney in fact for all Owners, and their respective First

Mortgagees and each Owner shall be an insured person under such policies with respect to liability arising out of any such Owner's membership in the Association.

Section 4 - Insurance on Dwellings. Each owner shall be responsible for obtaining general liability and property insurance for any dwelling owned without participation of the Association. Insurance coverage on the furnishings and other items of personal property belonging to an owner shall be the owner's responsibility as well. Any insurance policy obtained by an Owner shall, to the extent possible at reasonable cost, contain a waiver of the right of subrogation by the insurer as to any claims against Village at Southridge Community Association, its officers, directors, agents, and employees.

Section 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 other insurance.

Section 6 - Workmen's Compensation and Employer's Liability Insurance. The Association may obtain and maintain workman's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

Section 7 - Notice of Loss to First Mortgagees. Provided that a First Mortgagee has, in writing, requested the following information and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event there shall be any damage to or destruction of the Common Area which shall be in excess of Ten Thousand Dollars (\$10,000.00), timely written notice of any such damage or destruction shall be given by the Association to such First Mortgagee.

Section 8 - Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

Section 9 - Distribution of Insurance Proceeds by the Association. In the event that the Association is required to distribute any insurance proceeds directly to an Owner for losses to property, any such distribution shall be made jointly payable to the Owner and any First Mortgagee of record, as defined in this Declaration.

Section 10 - Other Insurance. The Association may obtain insurance coverage against such additional risks as it shall determine to be appropriate.

## ARTICLE VIII

### VARIOUS RIGHTS AND EASEMENTS

Section 1 - Association Easements. Declarant hereby expressly creates and reserves for the benefit of the Association, its designees, successors and assigns, the following easements:

(a) Easements Over Lots for Maintenance of Common Area. Easements over and across Lots as may be necessary or appropriate for the Association to perform duties and functions which it is obligated or permitted to perform under this Declaration, including the use, enjoyment, maintenance, repair, and replacement of any portion of Common Area, or Improvements thereon, and for access, ingress, and egress necessary for such use, enjoyment, maintenance, repair and replacement.

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(b) Easements for Association Fences. Easements over and across those Lots, Common Area and Public Streets upon which Declarant installs or constructs the Association Fences, if any, as may be reasonable and necessary for the installation, construction, operation, maintenance, repair and replacement of the Association Fences, if any, and for access, ingress and egress necessary for such installation, construction, operation, maintenance, repair and replacement.

Section 2 - Owner Easements. Declarant hereby expressly creates and reserves for the benefit of each Lot, and for the benefit of the Owner of such Lot, the following easements:

(a) Easements for Encroachments. A valid, currently existing easement for any encroachment, and for the maintenance of the same, which results from any portion of any Living Unit on a Lot encroaching upon an adjoining Lot or adjoining Common Area, whether as a result of errors in construction of any Improvements by Declarant, or reconstruction, repair, shifting, settlement, or movement of such Improvements, which easement shall exist for so long as such Living Unit exists.

(b) Easements Over Common Area for Use and Maintenance of Living Units. Easements over Common Area as may be necessary or appropriate for the use, enjoyment, maintenance, repair and replacement of the Living Unit constructed on such Lot, and for access, ingress and egress necessary for such use, enjoyment, maintenance, repair and replacement.

(c) Easements Over Common Area for Utilities. An easement over, across, under and through Common Area, in the location where such utilities and related facilities are originally installed by Declarant or in such other location as may be designated from time to time by the Association, for the purpose of installation, operation, maintenance, repair and replacement of underground utilities and related surface facilities necessary for the use, enjoyment and operation of the Living Unit constructed on such Lot, including, but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable lines, and all equipment and facilities incidental thereto, and for access, ingress and egress necessary for such installation, operation, maintenance, repair and replacement.

(d) Limitation on Owners' Rights in Common Area. Except as is otherwise specifically provided in this Declaration and except as may be authorized by the Association acting through its Executive Board, Owners and Related Users of Owners shall have no right to use or occupy Common Area.

Section 3 - Easements Deemed Appurtenant. The easements and rights hereinabove created shall be binding upon and inure to the benefit of the Association or each Lot in the project and the Owner of each such Lot, as the case may be, and all conveyances of and other instruments affecting title to any such Lot or Common Area shall be deemed to grant and reserve the easements and rights as are provided for herein, even though no specific reference to such easements appears in any such conveyance.

