

The Bungalows at Tuscany HOA

Covenants

Attorneys Opinion on Covenants

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FOR
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
THE BUNGALOWS AT TUSCANY
(a Common Interest Community)

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**NOTICE TO CLOSING AGENTS: THIS IS A FEE-ASSESSED SUBDIVISION.
CHECK WITH THE HOMEOWNERS ASSOCIATION FOR FEE SCHEDULE.**

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
THE BUNGALOWS AT TUSCANY
(a Common Interest Community)**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE BUNGALOWS AT TUSCANY is made and entered into this 18th day of December, 2002, by TUSCANY, LLC, a Colorado limited liability company, ZAPF HOMES, LTD., A COLORADO CORPORATION, MADELINE MCKOANE, MATTHEW MCKOANE, TIM ORTIZ, ARON KRISS, AND HIGHLAND CREEK, LLC, a Colorado limited liability company, hereinafter jointly referred to as "the Declarant."

RECITALS

A. The Declarant is the owner of that certain real property located in the County of Weld, State of Colorado as more fully described on Exhibit "A" attached hereto and made a part hereof by reference, ("the Bungalows") and of the real property described on Exhibit "B" attached hereto and made a part hereof by reference ("the Development Property").

B. The Declarant desires to create a Common Interest Community on the Bungalows, pursuant to the Colorado Common Interest Ownership Act, Section 38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time ("the Act").

C. This Declaration is subordinate to the Declaration of Covenants, Conditions, and Restrictions for Tuscany as the same may be amended from time to time as therein provided, which was recorded in the records of the Clerk and Recorder of Weld County, Colorado, on the 13th day of July, 2001, as Reception No. 28565440, First Amendment recorded April 9, 2002, at Reception No. 2941165, and Second Amendment recorded May 6, 2002, as Reception No. 2949142 (the "Tuscany Declaration").

D. The Declarant has caused to be incorporated a subassociation, as provided in Tuscany Declaration, under the laws of the State of Colorado known as THE BUNGALOWS AT TUSCANY HOMEOWNERS' ASSOCIATION, a Colorado nonprofit corporation, for the purpose of exercising the functions herein set forth (the "Subassociation").

ARTICLE I. SUBMISSION OF REAL ESTATE

The Declarant hereby publishes and declares that the Bungalows shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Bungalows and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Bungalows or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, Declarant hereby submits the Bungalows to the provisions of the Act. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

ARTICLE II. DEFINITIONS

Section 1: Capitalized Terms. When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms not otherwise defined in the Act shall have the meaning provided in this Article.

(a) "Allocated Interests" shall mean and refer to the Common Expense Liability and votes in the Subassociation.

(b) "Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

(c) "Association" means Tuscany Homeowners' Association organized to govern Tuscany. The Tuscany Declaration provides for subassociations that will manage special areas such as The Bungalows at Tuscany townhomes.

(d) "Bylaws" shall mean and refer to the bylaws, which are adopted by the Subassociation for the regulation and management of the Subassociation, including amendments to the bylaws.

(e) "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Lot in The Bungalows at Tuscany pursuant to this Declaration.

(f) "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Subassociation, together with any allocations to reserves.



(g) "Dealer" shall mean and refer to a Person in the business of selling Lots for such Person's own account.

(h) "Declarant" shall mean and refer to the persons and entities identified in the introductory paragraph.

(i) "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, plats of The Bungalows recorded in the Clerk and Recorder's office of Weld County, Colorado.

(j) "Dispose" or "disposition" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Lot, but the term does not include the transfer or release of a security interest.

(k) "Executive Board" or "Board of Directors" shall mean and refer to the Executive Board of the Association.

(l) "Tuscany" means the Property described in Tuscany Declaration and all Development Property that shall be brought under the governance of Tuscany Declaration.

(m) "Tuscany Declaration" means the Declaration for Tuscany recorded on July 13, 2001, at Reception No. 28565440, First Amendment recorded April 9, 2002, at Reception No. 2941165, and Second Amendment recorded May 6, 2002, at Reception No. 2949142 in the records of the county of Weld, state of Colorado, and as lands may be added to it and as it may be amended as therein provided and as provided in the Act. This Declaration is subordinate to the Tuscany Declaration.

(n) "Identifying Number" shall mean and refer to a symbol or address that identifies only one (1) Lot in The Bungalows.

(o) "Limited Common Elements" shall mean areas that are designated for the use of Lot Owners in The Bungalows only.

(p) "Lot" shall mean and refer to a physical portion of The Bungalows which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration. The term "Lot" as used in this Declaration shall have the same meaning as the term "Unit" as used in the Act.

(q) "Lot Owner" shall mean and refer to the Declarant or other Person who owns a Lot but does not include a Person having an interest in a Lot solely as security for an

obligation. The Declarant is the Owner of any Lot created in the Declaration, as identified in paragraph A of the RECITALS on page 1, until that Lot is conveyed to another Person. The term "Lot Owner" as used in this Declaration shall have the same meaning as the term "Unit Owner" as used in the Act.

(r) "Mortgagee" shall mean and refer to any Person who has a security interest in a Lot and who has provided written notice of such interest to the Association. "First Mortgagee" shall mean and refer to a Mortgagee who has a security interest in a Lot prior to all other security interests except the security interest for real property taxes and assessments made by Weld County, Colorado, or other governmental authority having jurisdiction over The Bungalows.

(s) "Person" shall mean and refer to a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or combination thereof.

(t) "Plat" shall mean and refer to the Plat of Replat of Block 4, Tuscany First Filing a subdivision recorded in the office of the Clerk and Recorder of Weld County, Colorado, and all recorded amendments thereto as well as the Development Property if and when it is added to The Bungalows.

(u) "Purchaser" shall mean and refer to a Person, other than a Declarant or a Dealer, who, by means of a transfer, acquires a legal or equitable interest in a Lot, other than:

- (1) A leasehold interest in a Lot of less than forty (40) years including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or
- (2) A security interest.

(v) "Residence" shall mean and refer to a single-family residential dwelling constructed on a Lot with a common wall with an adjacent Residence on an adjacent lot.

(w) "Rules and Regulations" shall mean and refer to any instruments, however denominated, which are adopted by the Declarant or the Executive Board, or the Subassociation for the regulation and management of The Bungalows, including any amendment to those instruments. Rules and Regulations adopted by the Subassociation shall be subordinate to Rules and Regulations adopted by the Association.

(x) "Security Interest" shall mean and refer to an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(y) "Single-family" shall mean and refer to any individual or group of persons related by blood or marriage or any unrelated group of not more than four (4) persons living together.

(z) "Subassociation" or "Lot Owners' Subassociation" shall mean and refer to a unit owners' association organized and existing under Section 38-33.3-301 of the Act for the purpose of governance of The Bungalows at Tuscany subject to the Tuscany Declaration.

(aa) "Unit" and/or "Lot" shall have the same definition as provided in Section 38-33.3-103(30) of the Act.

(bb) "Unit Owner" and/or "Lot Owner" shall have the same definition as provided in Section 38-33.3-103(31) of the Act.

(cc) "The Bungalows" shall mean the Replat of Block 4, Tuscany First Filing, a subdivision in the City of Evans, county of Weld, state of Colorado.

Section 2: Definitions in Tuscany Declaration. To the extent that definitions set forth in Tuscany Declaration supplement, contradict, or change the definitions herein contained, the definitions for Tuscany Declaration shall govern if they are more restrictive.

ARTICLE III. COMMON INTEREST COMMUNITY

Section 1: Name. The name of this area of Tuscany is THE BUNGALOWS AT TUSCANY.

Section 2: Association. The name of the Subassociation is THE BUNGALOWS AT TUSCANY HOMEOWNERS' ASSOCIATION.

Section 3: Planned Community. The Bungalows is a planned community.

Section 4: County. The name of every county in which any part of The Bungalows is situated is Weld County, Colorado.

Section 5: Legal Description. A legal description of The Bungalows is the Replat of Block 4, Tuscany First Filing, a subdivision of the City of Evans, county of Weld, state of Colorado.

Section 6: Maximum Number of Lots. The maximum number of Lots that the Declarant reserves the right to create within The Bungalows is forty-four (44).

Section 7: Boundaries of Lots. The boundaries of each Lot are set forth on the Plat. The Plat sets forth the Lot's Identifying Number.

Section 8: Allocated Interests. The Common Expense Liability and votes in the Subassociation shall be allocated among the Owners as follows:

- (a) A Lot Owner shall not have a Common Expense Liability or vote in the Subassociation until a Residence is constructed upon Lot Owner's Lot and a Certificate of Occupancy issued by the City of Evans, at which time the Lot Owner shall have a Common Expense Liability and the right to vote in the Subassociation.
- (b) Each Owner's share of the Common Expenses shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within The Bungalows upon which a Certificate of Occupancy issued.
- (c) Each Owner shall be entitled to one (1) vote for each Lot owned upon which a Residence has been constructed and a Certificate of Occupancy issued.