Section 4 - Title to Common Area. Title to the Common Area shall be conveyed to the Association by the Developer, free and clear of financial encumbrances, prior to conveyance of the first Lot to an Owner who is not the Developer.



## ARTICLE IX

ARCHITECTURAL REVIEW

Section 1 - Activation of the Association Architectural Review Committee. The initial Association Architectural Review Committee and the provisions of this Article shall not be activated or effective until the earlier of (a) the date the Executive Board of the Association elects to activate the Association Architectural Review Committee; or (b) the date 51% of the Members vote to direct the Executive Board to activate the Association Architectural Review Committee. Thereafter the Executive Board shall send notice to all Members advising the Members of the activation of the Association Architectural Review Committee and the effectiveness of the provisions of this Article ("Notice of Activation") and shall Record the Notice of Activation. On the date of Recordation of the Notice of Activation all of the provisions of this Article shall become effective and the Association Architectural Review Committee shall have the powers and duties set forth in this Declaration.

Section 2 - Deactivation and Reactivation of the Association Architectural Review Committee. The Executive Board of the Association may elect, from time to time, to deactivate a previously activated Association Architectural Review Committee. Thereafter, the Executive Board shall send notice to all Members advising the Members of the deactivation of the Association Architectural Review Committee ("Notice of Deactivation") and shall Record the Notice of Deactivation. Thirty (30) days after the date of the Notice of Deactivation the provisions of this Article shall be suspended and the Association Architectural Review Committee shall no longer have the powers and duties set forth in this Article or as may be provided elsewhere in this Declaration. The Association Architectural Review Committee may be reactivated and deactivated, from time to time, in accordance with the provisions set forth in Section 1 above and this Section.

Section 3 - Membership of Committee. Members of the Association Architectural Review Committee may, but shall not necessarily be, Members of the Association. Members of the Association Architectural Review Committee shall be appointed within ninety (90) days after the date of the Notice of Activation. Members of the Association Architectural Review Committee may be removed at any time by the Executive Board of the Association and shall serve for such term as may be designated by the Executive Board of the Association or until resignation or removal by the Board of the Association. The number of members of the committee shall be designated in the Bylaws of the Association.

Section 4 - Improvement to Property Defined. "Improvement to Property," ~~requiring approval of the Association Architectural Review Committee,~~ shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure or other Improvements, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and (e) any change or alteration of any previously approved Improvement to Property including any change of exterior appearance, color or texture.

Section 5 - Approval of Improvements Required. After the activation of the Association Architectural Review Committee, the approval of the Association Architectural Review Committee shall be required for any Improvement to Property on any lot within the project, except for any Improvement to Property made by Declarant and except as prior approval may be waived or certain Improvements to Property may be exempted in writing or under written guidelines

or rules promulgated by the Association Architectural Review Committee because approval in such case or cases is not reasonably required to carry out the purposes of this Declaration.

Section 6 - Committee Guidelines or Rules. The Association Architectural Review Committee may issue guidelines or rules relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property. Such guidelines or rules may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. Such guidelines or rules may waive the requirement for approval of certain Improvements to property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration. Such guidelines or rules may elaborate or expand upon the provisions herein relating to procedures and criteria for approval. Such guidelines or rules may specify rules and restrictions pertaining to the construction of Improvements to property, including, for example, the storage of construction materials and hours of construction operations. Such guidelines or rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 7 - Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to property, the Owner or its duly authorized representative proposing to make such Improvement to property ("Applicant") shall submit to the Association Architectural Review Committee at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, landscape plans, specifications and samples of materials and colors as the Association Architectural Review Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property ("Plans"). The Association Architectural Review Committee may require submission of additional Plans or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Association Architectural Review Committee of all required materials in connection with the proposed Improvement to Property, the Association Architectural Review Committee may postpone review of any materials submitted for approval.

Section 8 - Criteria for Approval. The Association Architectural Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the project in the vicinity of the proposed Improvement to Property; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the project; that the Improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the project or the enjoyment thereof by Owners; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association. The Association Architectural Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Association Architectural Review Committee may deem appropriate.

Section 9 - Architectural Review Fee. The Association Architectural Review Committee may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Association Architectural Review Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determine in any other

reasonable manner, such as based upon the estimated cost of the proposed Improvement to Property.

Section 10 - Decision of Committee. The decision of the Association Architectural Review Committee shall be made within thirty (30) days after receipt by the Association Architectural Review Committee of all materials required by the Association Architectural Review Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the Association Architectural Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Association Architectural Review Committee.

Section 11 - Appeal to Association Board. If the Association Architectural Review Committee denies, imposes conditions on, or refuses approval of a proposed Improvement to Property, the Applicant may appeal to the Executive Board of the Association by giving written notice of such appeal to the Association Architectural Review Committee within twenty (20) days after such denial or refusal. The Executive Board or a Tribunal appointed pursuant to the Bylaws of the Association shall hear the appeal in accordance with the provisions of the Bylaws of the Association for Notice and Hearing, and the Executive Board for the Association shall decide whether or not the proposed Improvement to Property or the conditions imposed by the Association Architectural Review Committee shall be approved, disapproved or modified.

Section 12 - Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Association Architectural Review Committee within thirty (30) days after the date of receipt by the Association Architectural Review Committee of all required materials including, in the case of Initial Improvements, final working drawings.

Section 13 - Obtaining Governmental Approvals. Applicant shall obtain, prior to commencement of construction of any Improvements to Property, all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any governmental authority having jurisdiction ("Governmental Approvals") in order for Applicant to construct, operate and maintain the Improvements to Property. The Governmental Approvals shall be deemed to include, but not be limited to, building approvals by the City of Longmont, Colorado.

Section 14 - Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible in complete conformity with the description of the proposed Improvement of Property, any materials submitted to the Association Architectural Review Committee in connection with the proposed Improvement to Property, any conditions imposed by the Association Architectural Review Committee and in compliance with the conditions and restrictions of this Declaration.

Section 15 - Notice of Completion. Upon completion of any Improvement of Property, the Applicant may give written Notice of Completion to the Association Architectural Review Committee. Until the date of receipt of such a Notice of Completion, the Association Architectural Review Committee shall not be deemed to have notice of completion of such Initial Improvements or Improvement to Property.

Section 16 - Inspection of Work. The Committee or its duly authorized representative shall have the right to inspect any Improvement to Property or the Property itself prior to, during or after completion of any improvement to the Property. The

Committee's right of inspection of improvements shall terminate thirty (30) days after the work or improvement shall have been completed and the respective Owners shall have given written notice to the Committee of such completion. The Committee's right to inspection shall not be terminated pursuant to this Section in the event plans for the construction of improvements or modification of improvements have not been previously submitted to it by the Applicant/Owner. If, as a result of any inspection, the Committee finds that such improvement has been initiated without obtaining approval of the plans therefore, or is not being constructed in substantial compliance with the plans approved by the Committee, the Committee shall have the right to initiate a civil action seeking injunctive relief against the Owner of the Property and any contractor or subcontractor who is completing the improvements without compliance with the Architectural Control provisions of this Declaration. Should the Committee be successful in obtaining injunctive relief against the Owner, any contractor or subcontractor involved in construction of improvements, the Committee shall be entitled to receive from the Owner all costs of the action, including reasonable attorney's fees. It is the intent of this Section to give the Committee the ability to prevent any construction within the subdivision of any type of improvement that has not been previously approved by the Architectural Review Committee.

Section 17 - Notice of Noncompliance. If, as a result of inspections or otherwise, the Association Architectural Review Committee finds that any Improvement to property has been done without obtaining the approval of the Association Architectural Review Committee, or was not done in substantial compliance with the approved Plans or other materials furnished to, and any conditions imposed by, the Association Architectural Review Committee, or has not been accomplished as promptly and diligently as possible, then the Association Architectural Review Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within thirty (30) days after the Association Architectural Review Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

Section 18 - Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Association Architectural Review Committee fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the Association Architectural Review Committee of written Notice of Completion from the Applicant, the Improvement to Property shall be deemed in compliance if the Improvement to Property was, in fact, completed as of the date of the Notice of Completion.