Section 9: Subassociation Membership. A Lot Owner shall become a member of the Subassociation when a Residence is constructed on Lot Owner's Lot and a Certificate of Occupancy issued by the City of Evans. A temporary Certificate of Occupancy shall, for all purposes, be deemed a Certificate of Occupancy.

Section 10: Association. The Tuscany Declaration shall govern membership in the Association and the obligation of Lot Owners to pay Common Expense Liability of the Association.



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Section 11: Notice. Notice of matters affecting the Common Interest Community may be given to Lot Owners by the Subassociation or by other Lot Owners in the following manner: notice shall be hand delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. Such notice shall be deemed given when hand delivered or when deposited in the United States mail.

ARTICLE IV. MEMBERSHIP, VOTING RIGHTS AND ALLOCATIONS

Section 1: Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Subassociation. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Subassociation. Ownership of such Lot with a Residence that has a Certificate of Occupancy or a temporary Certificate of Occupancy shall be the sole qualification for membership. When more than one (1) Person holds a membership interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Once a Lot and its Owner qualify for membership in the Subassociation, the Lot and its Owner shall remain qualified notwithstanding the existence or nonexistence of the Residence.

Section 2: Voting Rights and Assignment of Votes. The effective date for assigning votes to Lots pursuant to this Declaration shall be the date on which this Declaration is recorded in the records of the Clerk and Recorder of Weld County, Colorado.

Section 3: Allocated Interests. The Common Expense Liability and votes in the Subassociation allocated to each Lot are set forth in Section 8 of Article III above.

ARTICLE V. SUBASSOCIATION

Section 1: Authority and Power. The business and affairs of The Bungalows shall be managed by the Subassociation. The administration of The Bungalows shall be governed by the Tuscany Declaration, this Declaration, the Act, the Articles of Incorporation, Bylaws, and published Rules and Regulations of the Subassociation and the Association. The Association and the Subassociation shall have all the powers, authority, and duties permitted pursuant to this Declaration and the Act which are necessary and proper to manage the business and affairs of Tuscany and The Bungalows.

Section 2: Common Elements and Limited Common Elements. The Executive Board of the Association may adopt by majority vote such rules, regulations, common assessments, and special fees as it shall determine for the use and regulation of the Common Elements owned or leased by it. The use of these Common Elements shall be uniform within Tuscany for all owners. For Limited Common Elements owned or leased by the Subassociation that are maintained only by the Lot Owners within The Bungalows, the Subassociation shall be responsible for making such rules and regulations as required to regulate the use and maintain such Limited Common Elements. The Executive Board of the Association shall have the power and authority to amend any such rules and regulations adopted by the Executive Board of the Subassociation if it finds that such rules and regulations are detrimental to the health, welfare, and enjoyment of the Owners of Tuscany. The alleys that serve the Lots in The Bungalows are Limited Common Elements for the use and benefit of The Bungalows.

Section 3: Declarant Control. The Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board of the Subassociation for a period of seven (7) years after this Declaration is recorded in the office of the Clerk and Recorder of Weld County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of Section 38-33.3-303(5) (6) and (7) of the Act. (Also see Article VII.)

Section 4: Executive Board Powers and Duties. The Executive Board may act in all instances on behalf of the Subassociation, except as provided in this Declaration or the Bylaws. The Executive Board shall have, subject to the limitations contained in the Tuscany Declaration, this Declaration, and the Act, the powers and duties necessary for the administration of the affairs of the Subassociation and of The Bungalows, which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws.
- (b) Adopt and amend Rules and Regulations regarding the use and enjoyment of the Limited Common Elements, and the activities of occupants thereon, except to the extent regulated by the Executive Board of the Association and as provided in Section 2 above.
- (c) Adopt and amend budgets for revenues, expenditures, and reserves, which budget may include the allocated expenses of the Association should the Executive Board determine to collect such Association fees and remit to the Association.



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- (d) Collect Common Expense Assessments from Lot Owners.
- (e) Hire and discharge Managers, subject to the power of the Executive Board of the Association to hire and discharge managers for Tuscany.
- (f) Hire and discharge independent contractors, employees, and agents other than Managers.
- (g) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration in the Subassociation's name, or on behalf of the Association, or two (2) or more Lot Owners on any matters affecting The Bungalows.
- (h) Make contracts and incur liabilities.
- (i) Provide for the use, maintenance, repair, replacement, and modification of the Limited Common Elements, also landscaping around Residences in Lots, except within enclosed patio areas.
- (j) Cause additional improvements to be made as a part of the Limited Common Elements.
- (k) Maintain the roofs and exterior of all Residences, excluding glass and structural damage.
- (l) Provide trash removal.
- (m) Provide TV cable.
- (n) Acquire, hold, encumber, and convey in the Subassociation's name, any right, title, or interest to real estate or personal property, but the Limited Common Elements may be conveyed or subjected to a Security Interest only pursuant to this Declaration and applicable law.
- (o) Grant easements for any period of time, including permanent easements, leases, licenses, and concessions through or over the Limited Common Elements, subject first to approval of the Executive Board of the Association.
- (p) Impose a reasonable charge for late payment of assessments and levy a



reasonable fine for violation of this Declaration, the Bylaws, and the Rules and Regulations of the Association and the Subassociation.

- (q) Impose a reasonable charge for the preparation and recordation of supplements or amendments to this Declaration and for statements of unpaid assessments.
- (r) Provide for the indemnification of the Subassociation's officers and the Executive Board and maintain Directors' and officers' liability insurance.
- (s) Assign the Subassociation's right to future income, including the right to receive Common Expense Assessments, only upon the affirmative vote of the Lot Owners of Lots to which at least fifty-one percent (51%) of the votes in the Subassociation are allocated, at a meeting called for that purpose.
- (t) Exercise any other powers conferred by the Declaration.
- (u) Exercise any other power that may be exercised in the State of Colorado by a legal entity of the same type as the Subassociation so long as such exercise of powers does not conflict with the exercised powers of the Association.
- (v) Exercise any other power necessary and proper for the governance and operation of the Subassociation.
- (w) By resolution, establish permanent and standing committees of Directors to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Lot Owners and the Executive Board. Actions taken by a committee may be appealed to the Executive Board by any Lot Owner within forty-five (45) days of publication of a notice. If an appeal is made, the committee's action must be ratified, modified, or rejected by the Executive Board at its next regular meeting.

Section 5: Executive Board Limitations. The Executive Board may not act on behalf of the Subassociation to amend this Declaration, to terminate The Bungalows, or to elect members of the Executive Board or determine their qualifications, powers, and duties or



terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

Section 6: Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, or in the event that the need for maintenance or repair of the Limited Common Elements or any improvements located thereon is caused by the willful or negligent act, omission, or misconduct of any Lot Owner, or by the willful or negligent act, omission, or misconduct of any member of such Lot Owner's family, or by a guest or invitee of such Lot Owner, or any tenant or tenant's family, the costs of such repair and maintenance shall be the personal obligation of such Lot Owner, and any costs, expenses, and fees incurred by the Subassociation for such maintenance, repair, or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall be a lien against such Owner's Lot as provided in this Declaration. A determination of the willful or negligent act, omission, or misconduct of any Lot Owner or any member of a Lot Owner's family, or a guest or invitee of any Lot Owner, or tenant or tenant's family, and the amount of the Lot Owner's liability therefor, shall be determined by the Executive Board of the Subassociation after notice to the Lot Owner and the right to be heard before the Executive Board in connection therewith.

ARTICLE VI. PROPERTY RIGHTS IN LIMITED COMMON ELEMENTS

Section 1: Dedication of Limited Common Elements. The alleys in The Bungalows are dedicated as Limited Common Elements and such other areas as the Executive Board may designate from time to time.

Section 2: Owners' Easements of Enjoyment. Every Lot Owner shall have a right and easement of enjoyment in and to the Limited Common Elements and such easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (a) The right of the Association and the Subassociation to promulgate and publish reasonable Rules and Regulations as provided in this Declaration and in the Tuscan Declaration.
- (b) The right of the Subassociation to suspend voting rights by an Owner for any period during which any assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the published Rules and Regulations of the Association and/or the Subassociation.

- (c) The right of the Subassociation to limit use of the Limited Common Elements while maintaining, repairing, and making replacements in the Limited Common Elements that are designated, owned or leased by the Subassociation.