Section 19 - Appeal to Association Board of Finding of Noncompliance. If the Association Architectural Review Committee gives any notice of noncompliance, the Applicant may appeal to the Executive Board of the Association by giving written notice of such appeal to the Executive Board of the Association and the Association Architectural Review Committee within thirty (30) days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Association Architectural Review Committee shall request a finding of noncompliance by the Executive Board of the Association by giving written notice of such request to the Association and the Applicant within thirty (30) days after delivery to the Applicant of a notice of noncompliance from the Association Architectural Review Committee. In either event, the Executive Board of the Association or a Tribunal appointed pursuant to the Bylaws of the Association shall hear the matter in accordance with the provisions of the Bylaws for Notice and Hearing, and the Executive Board of the Association shall decide whether or not there has been such

noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

Section 20 - Correction of Noncompliance. If the Executive Board of the Association determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Executive Board of the Association. If the Applicant does not comply with the Executive Board of the Association ruling within such period the Executive Board, may, at its option, record a Notice of Noncompliance against the real property on which the noncompliance exists, may remove the noncomplying Initial Improvements or other Improvement to Property or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant, the Executive Board of the Association may levy a Reimbursement Assessment against the Owner of the Lot for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration.

Section 21 - No Implied Waiver or Estoppel. No action or failure to act by the Association Architectural Review Committee or the Association shall constitute a waiver or estoppel with respect to future action by the Association Architectural Review Committee with respect to any Improvement to Property. Specifically, the approval by the Association Architectural Review Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to property or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to Property.

Section 22 - Committee Power to Grant Variances. The Association Architectural Review Committee may authorize variances from compliance with any of the provisions of this Declaration for property in the project when circumstances such as, but not limited to, topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Executive Board or a majority of the members of the Association Architectural Review Committee. If any such variance is granted, no violation of the provisions of this Declaration for property in the project shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for property in the project for any purpose except as to the particular property and particular provisions covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with Restrictions in any deed or lease from Declarant or to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, development guides and zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

Section 23 - Compensation of Members. Members of the Association Architectural Review Committee may receive reimbursement of out-of-pocket expenses incurred by them in the performance of their duties hereunder as compensation for the performance of such duties if approved by the Executive Board of the Association.

Section 24 - Meetings of Committee. The Association Architectural Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Association Architectural Review Committee may, from time to time, by

resolution in writing adopted by a majority of the members, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for or on behalf of the Association Architectural Review Committee, except the granting of approval to any Improvement to Property and granting of variances. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the Association Architectural Review Committee shall constitute action of the Association Architectural Review Committee.

Section 25 - Records of Actions. The Association Architectural Review Committee shall report in writing to the Executive Board of the Association all final action of the Association Architectural Review Committee and the Executive Board shall keep a permanent record of such reported action.

Section 26 - Estoppel Certificates. The Association shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Association Architectural Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

Section 27 - Nonliability for Committee Action. There shall be no liability imposed on the Association Architectural Review Committee, any member of the Committee, any Committee Representative, the Association, any member of the Executive Board of either, or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Association Architectural Review Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Association Architectural Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

Section 28 - Construction Period Exception. Until such time as all Living Units are built upon Lots within the project, all actions regarding architectural control shall be decided by the Declarant without participation by the Executive Board of the Association. The Declarant may incorporate and utilize any or all of the provisions of this Article IX to arrive at its decision.

## ARTICLE X

### TERMINATION AND AMENDMENT OF DECLARATION

Section 1 - Termination. This Declaration shall continue in effect until and unless terminated as provided in accordance with the provisions of C.R.S. §38-33.3-218 as originally enacted or as subsequently amended by Colorado Legislature.

Section 2 - Amendment. Unless terminated as provided in Section 1, each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each except for provisions stated in Article XII, Section 2, which identify specific voting requirements for those actions to be authorized. This Declaration may be amended during the first twenty (20) year period in accordance with the provisions of C.R.S. §38-33.3-217 as originally enacted or subsequently amended by the Colorado Legislature

## ARTICLE XI

CONDEMNATION, DAMAGE OR DESTRUCTION  
TO COMMON AREA

Section 1 - Damage or Destruction to Common Area. In the event of damage or destruction to all or a portion of the Common Area due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, the Association shall present to the Members a notice of a special assessment for approval by the membership as provided for in Article V, Section 7 of this Declaration. If such assessment is approved, the Association shall levy such assessment and proceed to make such repairs or reconstruction. If such assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by the written consent of seventy-five percent (75%) of the Owners other than Declarant, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the First Mortgagees of their respective Lots, if any. Such assessment shall be due and payable as provided by resolution of the Executive Board, but not sooner than sixty (60) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on the Lot, and may be enforced and collected in the same manner as any assessment lien provided for in this Declaration.

Section 2 - Owner-Caused Damage. If, due to the act or neglect of an Owner or a Related User of an Owner, whether by virtue of the exercise by such Owner or Related User of any easement or right granted to him herein or otherwise, loss or damage shall be caused to any property, including the Common Area, and, in the case of damage to property, if such Owner does not promptly repair and restore any such damaged property to the condition it was in prior to such damage at such owner's sole cost and expense, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as a Reimbursement Assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Residential Lot of such Owner as provided elsewhere in this Declaration for assessments or other charges.

Section 3 - Condemnation Procedure. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Area, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Area and improvements thereof), as reasonably determined by the Association in excess of \$10,000, the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Area or improvement thereon sought to be so condemned, to all First Mortgagees, Members, and to the Declarant. The Association shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings, pursuant to which the Common Area or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein is relinquished without giving all First Mortgagees, Members, and Declarant at least fifteen (15) days prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking shall be payable to the

Association, subject to the provisions of C.R.S. §38-33.3-107 regarding the distribution of eminent domain awards as that section was originally enacted or is subsequently amended by the Colorado Legislature.

## ARTICLE XII

### MORTGAGEE'S RIGHTS

Section 1 - Notice to Mortgagee. Each holder of a first deed of trust on any Lot shall, upon written request by such holder to the Board, receive any of the following:

(a) Copies of budgets, notices of assessments, insurance certificates, or any other notices or statements provided under this Declaration by the Association to the Owner of the Lot covered by the deed of trust;

(b) Any audited or unaudited financial statements of the Association within ninety (90) days following the end of any fiscal year, which are prepared for the Association and distributed to the Owners subject to the limitation that the Association shall not be required to provide an audited financial statement to any owner or mortgagee unless the holder of the first mortgage requests either an audited or unaudited financial statement from the Association;

(c) Copies of notices of meetings of the Owners and the right to be represented at any such meetings by designated representative;

(d) Notice of the decision of the Owners or the Association to make any material amendment to this Declaration (as defined in Federal National Mortgage Association Lending Guide), the Bylaws, or the Articles of Incorporation of the Association;

(e) Notice of substantial damage to or destruction of any Building or Living Unit, or any part of the Common Area;

(f) Notice of commencement of any condemnation or eminent domain proceedings with respect to any part of the Common Area or any Lot within the Project;

(g) Notice of any default of the holder's Owner which is not cured by the Owner within thirty (30) days after the giving of notice by the Association to the Owner of the existence of the default;

(h) The right to examine the books and records of the Association at any reasonable time;

(i) Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 2 - Actions Requiring Both Member and First Mortgagee Approval. Notwithstanding anything to the contrary set forth in this Declaration, the Association shall not:

(a) unless it has obtained the prior written consent of at least sixty seven percent (67%) of all classes of Members and 67% of First Mortgagees of Lots (based upon one vote for each First Mortgage owned):

(1) by act or omission, change, waive, or abandon any scheme of architectural control, or enforcement thereof, as set forth in this Declaration, regarding the design or maintenance of the Lots, improvements thereon or the Common Area;



(2) fail to maintain full current replacement cost fire and extended insurance coverage on the Common Area, or

(3) use hazard insurance proceeds for Common Area property losses for purposes other than to repair, replace, or reconstruct such property; or

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer any common property owned, directly or indirectly, by the Association for the benefit of the Owners (excluding the granting of easements for public utilities or other purposes consistent with the intended use of such common property); or

(5) effectuate any decision to terminate professional management and assume self-management of the Properties;

(6) any change in the voting method;

(7) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(8) change the method of determining or the amount of reserves for maintenance, repair and replacement of the common areas;

(9) change or alter in any respect the required insurance coverages or fidelity bonds;

(10) change the Association or owner responsibility for maintenance and repair of the common area, lots, lot improvements or Living Units;

(11) Seek to expand or contract the project subject however to the Special Declarant's right of expansion and development rights set forth within this Declaration;

(12) change the boundaries of any lot;

(13) change the interests in the general common areas;

(14) alter this Declaration with respect to leasing of Living Units or the composition of any right of first refusal or similar restructure or the right of any Lot owner to sell, transfer, or convey a lot;

(15) alter any provision within the Declaration, Articles of Incorporation, or Bylaws which is for the express benefit of a first mortgage holder or eligible insurer or guarantor of first mortgage of a Lot within the project.