Section 3: Delegation of Use. Any Lot Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Limited Common Elements and facilities to the members of his or her family, tenants, or contract purchasers who reside on his or her Lot.

ARTICLE VII. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 1: Special Declarant Rights. Declarant hereby reserves the right for a period of seven (7) years after this Declaration is recorded in the office of the Clerk and Recorder of Weld County, Colorado, to perform the acts and exercise the rights hereinafter specified ("the Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- (a) Sales Management and Marketing. The right to maintain two (2) sales offices, two (2) management offices, signs advertising The Bungalows, and models. The Declarant shall have the right to determine the number of models and the size and location of the sales office, management office, and models. The Declarant shall also have the right to relocate the sales offices, management offices, and models from time to time at its discretion. After the Declarant ceases to be the Owner of a Lot, the Declarant shall have the right to remove any sales office, management office, or model from The Bungalows.
- (b) Merger. The right to merge or consolidate The Bungalows with another common interest community of the same form of ownership.
- (c) Control of Subassociation and Executive Board. The right to appoint or remove any officer of the Subassociation or any Executive Board member, subject to the limitations of Section 38-33.3-303(5), (6), and (7) of the Act. (Also see Article V § 3.)
- (d) Expansion and Development Rights. The Declarant reserves the right set forth in ARTICLE VIII of this Declaration.

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) Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for lawn maintenance, and snow removal, subject to limitations set forth in the Act and the right of the Subassociation to terminate on sixty (60) days' written notice any contracts entered into by Declarant.
- (b) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

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

Section 4: Appointment of Tuscany, LLC. By execution of this Declaration, all the persons constituting the Declarant appoint and empower Tuscany, LLC, a Colorado limited liability company, to act on behalf of Declarant in the exercise of all Declarant powers contained in this Declaration, including but not limited to, the Special Declarant Rights and Additional Reserved Rights and the Expansion and Development Rights set forth in ARTICLE VIII.

ARTICLE VIII. RESERVATION OF EXPANSION AND DEVELOPMENT RIGHTS

Section 1: Expansion Rights. Declarant expressly reserves the right to subject all or any part of the property described in Exhibit "B" attached hereto and hereby incorporated herein by reference and added pursuant to § 38-33.3-222 of the Act ("the Development Property") to the provisions of this Declaration, or to release any part or all of the Development Property from this Declaration. 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, or the Declarant may release any part or all of the Development Property from this Declaration.

Section 2: Development and Withdrawal Rights. Declarant expressly reserves the right to create additional Lots and Limited Common Elements, to subdivide the Lots,



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and to convert Lots into Limited Common Elements on all or any portion of the Common Interest Community property so long as the number of Lots does not exceed forty-four (44). 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.

Section 3: Amendment of the Declaration. If Declarant elects to submit the Development Property, or any part thereof, to this Declaration, Declarant shall record an Amendment to the Declaration containing a legal description of the Development Property, or portion thereof to be submitted to this Declaration, and reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Lot will be apportioned according to the total number of Lots with Residences submitted to the Declaration. The Allocated Interests appurtenant to each Lot in the Common Interest Community, as expanded, shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots with Residences that have been issued a Certificate of Occupancy or temporary Certificate of Occupancy with Residences within the Common Interest Community, as expanded.

Section 4: Supplement to the Plat. Declarant shall, contemporaneously with the amendment of this Declaration, file a supplement to the Plat showing the Development Property or portion thereof to be submitted to this Declaration and the Lots and Common Elements created within the Development Property or portion thereof to be submitted to this Declaration.

Section 5: Interpretation. Recording of amendments to the Declaration in the office of the Clerk and Recorder of Weld County, Colorado, shall automatically (i) vest in each existing Lot Owner the reallocated Allocated Interests appurtenant to his Lot; and (ii) 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 the Declaration, the definitions in this Declaration shall automatically be extended to encompass and to refer to The Bungalows, as expanded. The Development Property, or any part thereof, shall be added to and become a part of The Bungalows for all purposes. All conveyances of Lots after such expansion shall be effective to transfer rights in all Limited Common Elements as expanded, whether or not reference is made to any amendment to the Declaration. Reference to the Declaration in any instrument shall be deemed to include all amendments to the Declaration without specific reference thereto.



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Section 6: Maximum Number of Lots. The maximum number of Lots in the Common Interest Community, as expanded, shall not exceed the number set forth in Article III, Section 6, above or the maximum number of Lots allowed by any governmental entity having jurisdiction over the Real Estate, pursuant to any development plan for the Real Estate and the Development Property. Declarant shall not be obligated to expand the Common Interest Community beyond the number of Lots initially submitted to this Declaration.

Section 7: Construction Easement. Declarant expressly reserves the right to perform construction work, store materials on Limited Common Elements, and the future right to control such work 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, ducts, conduits, and other facilities across the Real Estate for the purpose of furnishing utility and other services to the Development Property or other property. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements.

Section 8: Reciprocal Easements. If all or part of the Development Property is not submitted to this Declaration, or if property is withdrawn from the Common Interest Community ("the Withdrawn Property"): (i) the Lot 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 Common Interest Community; and (ii) the Lot Owner(s) in the Common Interest Community 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 Weld County, Colorado, whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the Lot Owners of the Development Property and the Withdrawn Property and the Lot Owners in the Common Interest Community 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 9: Termination of Expansion and Development Rights. The expansion and development rights reserved to Declarant, for itself, its successors and assigns, shall expire seven (7) years from the date of recording this Declaration, unless the expansion and development rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion and development rights by Declarant.

Section 10: Transfer of Expansion and Development Rights. Any expansion, development, or withdrawal 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 Weld County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE IX. ASSESSMENT FOR COMMON EXPENSES

Section 1: Common Expense Assessment for Tuscany. Assessments made by Tuscany Homeowners' Association, a Colorado nonprofit corporation, shall be separate and apart from the Common Expense Assessment of the Subassociation and shall be paid direct as an additional assessment by the Owner or upon direction of the Subassociation paid to it and then be remitted to the Association. If the Subassociation elects to receive the Common Expense Assessment for the Association from Owners of Lots in The Bungalows, the Subassociation makes no guarantee of payment by the Owner(s) and takes no responsibility for collection.

Section 2: Phased Building of Residences. The Bungalows have been approved by the City of Evans for the construction of twenty-six (26) Residences. All twenty-six (26) Lots have been included in this Declaration, but until a Residence is constructed on a Lot and receives a temporary or permanent Certificate of Occupancy from the City of Evans, the Lot will not incur the Common Expense Liability of the Subassociation. The Common Expense assessment made by the Subassociation is assessed to a Residence on a Lot that has received a temporary or permanent Certificate of Occupancy. As each Lot is subject to Common Expense Liability, special consideration shall be given to any reserve funds to make sure that all Lot Owners are treated fairly by assessing new Lot Owners to fund the reserve fund as appropriate to assure equity to of all Lot Owners.

Section 3: Common Expenses Prior to Assessments. Until the Subassociation makes a Common Expense Assessment, the Declarant shall pay all common expenses.



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Section 4: Personal Obligation of Owners for Common Expenses. After Assessments are made by the Executive Board, the Declarant, for each Lot improved with a Residence, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, and construction thereon of a Residence, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Subassociation Common Expense Assessments imposed by the Subassociation to meet the estimated Common Expenses. Common Expense Liability for the Lot commences when the Residence constructed thereon receives a temporary or permanent Certificate of Occupancy.

Section 5: Purpose of Assessment. The Assessments levied by the Subassociation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and for the following specific purpose, by general reference and not by limitation:

- (a) Administrative expenses, such as general office expenses, managers, accountants, and attorneys.
- (b) Lawn sprinklers, repairs, maintenance, and replacements.
- (c) Maintenance, repairs, and replacement of all landscaping in the Limited Common Elements, also landscaping around Residences in Lots, except within enclosed patio areas.
- (d) Snow removal of alleys, driveways and walks.
- (e) Insurance of Limited Common Elements.
- (f) Maintenance of the roof and exterior of all Residences, excluding window glass and structural damage.
- (g) Trash removal.
- (h) TV cable.

Section 6: Easement for Maintenance, Repair and Replacement. The Declarant, and the Lot Owners, by acceptance of a deed to a Lot, grant a perpetual easement to the Subassociation, its employees and agents, to enter each Lot in The Bungalows to perform the maintenance, repairs, and replacement provided in Section 5 above, and for emergency purposes.



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Section 7: Amount of Assessment. The amount of the Assessment for the estimated Common Expenses which shall be paid by each Owner shall be determined by dividing the aggregate sum the Subassociation reasonably determines to be paid by all Owners by the total number of Residences within The Bungalows, and the Owner of each Lot on which a Residence has been constructed and received a temporary or permanent Certificate of Occupancy.