(16) make a decision by the owners Association to establish self management when professional management had been required previously by an eligible mortgage holder;

(17) attempt restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;

(18) take any action to terminate the legal status of the project after substantial destruction or condemnation occurs;

(19) attempt a termination for reasons other than substantial destruction or condemnation.

Section 3 - Rights of First Mortgagees to Pay Assessments, Etc. Any First Mortgagee of a Lot within the Project may jointly or severally pay any tax or other charge which is in default and which may have become a charge or a lien against any common property of the Association, and any First Mortgagee may jointly or severally pay any overdue premium on hazard insurance policies or secure new hazard insurance coverage on the lapse of any such policy upon any common area of the Association, and any First Mortgagee(s) making such payments shall be entitled to immediate reimbursement therefor from the Association.

### ARTICLE XIII

#### RIGHTS RESERVED BY DECLARANT

Section 1 - Special Declarant Rights. Declarant hereby reserves the right from time to time until the Turnover Date, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

(a) Completion of Improvements. The right to complete improvements indicated on Plats and Maps filed with the Declarant.

(b) Exercise of Development Rights. The right to exercise any Development Right reserved in Article XIII of this Declaration.

(c) Sales Management and Marketing. The right to maintain sales offices, management offices, signs advertising the project and models.

(d) Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the project or within real estate which may be added to the project.

(e) Master Association. The right to make the project subject to a Master Association.

(f) Merger. The right to merge or consolidate the project with another project of the same form of ownership.

(g) Control of Association and Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member.

(h) Amendment of Declaration. The right to amend this Declaration in connection with the exercise of any Development Rights.

(i) Amendment of Map. The right to amend the Map in connection with the exercise of any Development Rights.

Section 2 - Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 1 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

(a) Dedications. The right to establish from time to time, by dedication or otherwise, utility and other easements for purposes, including but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas and conduit installation areas and to create other reservations, exceptions and exclusions for the benefit of and to serve the Lot Owners within the project.

(b) Use Agreements. The right to enter into, establish, execute, amend and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking, which may or may not be a part of the project for the benefit of the Lot Owners and/or the Association.

(c) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 3 - Rights Transferrable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Boulder County. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 4 - Expansion Rights. Declarant expressly reserves the right to subject all or any part of the property described in "Exhibit A" attached hereto and hereby incorporated by reference (the "Development Property") to the provisions of this Declaration upon the substantial completion of improvements on the Development Property. The consent of the existing Lot Owners or Mortgagees shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

Section 5 - Development and Withdrawal Rights. Declarant expressly reserves the right to construct additional Units, Common Elements and Limited Common Elements (the "Additional Improvements") to subdivide Units and to convert Units into Common Element on all or any portion of the Property reserved for future development in the Declaration or on the Map. Declarant may exercise its Development Rights on all or any portion of the reserved Property in whatever order of development Declarant, in its sole discretion, determines. If all or any part of the Development Property is submitted to this Declaration, this right to reserve property for future development shall apply to such property as well. Declarant expressly reserves the right to withdraw all or any portion of the Property that is reserved for future development in the Declaration or on the Map from the project by recording a document evidencing such withdrawal in the office of the Clerk and Recorder of Boulder County; provided, however, that no portion of the Property may be withdrawn after a Lot in that portion of the Property has been conveyed to a Purchaser. The property withdrawn from the project shall be subject to whatever easements, if any, are reasonably necessary for access to or operation of the project. Declarant shall prepare and record in the office of the Clerk and Recorder of Boulder County whatever documents are necessary to evidence such easements.

Section 6 - Amendment of the Declaration. If Declarant elects to submit the Development Property, or any part thereof, or Additional Improvements, to this Declaration, or to subdivide or to convert Units at such time as construction of the improvements on the Development Property or the Additional Improvements are substantially complete, Declarant shall record an amendment to this Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units submitted to the Declaration. The Allocated Interests appurtenant to each Unit in the project, as expanded, shall be based on the total number of Lots within the project, as expanded, and/or on such other information as Declarant shall reasonably determine is relevant to the reallocation.