Section 8: Annual Assessments. Annual assessments shall be fixed by the Executive Board and approved by a majority vote of the Owners with voting rights voting in person or by proxy at an annual or special meeting of the Owners.

Section 9: Notice and Quorum for any Action Authorized Under Section 8. Written notice of any meeting called for the purpose of taking any action authorized under Section 8 shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast twenty percent (20%) of all the votes of the Owners shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 10: Uniform Rate of Assessment. Both annual and special Assessments must be fixed at a uniform rate for all Lots upon which there is a Residence and may be collected on a monthly basis.

Section 11: Date of Commencement of Annual Assessments; Due Dates. The annual Assessments provided for herein shall commence as of the first day of the month following the construction of the first Residence and receipt of a temporary or permanent Certificate of Occupancy. Unless the Declarant is paying all assessments as provided in Section 3 above, (in which event no Annual Assessments shall commence during the period of time that Declarant is paying all said Assessments). The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall fix the amount of the annual Assessment at least thirty (30) days in advance of each annual Assessment period, which assessment must be approved by the Owners as provided in Sections 8 and 9 above. Written notice of the annual Assessment shall be sent to the Owner of Lots subject thereto. The due dates shall be established by the Executive Board. The Executive Board may, at its discretion, permit annual assessments to be payable in installments.



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Section 12: Reserve Fund. Upon the sale, transfer, or conveyance of a Lot, the purchaser or transferee of the Lot shall deposit with the Association as a reserve fund an amount equal to one-fourth of the annual assessment established by the Executive Board for the year in which the transfer occurs. If, at any time, an Owner is in default in the payment of any assessments due to the Subassociation, the Subassociation shall have the right to use said reserve, or as much thereof as may be necessary, to pay any delinquent amount owed to the Subassociation and to reimburse the Subassociation for any expenses incurred by the Subassociation in collecting delinquent assessments from the Owner. In such event, the Owner shall, upon written demand of the Subassociation, promptly remit to the Subassociation a sufficient amount of cash to restore the reserve to its original amount. In the event the reserve account is not used to make delinquent payments, then it shall be refunded to the Owner upon the sale of the Owner's Lot without interest. The Subassociation shall have the right to commingle the reserve account with other funds of the Subassociation and shall have no obligation to retain the reserve funds in a separate account or pay interest on the reserve funds. The reserve account shall not be deemed to be liquidated damages, and if claims of the Subassociation against an Owner exceed the reserve account, the Owner shall remain liable for the payment of the balance of such claims to the Subassociation.

ARTICLE X. LIEN FOR NONPAYMENT OF COMMON EXPENSES

Any Assessment, charge, or fee provided for in this Declaration or any monthly or other installment thereof which is not fully paid within ten (10) days after the date due shall bear interest at a rate determined by the Executive Board. In addition, the Executive Board may assess a late charge thereon. Any Owner who fails to pay any Assessment, charge, or fee of the Subassociation shall also be obligated to pay to the Subassociation, on demand, all costs and expenses incurred by the Subassociation, including reasonable attorney's fees, in attempting to collect the delinquent amount. The total amount due to the Subassociation, including unpaid Assessments, fees, charges, fines, interest, late payment penalties, costs, and attorney's fees, shall constitute a lien on the defaulting Owner's Lot as provided in the Act. Said lien shall have the priority provided for in Section 38-33.3-116 of the Act. The Subassociation may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Subassociation or any monthly or other installment thereof and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Subassociation against a delinquent Owner to recover a money judgment for unpaid amounts due to the Subassociation or monthly or other installments thereof may be commenced and pursued by the Subassociation without foreclosing or in any way waiving the Subassociation's lien.



ARTICLE XI. INSURANCE

Section 1: Insurance Requirements Generally. To the extent reasonably available, the Subassociation shall obtain and maintain insurance as hereinafter provided. If such insurance is not reasonably available and the Executive Board determines that any insurance described in this Article will not be maintained, the Executive Board shall cause notice of that fact to be hand delivered or sent, postage prepaid, by United States mail to all Lot Owners at their respective last known addresses. All such insurance shall be underwritten, to the extent possible, with companies licensed to do business in Colorado having a Best's Insurance report rating of B/VI or better covering the risks below. Section 38-33.3-313, Colorado Revised Statutes, and as it may be amended from time to time shall apply, except as herein amended.

- (a) All Owners of Lots upon which there is a Residence must keep the Residence insured for its replacement cost less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations, and other items normally excluded from property policies, against casualty loss and all other general areas of coverage in homeowners' policies.
- (b) The Subassociation shall insure the Limited and General Common Elements.

To the extent possible, casualty, property and liability insurance shall incorporate the following:

- (a) If the Subassociation is the insurer waives the right to subrogation under the policy against a Lot Owner, member of the household of a Lot Owner, the Association, its Directors, officers, employees, and agents.
- (b) If the Subassociation is the insurer, an act or omission by a Lot Owner, unless acting within the scope of the Lot Owner's authority on behalf of the Association, will not void the policy or be a condition of recovery under the policy.
- (c) Contain a "severability of interest" clause that the insurance cannot be canceled, invalidated, or suspended on account of the negligent or

intentional acts of the Association, its Directors, officers, employees, and agents.

- (d) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner which covers the same risk covered by a Subassociation policy, the Subassociation's policy provides primary insurance.
- (e) Losses must be adjusted with the Subassociation.
- (f) Insurance proceeds shall be paid to the Subassociation but are to be held in trust for each Lot Owner and the holder of a Security Interest encumbering such Lot. The common wall between Residences creates a joint duty of repair and replacement by the adjacent Lot Owners and therefore § 38-33.3-313 (5), (6), and (9), C.R.S. shall apply to all common walls.
- (g) The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Subassociation, to each Lot Owner, and to each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.
- (h) The name of the insured shall be substantially as follows: The Owner and/or "The Bungalows at Tuscany Homeowners' Association."
- (i) If the insurance is issued to the Subassociation, of the deductible portion, each Lot shall pay its prorata share thereof as an additional Common Expense.

Section 2: Public Liability and Property Damage Insurance. The Subassociation shall obtain and maintain comprehensive public liability insurance, including non-owned and hired automobile liability coverage and personal injury liability coverage, covering liabilities of the Subassociation, its Directors, officers, employees, agents, and Owners arising in connection with the ownership, operation, maintenance, occupancy, or use of the Common Elements and Limited Common Elements and any other area the Subassociation is required to maintain pursuant to this Declaration with a minimum single limit or per-occurrence limit of One Million Dollars (\$1,000,000).



Section 3: Workmen's Compensation and Employer's Liability Insurance. The Subassociation shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

Section 4: Fidelity Bonds. A blanket fidelity bond or dishonest insurance coverage is required for anyone who either handles or is responsible for funds held or administered by the Subassociation, whether or not he or she receives compensation for his or her services. The bond or insurance shall name the Subassociation as obligee and shall cover the maximum funds that will be in the custody of the Association or the Manager at any time while the bond or insurance is in force. In no event shall the bond or coverage be for an amount less than the sum of three (3) months' assessments plus reserve funds.

Section 5: Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain Directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Subassociation. This insurance will have limits determined by the Executive Board.

Section 6: Other Insurance The Subassociation may carry other insurance which the Executive Board considers appropriate to protect the Association and the Subassociation.

Section 7: Insurance by Owners. In the event any Lot Owner shall have insurance coverage on a loss that is repaired or replaced by the Subassociation, the Lot Owner shall pay to the Subassociation all insurance proceeds received by said Owner under such insurance coverage. [See Section 1(f) of this ARTICLE XI that applies to common walls.]

Section 8: Executive Board Requirements. The Executive Board may adopt such rules, regulations, amendments, and requirements to this ARTICLE XI, and for its enforcement, as reasonably required to govern Lot Owner's conduct and use of the Lot to enhance insurance availability and reasonableness of premiums.

ARTICLE XII. INDEMNIFICATION

To the full extent permitted by law, each officer and member of the Executive Board of the Subassociation shall be and are hereby indemnified by the Lot Owners and the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party or in

which they may become involved by reason of their being or having been an officer or member of the Executive Board of the Subassociation or any settlement thereof, whether or not they are an officer or a member of the Executive Board of the Subassociation at the time such expenses are incurred, except in such cases where such officer or member of the Executive Board is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Subassociation.

ARTICLE XIII. ARCHITECTURAL CONTROL

The Architectural Control Committee and the design standards for The Bungalows are set forth in Article XI of the Tuscany Declaration.