The amendment to this Declaration shall contain, at a minimum, the legal description of the Development Property, or a part thereof, or a description of the property on which the Additional Improvements being submitted to this Declaration are located and a

schedule of the Allocated Interests appurtenant to the Units in the project as expanded.

Section 7 - Amendment of the Map. Declarant shall, contemporaneously with the amendment of this Declaration, file an amendment of the Map showing the location of the Additional Improvements constructed on the Development Property. The amendment to the Map shall substantially conform to the requirements contained in this Declaration.

Section 8 - Interpretation. Recording of amendments to this Declaration and Map in the office of the Clerk and Recorder of Boulder County shall automatically:

(a) Vest in each existing Lot Owner the reallocated Allocated Interests appurtenant to the Lot; and

(b) Vest in each existing Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot.

Upon the recording of an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property, as expanded. The Development Property, or any part thereof, or the Additional Improvements, shall be added to and become a part of the Property for all purposes. All conveyances of Lots after such expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made to any amendment to this Declaration or the Map. Reference to this Declaration and the Map in any instrument shall be deemed to include all amendments to this Declaration and the Map without specific reference thereto.

Section 9 - Maximum Number of Lots. The maximum number of Lots in the project shall not exceed 62 Lots or the maximum number of Lots allowed by any governmental entity having jurisdiction over the Property, pursuant to any development plan for the Property and the Development Property. Declarant shall not be obligated to expand the project beyond the number of Lots initially submitted to this Declaration.

Section 10 - Construction. The buildings, structures and types of improvements to be placed on the Property or the Development Property or any part thereof shall be of a quality equal to the improvements previously constructed on the property, but need not be of the same size, style or configuration. The improvements may be located anywhere on the Property reserved for future development or on the Development Property.

Section 11 - Construction Easement. Declarant expressly reserves the right to perform warranty work, repairs and construction work and to store materials in secure areas in Lots and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Lot Owner or Mortgagee. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, conduits and other facilities across the land not designated as reserved for future development in this Declaration or on the Map for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an improvement containing Living Units.

Section 12 - Reciprocal Easements. If all or part of the Development Property is not submitted to this Declaration, or if property is withdrawn from the Project ("Withdrawn Property"):

(a) The Owner(s) of the Development Property and/or Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Project; and

(b) The Owner(s) in the Project shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Development Property and Withdrawn Property.

Declarant shall prepare and record in the office of the Clerk and Recorder of Boulder County whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the Owners of the Development Property and the Withdrawn Property and the Owners in the Project shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

Section 13 - Termination of Development Rights. The development rights reserved by Declarant, for itself, its successors and assigns, shall expire ten (10) years from the date of recording this Declaration, unless the expansion and development rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the expansion and development rights by Declarant. Upon the expiration or other termination of the development rights, any Lot then subject to Development Rights shall become Common Elements.

Section 14 - Transfer of Development Rights. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Boulder County. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE XIV

REQUIRED ALLOCATION OF INTERESTS

\* Section 1 - Allocated Interests. The undivided interest in the Common Elements, the common expense liability and voting in the Association allocated to each Lot are as follows:

SEE AMENDMENT

(a) The undivided interest in the Common Elements shall be determined by using a formula in which the numerator is 1 and the denominator is the total number of Lots subject to this original Declaration or any subsequent amendment of this Declaration which are shown on a recorded subdivision plat(s) required by the City of Longmont and recorded with the Boulder County Clerk and Recorder;

(b) The percentage of liability for common expenses shall be determined by using a formula in which the numerator is 1 and the denominator is the total number of Lots subject to this original Declaration or any subsequent amendment of this Declaration which are shown on a recorded subdivision plat(s) required by the City of Longmont and recorded with the Boulder County Clerk and Recorder; and

(c) The number of votes in the Association, on the basis of one (1) vote being allocated to each Lot Owner (not Living Unit Owner), as determined by the total number of Lots that have been submitted to this original Declaration or any subsequent amendment of this Declaration which are shown on a recorded subdivision plat required by the City of Longmont and recorded with the Boulder County Clerk and Recorder.