ARTICLE XIV. FENCE RESTRICTIONS

There shall be no fences constructed on any Lot except an attached fence to the Residential Dwelling no larger than 15 feet by 20 feet. The type and height of privacy fences allowed are Heritage Vinyl Products: Colonial; Dynasty; and Shadowbox not exceeding sixty (60) inches in height. The approved color is ivory. The Architectural Control Committee may approve other fence construction and materials that blend with the Residence. The fence may have mesh or other materials to retain small animals.

ARTICLE XV. GENERAL PROVISIONS

Section 1: Enforcement. Enforcement of this Declaration shall be by appropriate proceedings at law or in equity against those persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an Owner, or by the Subassociation. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award to the prevailing party in such litigation, in addition to such damages as the Court may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the prevailing party in connection with such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration.



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Section 2: Duration. This Declaration shall run with the land, shall be binding upon all persons owning Lots and any persons hereafter acquiring said Lots, and shall be in effect in perpetuity unless amended or terminated as provided in the Act, the Tuscan Declaration, this Declaration, or by legal proceeding.

Section 3: Amendment. Except in cases where the Declaration may be amended by the Declarant as provided in Tuscan Declaration, or except in cases where the Subassociation Owners may amend this Declaration as provided in the Act and except as limited by § 38-33.3-217(4) of the Act, this Declaration may be altered or amended at any time by the then record Owners of sixty-seven percent (67%) or more of the Lots so elect through a duly written and recorded instrument and by the Declarant at any time to make changes and revisions to comply with requirements of HUD, Fannie Mae, Freddie Mac, or VA.

Section 4: Management of the Common Areas. The Subassociation may obtain and pay for the services of a managing agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Subassociation shall determine to be necessary or desirable for the proper management, operation, and maintenance of the Common Elements; provided, however, that any contract in regard to the hiring or employing of such a managing agent or other personnel shall not be for a term in excess of three (3) years and shall provide that the same shall terminate on sixty (60) days' written notice, with or without cause, and without payment of any termination fee.

ARTICLE XVI. MORTGAGEE PROTECTION

Section 1: Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests and others as identified in Section 2. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 2: Notices of Actions. The Subassociation shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of (and each Lot Owner hereby consents to and authorizes such notice):

- (a) Any condemnation loss or any casualty loss which affects a material portion of The Bungalows or any Lot in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;



- (b) Any delinquency in the payment of Common Expense assessments owed by a Lot Owner whose Lot is subject to a first Security Interest held, insured, or guaranteed, by such Eligible Mortgagee or Eligible Insurer, as applicable, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Subassociation;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 3 below; and
- (e) Any judgment rendered against the Subassociation.

Section 3: Consent and Notice Required.

- (a) Notwithstanding any requirement permitted by this Declaration or the Act, no amendment of any provision of the Declaration by the Subassociation or Lot Owners described in this Subsection may be effective without notice to all Eligible Mortgagees and Eligible Insurers, and as required by Section 2 above, and the vote of at least sixty-seven percent (67%) of the Lot Owners (or any greater Lot Owner vote required in this Declaration or the Act) and until approved by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right in Tuscan Declaration which affect or modify:
 - (I) Voting rights;
 - (II) Assessments, assessment liens or priority of assessment liens;
 - (III) Reserves for maintenance, repair and replacement of Common Elements;
 - (IV) Responsibility for maintenance and repairs;
 - (V) Reallocation of interest in the Common Elements or Limited Common Elements except that when Limited Common Elements



are reallocated by agreement between Lot Owners, only those Lot Owners and only the Eligible Mortgagees holding Security Interest in such Lots need approve such action;

- (VI) Redefinition of boundaries of Lots, except that when boundaries of only adjoining Lots are involved, or a Lot is being subdivided, then only those Lot Owners and the Eligible Mortgagees holding Security Interests in such Lot or Lots need approve such action;
 - (VII) Convertibility of Lots into Common Elements or Common Elements into Lots;
 - (VIII) Insurance or fidelity bonds;
 - (IX) Leasing of Lots;
 - (X) Imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot;
 - (XI) A decision by the Subassociation to establish self-management when professional management had been required previously by the Document or any Eligible Mortgagee;
 - (XII) Restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Documents; and
 - (XIII) Any provision that expressly benefits mortgage holders, insurers or guarantors.
- (b) Notwithstanding any lower requirement permitted by this Declaration or the Act, the Subassociation may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights, without the notice to all Eligible Mortgagees, and Eligible Insurers as required by Section 2 above, and approval of a least fifty-one percent (51%) (or the indicated percentage,) of the Eligible Mortgagees:
- (I) Convey or encumber the Limited Common Elements or any portion thereof, where an eighty percent (80%) Eligible Mortgagee approval is required. (The granting of easements for

public utilities or for other public purposes consistent with the intended use of the Limited Common Elements by The Bungalows will not be deemed a transfer within the meaning of this clause);

- (II) The alteration of any partition or creation of any aperture between adjoining Lots (when Lot boundaries are not otherwise being affected), in which case only the owners of Lots affected and Eligible Mortgagees of those Lots need approve the action;
 - (III) The granting of any permits, easements, leases, licenses or concessions through or over the Limited Common Elements (excluding, however, any utility, road or other easements serving or necessary to serve The Bungalows and excluding any leases, licenses or concessions for no more than one year);
 - (IV) The establishment of self-management when professional management has been required previously by the Declaration or by any Eligible Mortgagee.
 - (V) Restoration or repair of the Limited Common Elements after a hazard damage or partial condemnation in a manner other than specified in the Declaration.
 - (VI) The merger of The Bungalows with any other common interest community.
 - (VII) The assignment of the future income of the Subassociation, including its right to receive Common Expense Assessments.
 - (VIII) Any action taken not to repair or replace the Limited Common Elements.
- (c) The failure of an Eligible Mortgagee or Insurer to respond within thirty (30) days to any written request of the Subassociation delivered by certified or registered mail, "return receipt requested" for approval of an addition or amendment of the Declaration wherever Eligible Mortgagee or Insurer approval is required, shall constitute an implied approval of the addition or amendment.



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Section 4: Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment, or termination.

Section 5: Inspection of Books. The Subassociation must maintain current copies of the Declaration, Bylaws, Rules, books and records and financial statement. The Subassociation shall permit any Eligible Mortgagee or Eligible Insurer or other first mortgagee of Units, to inspect the books and records of the Subassociation during normal business hours.

Section 6: Financial Statements. The Subassociation shall provide any Eligible Mortgagee or Eligible Insurer who submits a written request, a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Subassociation. Such financial statement shall be audited or shall be reviewed by an independent certified public accountant if:

- (a) The Bungalows contain forty-four (44) Lots, in which case the cost of the audit shall be a Common Expense; or
- (b) An Eligible Mortgagee or Eligible Insurer request it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

Section 7: Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 8: Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which a Unit Owner may attend.

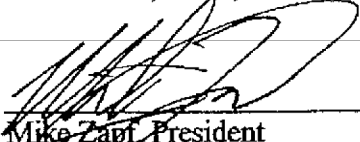
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

TUSCANY, LLC, a Colorado limited liability
company

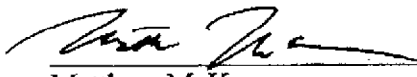
By 

James L. Martin, Manager

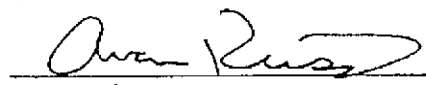
ZAPF HOMES, LTD., a Colorado corporation

By 
Mike Zapf, President

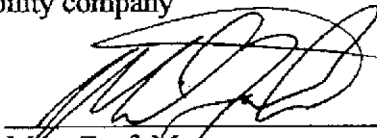

Madeline McKoane

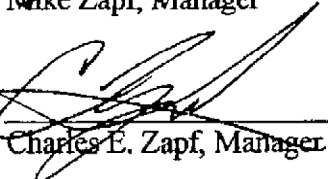

Matthew McKoane


Tim Ortiz


Aron Kriss

HIGHLAND CREEK, LLC, a Colorado limited liability company

By 
Mike Zapf, Manager

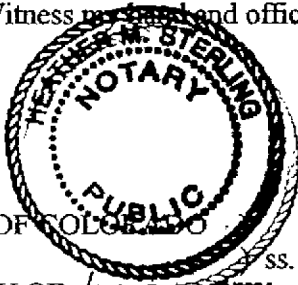
By 
Charles E. Zapf, Manager

(See attached pages for notary section)

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 18th day of December, 2002, by James L. Martin, as manager of Tuscany, LLC, a Colorado limited liability company.

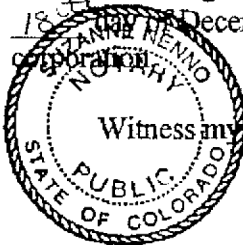
Witness my hand and official seal.



Heather M. Sterling
Notary Public
My commission expires:

STATE OF COLORADO)
) ss.
COUNTY OF Larimer

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 18th day of December, 2002, by Mike Zapf, president of Zapf Homes, Ltd., a Colorado corporation.



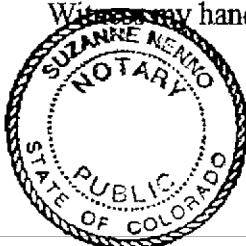
Witness my hand and official seal.

Suzanne Nennio
Notary Public
My commission expires: 11/7/04

STATE OF COLORADO)
) ss.
COUNTY OF Larimer

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 18th day of December, 2002, by Madeline McKoane.

Witness my hand and official seal.



Suzanne Nennio
Notary Public
My commission expires: 11/7/04



3021416 01/07/2003 01:49P Weld County, CO
34 of 37 R 186.00 D 0.00 Steve Moreno Clerk & Recorder

STATE OF COLORADO)
) ss.
COUNTY OF Larimer

18th The foregoing instrument was subscribed, sworn to, and acknowledged before me this day of December, 2002, by Matthew McKoane.

Witness my hand and official seal.

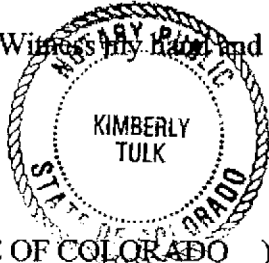


Suzanne Munro
Notary Public
My commission expires: 11-7-04

STATE OF COLORADO)
) ss.
COUNTY OF Weld

18 The foregoing instrument was subscribed, sworn to, and acknowledged before me this day of December, 2002, by Tim Ortiz.

Witness my hand and official seal.

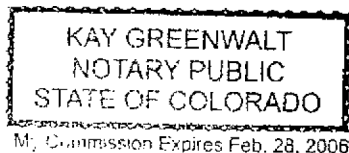


Kimberly Tulk
Notary Public
My commission expires: 10-22-03

STATE OF COLORADO)
) ss.
COUNTY OF Weld

18th The foregoing instrument was subscribed, sworn to, and acknowledged before me this day of December, 2002, by Aron Kriss.

Witness my hand and official seal.



Kay Greenwalt
Notary Public
My commission expires:



3021416 01/07/2003 01:49P Weld County, CO
35 of 37 R 186.00 D 0.00 Steve Moreno Clerk & Recorder

STATE OF COLORADO)
) ss.
COUNTY OF LaRimer

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 18th day of December, 2002, by Mike Zapf, manager of Highland Creek, LLC, a Colorado limited liability company.



Witness my hand and official seal.

Suzanne Nenni
Notary Public
My commission expires: 1/7/04

STATE OF COLORADO)
) ss.
COUNTY OF LaRimer

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 18th day of December, 2002, by Charles E. Zapf, manager of Highland Creek, LLC, a Colorado limited liability company.



Witness my hand and official seal.

Suzanne Nenni
Notary Public
My commission expires: 1/7/04

THE CONSENT OF MORTGAGEES SHALL BE FILED IN THE RECORDS OF THE CLERK AND RECORDER OF WELD COUNTY, COLORADO, BY SEPARATE INSTRUMENT.



3021416 01/07/2003 01:49P Weld County, CO
36 of 37 R 186.00 D 0.00 Steve Moreno Clerk & Recorder

EXHIBIT "A"
THE BUNGALOWS AT TUSCANY
[Twenty-six (26) Lots]

All of the following Lots are situate in the City of Evans, County of Weld, State of Colorado.

OWNER

PROPERTY (LOTS)

Zapf Homes, Ltd., a Colorado corporation

Lots 1A and 1B, 2A and 2B of Block 4, Replat of Block 4, Tuscany First Filing

Madeline McKoane

Lots 3A and 3B, of Block 4, Replat of Block 4, Tuscany First Filing

Matthew McKoane

Lots 4A and 4B of Block 4, Replat of Block 4, Tuscany First Filing

Tim Ortiz

Lots 5A and 5B of Block 4, Replat of Block 4, Tuscany First Filing

Aron Kriss

Lots 6A and 6B of Block 4, Replat of Block 4, Tuscany First Filing

Highland Creek, LLC, a Colorado limited liability company
(Mike Zapf and Charles E. Zapf, Managers)

Lots 7A and 7B through Lots 13A and 13B of Block 4, Replat of Block 4, Tuscany First Filing

EXHIBIT "B"
THE BUNGALOWS AT TUSCANY
[The Development Property – Eighteen (18) Lots]

Tuscany, LLC, a Colorado limited liability company

Lots 1 through 4 of Block 5; and Lots 1 through 5 of Block 6, Replat of Blocks 4, 5, and 6 and Tract 7, Tuscany First Filing



3021416 01/07/2003 01:49P Weld County, CO
37 of 37 R 186.00 D 0.00 Steve Moreno Clerk & Recorder

Addendum A

Budget for Bungalows

\$95.00 per Month

1)Lawn maintenance and snow removal	\$25.00
2)Trash Removal	\$14.00
3)Cable	\$26.00
4)Roof and exterior maintenance slush fund	\$15.00
5)Management Fee	\$3.00
6)Overruns and contingencies	\$12.00

RAMSEY D. MYATT
ROBT. W. BRANDES, JR.
RICHARD S. GAST
JEFFREY J. JOHNSON
DANIEL C. MUFFLY

MYATT BRANDES & GAST

PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
CLOCKTOWER SQUARE
323 SOUTH COLLEGE AVENUE, SUITE 1
FORT COLLINS, COLORADO 80524-2845

TELEPHONE (970) 482-4846
FACSIMILE (970) 482-3038
E-MAIL: rgast@verinet.com

BRIAN R. LEONE
JOSHUA B. ZUGISH

September 12, 2005

Board of Directors
The Bungalows at Tuscany Homeowners' Association
c/o Dennis Nimetz
1029 Indian Trail Drive
Windsor, CO 80550

**THIS LETTER IS CONFIDENTIAL AND ITS CONTENTS ARE SUBJECT
TO THE ATTORNEY-CLIENT PRIVILEGE.**

Re: Maintenance Issues/Bylaws/Ground Subsidence/Insurance

Dear Board Members:

Background

Through your managing agent, Dennis Nimetz, you have asked for my input on various maintenance issues, potential claims relating to ground subsidence around the homes and insurance issues.

In preparing this opinion letter I have reviewed (and the scope of my opinions is limited to) the following documents:

- Declaration of Covenants, Conditions and Restrictions for The Bungalows at Tuscany recorded with the Clerk and Recorder of Weld County, Colorado on January 27, 2003 at Reception No. 3021416 (the "Bungalows Declaration").
- Declaration of Covenants, Conditions and Restrictions for Tuscany recorded with the Clerk and Recorder of Weld County, Colorado on July 13, 2001 at Reception No. 2865440, together with the First and Second Amendments to that Declaration (collectively referred to as the "Master Declaration").
- Articles of Incorporation of the Association filed with the Colorado Secretary of State on December 20, 2002 (the "Articles").
- Replat of Block 4, Tuscany First Filing, recorded with the Clerk and Recorder of Weld County, Colorado on November 22, 2002 at Reception No. 3008344, and Amended Replat of Block 4, Tuscany First Filing, recorded with the Clerk and Recorder of Weld County, Colorado on April 11, 2003 at Reception No. 3051701 (the "Plats"). Copies of excerpts from the most recent of the two Plats are enclosed with this letter.

I have also spoken with Jana Easley at the City of Evans Planning Department regarding street maintenance issues.

This letter is intended for the exclusive use of the Association's Board of Directors.

Maintenance Issues

Dennis Nimetz had originally requested that I prepare a table outlining the respective maintenance responsibilities of the Association and the homeowners. However, given some of the maintenance issues I have encountered in researching this matter, it makes the most sense to resolve those issues before formally preparing the maintenance table. Note that I have included an abbreviated version of a maintenance table on page four of this letter.

By way of additional background, the Bungalows community is subject to two separate declarations, the Master Declaration and the Bungalows Declaration. The Master Declaration has broad provisions applicable to the entire Tuscany community, while the Bungalows Declaration has a variety of provisions which are specific to the Bungalows neighborhood.