Section 2 - Identification of Lots Subject to Limited Common Elements Within the Association. Lots 5 and 6 are immediately adjacent to a 28-foot access easement with the express intent that access easement serve as a common driveway for those two (2) Lots to provide access to a public street shown on the recorded plat of the subdivision. The Declarant desires to establish the access easement as a Limited Common Element for the exclusive use of the Owners and occupants of the Lots known as Lots 5 and 6. The Declarant further states the maintenance responsibility for this Limited Common Element (described as an access easement) shall be divided equally between the Owners of Lots 5 and 6; provided, however, that the Executive Board of the Association shall make the determination of when any maintenance is necessary and shall have the responsibility to contract for the maintenance on behalf of the Association. Subsequent to any maintenance being performed, the Owners of Lots 5 and 6 shall equally divide the costs and pay for any Limited Common Element maintenance. The Executive Board of the Association shall consult with the Owners of Lots 5 and 6 prior to scheduling any maintenance to the Limited Common Element (described as an access easement).

Section 3 - Reservation by Declarant Regarding Future Limited Common Elements. The Declarant reserves the right to allocate any area which constitutes a part of the Common Elements as Limited Common Elements for the exclusive use of the Owners of Lots to which these Limited Common Elements may become appurtenant. The Declarant may assign such Common Elements as Limited Common Elements pursuant to the provisions of C.R.S. 38-33.3-208 of the Act (i) by making such an allocation in a recorded instrument or (ii) by recording an appropriate amendment or supplement to this Declaration. Such allocations by the Declarant may be to Lots owned by the Declarant. Subsequent to the Declarant control period, the right of allocation pursuant to this Section shall pass from the Declarant to the Executive Board, and the Declarant may not thereafter exercise such right.

## ARTICLE XV

### GENERAL PROVISIONS

Section 1 - Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2 - Severability. Invalidity of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3 - Claims. No claim or cause of action shall accrue in favor of any person in the event of the invalidity of any provision of this Declaration or for failure of the Association or Declarant to enforce any provision hereof. This Section may be pleaded as a full bar to the maintenance of any suit, action, or arbitration brought in violation of this provision.

Section 4 - Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by







interior of any Living Unit or within a fence that has been built upon a Lot for purposes of controlling the movement of any such animal. It shall be the obligation of each Owner owning a pet to control it in accordance with the existing ordinances of the City of Longmont, Colorado. It shall be the responsibility of each owner to maintain any Lot or Common Area used in any manner by any pet to avoid any noise, odor or nuisance to any other Owner within the Association. The Executive Board of the Association may, at any time, create rules and regulations regarding the keeping of animals within the Project, and all Owners shall be subject to this covenant which requires that the Owners comply with the terms and conditions of those rules and regulations regarding animals within the Project. Any rules and regulations regarding animals shall be established in accordance with the Bylaws of the Association.

3. Article I, Section 3, which defines the phrase "Association" is revoked and replaced with the following language:

Section 3. "Association" shall mean and refer to The Paramount Village Community Association, a Colorado corporation, not for profit, its successors and assigns.

4. Article V, which deals with the Covenant for Assessments for the Association, and more specifically Section 14, which deals with Rights of First Mortgagees, is revoked, and Section 14 is replaced with the following language:

Section 14 - Rights of First Mortgagees. Any First Mortgagee of a Lot within the Project may jointly or severally pay any tax or other charge which is in default and which may have become a charge or a lien against any common area of the Association, and any First Mortgagee may jointly or severally pay any overdue premium on hazard insurance policies or secure new hazard insurance coverage on the lapse of any such policy, upon common area of the Association, and any First Mortgagee(s) making such payments shall be entitled to immediate reimbursement therefor from The Paramount Village Community Association.

5. Article XIV, which deals with Allocation of Interests, and more specifically Section 1, which deals with Allocated Interests, is hereby revoked, and Section 1 is replaced with the following language:

Section 1 - Allocated Interests. The common expense liability and voting in the Association allocated to each Lot are as follows:

(a) The percentage of liability for common expenses shall be determined by using a formula in which the numerator is 1 and the denominator is the total number of Lots subject to this original Declaration or any subsequent amendment of this Declaration which are shown on a recorded subdivision plat(s) required by the City of Longmont and recorded with the Boulder County Clerk and Recorder; and

(b) The number of votes in the Association, on the basis of one (1) vote being allocated to each Lot Owner (not Living Unit Owner), as determined by the total number of Lots that have been submitted to this original Declaration or any subsequent amendment of this Declaration which are shown on a recorded subdivision plat required by the City of Longmont and recorded with the Boulder County Clerk and Recorder.