In evaluating the responsibility for maintaining various properties within the Bungalows neighborhood, we must look at both the Plats and the Bungalows Declaration. Turning first to the Plats (again a copy of the most recent of the two Plats is enclosed for your reference), all of the homes in the Bungalows neighborhood front on either Palermo Avenue or Porto Fino Avenue. A street identified as Jessica Street runs in a north-south direction between the lots in the Bungalows neighborhood. My understanding is that this street is not formally signed and acts as an alleyway providing access to the garages and the back doors for the Bungalows homes. Significantly, Jessica Street is a publicly dedicated street on the Plats. The Statement of Dedication appearing on the Plats confirms that Jessica Street is dedicated to the public as public right-of-way. The effect of that dedication is that Jessica Street is actually owned by the City of Evans.

In speaking with the planner in the City of Evans Planning Department, she indicated that since Jessica Street was dedicated to the City, the City is responsible for its maintenance. The contact person at the City of Evans for any maintenance questions is:

Mike Hunter – City of Evans Operations Center
Phone Number: (970) 339-4081 (Extension 109)

The maintenance provisions in the Master Declaration and the Bungalows Declaration create some inconsistencies with the Plats. The Master Declaration makes reference to Common Elements (sometimes referred to as General Common Elements), and the Bungalows Declaration makes reference to Limited Common Elements. Generally speaking, General Common Elements and Limited Common Elements are property within a community owned by the homeowners association or, in the case of a condominium community, by all of the condominium unit owners as tenants in common. The difference between General Common

Elements and Limited Common Elements is that General Common Elements are available for the use and enjoyment of all owners within a community, while Limited Common Elements are allocated to specific lots or homes and are available only for the exclusive use of certain lots or homes. A greenbelt area in a planned community which is owned by a homeowners association is typically a General Common Element available for use by all of the homeowners. Limited Common Elements are most typically found in a condominium community and consist of items like decks and balconies which are outside an owner's condominium unit but which are reserved for the exclusive use of that unit owner.

General Common Elements and Limited Common Elements are typically identified on plat maps for a community. In the case of the Bungalows at Tuscany, no General Common Elements or Limited Common Elements are identified on the Plats. Again, Jessica Street is shown on the Plats as a publicly dedicated street.

Issues arise when we look at the Bungalows Declaration. Article VI, Section 1 of the Bungalows Declaration provides that the alleys in the Bungalows neighborhood are dedicated as Limited Common Elements. Being Limited Common Elements means the alleys are designated for the use by only those owners within the Bungalows neighborhood. There is no definition of alleys in the Bungalows Declaration, so it is unclear whether the developer was referring to what is shown on the Plats as Jessica Street or some other alleyways. Logically, since Jessica Street provides access to the garages and back doors of the Bungalows homes, the developer most likely intended Jessica Street to be an "alley" as referenced in the Bungalows Declaration. However, if Jessica Street was truly intended to be an alley instead of a publicly dedicated street, it should have been identified as a separate tract or outlot on the Plats, and then deeded by the developer to the Association. Simply stated, a publicly dedicated street cannot be a Limited Common Element as that term is typically used in Colorado law.

Looking to specific maintenance responsibilities for Jessica Street, the issues are compounded under the Bungalows Declaration in Article V, Section 4(i) which makes it the obligation of the Association's Board to maintain, repair and replace the Limited Common Elements in the Bungalows community. Since Article VI, Section 1 of the Bungalows Declaration dedicates the alleys as Limited Common Elements, the intent of the developer was to have the Association maintain, repair and replace any alleys. However, since the City has accepted the dedication of Jessica Street and acknowledges responsibility for maintaining it, the conclusion has to be that there are no alleys or other Limited Common Elements left within the Bungalows community for the Association to maintain.

The initial dedication of Jessica Street as public right-of-way occurred when the first Replat of Block 4 was recorded on November 22, 2002. The Bungalows Declaration purporting to dedicate alleys like Jessica Street as Limited Common Elements was not recorded until January 7, 2003. The Bungalows Declaration could not subsequently "undo" the public dedication of the Jessica right-of-way to the City and reserve that as a private Limited Common Element for the benefit of the Bungalows homeowners. As a result, my conclusion is that Jessica Street is public right-of-way owned by the City, and not a Limited Common Element.

Since you have a relatively small Association, my recommendation would be to amend the Bungalows Declaration to resolve any confusion about Jessica Street and simply state in the amendment that Jessica Street (which serves as the alley for the Bungalows community) is a publicly dedicated street which has been accepted by the City and which will be maintained by the City.

One area of further clarification with the City would be snow removal. I am not sure whether the City routinely plows a street like Jessica Street during the winter months. If not, and if plowing is necessary, you can clarify in an amendment to the Bungalows Declaration that the Association will take on that maintenance responsibility.

Outside of the Jessica Street maintenance issue, with a little bit of searching we can get a fairly good picture of the respective maintenance responsibilities of the Association and the owners from the Master Declaration and the Bungalows Declaration. Note that most declarations for communities in northern Colorado set forth the maintenance responsibilities in a single section. This is not the case with Tuscan. Provisions relating to maintenance are scattered throughout the two Declarations in sections relating to architectural control, assessments and the structure of the homeowners association. Nonetheless, a brief overview of the maintenance responsibilities for items other than Jessica Street appears below:

Association

Owner

Landscaping on each Bungalow's lot outside of the enclosed patio area (Reference: Bungalows Declaration Article V, Section 4(i))

Landscaping within the enclosed patio area on each owner's lot (Reference: Bungalows Declaration Article V, Section 4(i))

Lawn sprinklers on the lots outside of the enclosed patio area (Reference: Bungalows Declaration Article V, Section 4(i) and Article IX, Section 5)

All other improvements on an owner's lot which are not otherwise the responsibility of the Association (Colorado Common Interest Ownership Act §38-33.3-307)

Snow removal from the lots (Reference: Bungalows Declaration Article IX, Section 5(d))

Residence roofs and exterior surfaces of the residences (excluding window glass and structural damage) (Reference: Bungalows Declaration Article IX, Section 5(f))

Bylaws

Dennis Nimetz advises that he cannot locate a copy of the Bylaws for your Association. The developer should have prepared Bylaws for the Association as part of the initial governing documents package. Indeed, under the Colorado Common Interest Ownership Act ("CCIOA"), the developer was obligated to provide the Association with the original Bylaws following the turnover of the Association to the homeowners.

Since the Bylaws govern a variety of important procedural matters for the Association (such as conducting meetings), it is critical that the Association have a set of Bylaws in place. Unlike the Bungalows Declaration and the Articles, the Bylaws are not recorded or filed in the public records. I would recommend contacting the developer to obtain the Bylaws. If the developer does not have a set of Bylaws for the Bungalows, you have two options:

1. You can demand that the developer prepare an original set of Bylaws at the developer's expense and deliver those to the Association (since the developer was obligated to do so upon termination of developer control under CCIOA).
2. I can prepare a set of Bylaws which can be adopted by the Board of Directors.

Again, it is important to make sure the Association has a set of Bylaws in place as soon as possible.

Ground Subsidence

Dennis Nimetz advises that backfill around the foundations of the homes in the Bungalows neighborhood has been settling and causing flooding of basements. This settling is occurring on the lots owned by individual homeowners.

If the subsidence was caused by improper grading by the developer or builder, or other developer/builder negligence (as opposed to a homeowner changing the grading or drainage patterns on a lot), then ordinarily a homeowner has a claim against the developer or builder to fix the problem. Depending on when the homes in the Bungalows were built, this may be covered by the builder's warranty. If the warranty has expired, claims may still be brought (unless such claims have otherwise been waived or released under the builder warranty) within two years after the problem is discovered, but in no event later than six years after the homes were constructed. This statute of limitations means a lawsuit must actually be filed in the Weld County District Court against the builder or other responsible party within the referenced time period.

The initial question will be who performed the dirt work resulting in the subsidence. If it was the developer (Tuscany, LLC) as part of the initial grading for the Bungalows neighborhood, any claim against that entity may not be worth much. My understanding is that Tuscany, LLC is insolvent and already has multi-million dollar judgments in place against it relating to the overall

Tuscan project. Furthermore, under Article XII, Section 4 of the Master Declaration, Tuscan, LLC included language saying it would not be liable for any loss or damage to a residence caused by, resulting from or in any way connected with soil conditions on any lot. This type of provision in the Master Declaration may not be enforceable and may be void against public policy; however, it does give anyone trying to assert a claim against Tuscan, LLC for the subsidence another hurdle to overcome.

If, instead, either the builder is at fault or a subcontractor of the builder is at fault, then claims may be asserted against those persons or entities and, depending on their solvency, their insurance carriers may be called on to pay any claims.

Construction defect litigation is a technical area of the law and, if the Association or individual homeowners are interested in pursuing claims, I would recommend they sit down and discuss the issues with one of the construction defect trial attorneys here in our firm.

Insurance

The Association's insurance obligations are set forth in Article XI of the Bungalows Declaration. Basically, the Association is responsible for insuring any Limited and General Common Elements, with the owners being responsible for insuring the homes and other improvements on their lots.

Since there are no Limited or General Common Elements owned by the Association, the Association does not need to obtain any property or casualty insurance.

In Article XI, Section 2, the Bungalows Declaration provides that the Association must maintain comprehensive public liability insurance, including non-owned and hired automobile liability coverage and personal injury liability coverage, covering liabilities of the Association, its directors, officers, employees, agents and owners arising in connection with any Limited Common Elements and General Common Elements, as well as any other area the Association is required to maintain with a minimum single limit or per occurrence limit of \$1,000,000. Although the Association does not own any Limited Common Elements or General Common Elements, it does have maintenance responsibility for portions of the owners' lots, so it is necessary to have this liability insurance in place.

Under Article XI, Section 3 of the Bungalows Declaration, the Association must maintain workmen's compensation and employer liability insurance as necessary to comply with applicable law. My understanding is that the Association has no employees, so this coverage is not necessary.

Article XI, Section 4 of the Bungalows Declaration requires the Association to have a fidelity bond for the property manager who handles funds of the Association. The bond should cover the maximum funds in the custody of the Association or the manager, and in no event should it be for an amount less than the sum of three months' assessments plus reserve funds.

Board of Directors
The Bungalows at Tuscany Homeowners' Association
September 12, 2005
Page 7

Lastly, under Article XI, Section 5 of the Bungalows Declaration, the Board is required to have in effect directors' and officers' liability insurance covering all of the directors and officers of the Association. The limits are as determined by the Board.

If you have any questions or need anything further, please let me know. Thank you.

Very truly yours,

MYATT BRANDES & GAST PC

By: _____

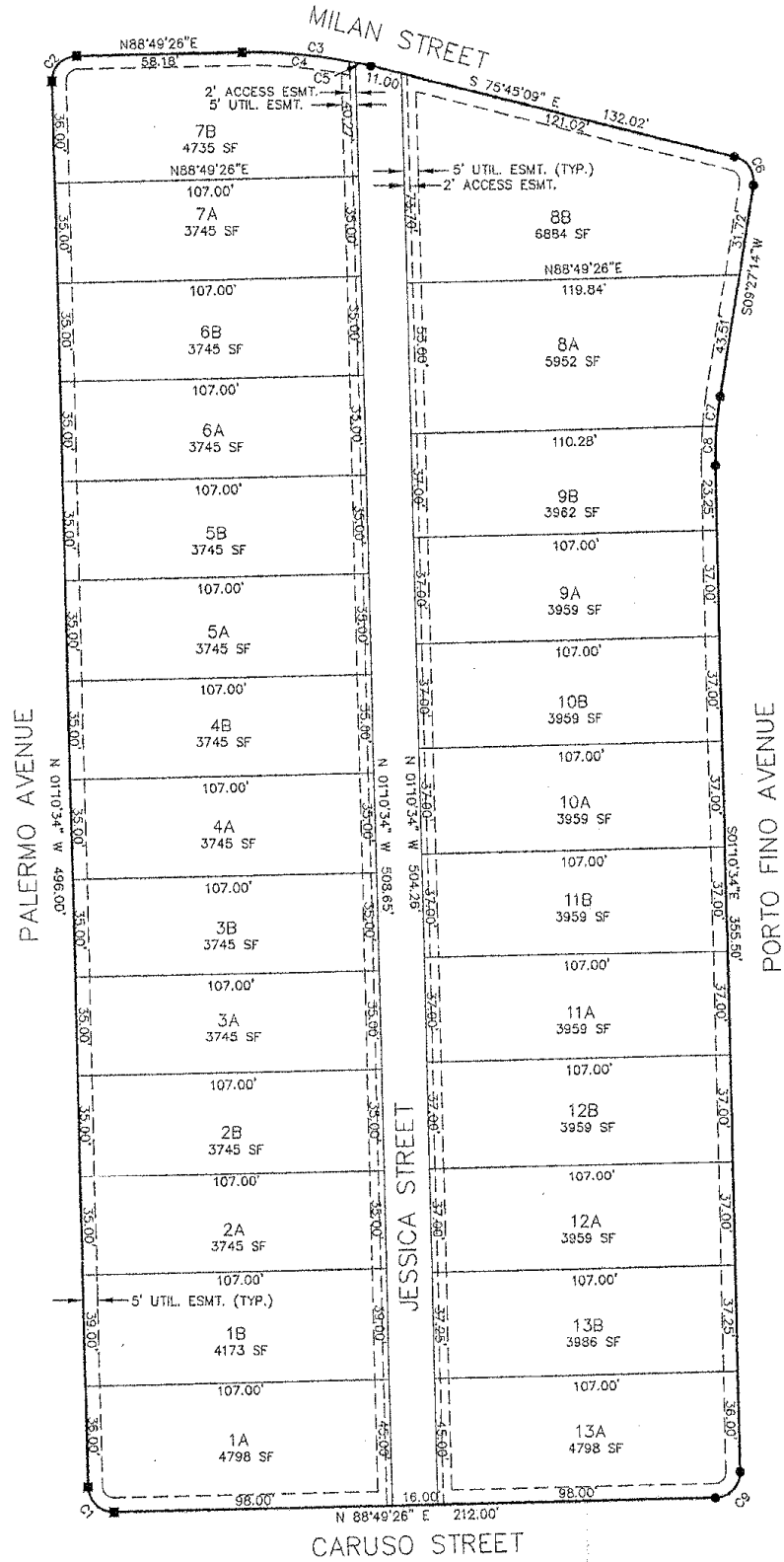
Richard S. Gast

RSG/lis
Enclosures

ENV
8/16/8

701

3051701 04/11/2003 02:59P Weld County, CO
1 of 1 R 11.00 D 0.00 Steve Moreno Clerk & Recorder



AMENDED REPLAT OF BLOCK 4, TUSCANY FIRST FILING

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 23,
TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL
MERIDIAN, CITY OF EVANS, COUNTY OF WELD, STATE OF
COLORADO.

CERTIFICATE OF DEDICATION AND OWNERSHIP

KNOW ALL MEN BY THESE PRESENTS THAT MICHAEL ZAPF, MADELINE MCKOANE, MATTHEW MCKOANE, TIM ORTIZ, ARRON KRISS, AND HIGHLAND CREEK LLC BEING THE OWNERS OF CERTAIN LAND IN THE CITY OF EVANS, WELD COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF EVANS, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

BLOCK 4, TUSCANY FIRST FILING AS RECORDED UNDER RECEPTION NUMBER 2794234, AT THE WELD COUNTY CLERK AND RECORDER'S OFFICE.

SAID TRACT CONTAINS 2.670 ACRES, MORE OR LESS.

HAVE BY THESE PRESENTS LAID OUT, PLATTED AND SUBDIVIDED THE SAME INTO TRACTS, LOTS, AND BLOCKS AS SHOWN ON THIS PLAT, UNDER THE NAME AND STYLE OF REPLAT OF BLOCK 4, TUSCANY FIRST FILING, A SUBDIVISION OF THE CITY OF EVANS, WELD COUNTY, COLORADO, AND DO HEREBY DEDICATE TO THE PUBLIC ALL STREETS, AVENUES, WAYS AND OTHER PUBLIC RIGHTS-OF-WAY FOR THE PURPOSE SHOWN HEREON.

EXECUTED THIS 10 DAY OF February, A.D. 2003

OWNERS

MICHAEL ZAPF

TIM ORTIZ

Madelaine MCKOANE

ARRON KRISS

MATTHEW MCKOANE

HIGHLAND CREEK LLC.

MIKE ZAPF - MANAGER

CHARLES ZAPF - MANAGER

MATTHEW MCKOANE - MANAGER

TIM ORTIZ - MANAGER

ACKNOWLEDGEMENT

STATE OF COLORADO)

) SS

COUNTY OF WELD)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 10 DAY OF February, 2003
BY: MICHAEL ZAPF, MADELINE MCKOANE, MATTHEW MCKOANE, TIM ORTIZ, ARRON KRISS, AND HIGHLAND CREEK LLC

WITNESS MY HAND AND SEAL

MY COMMISSION EXPIRES: 2/4/2004

Alison Zapf
NOTARY PUBLIC



PLANNING COMMISSION CERTIFICATE

THIS PLAT APPROVED BY THE CITY OF EVANS PLANNING COMMISSION THIS 19th DAY OF November
A.D. 2002³

Elizabeth Ryford
SECRETARY
David James
CHAIRMAN

PUBLIC WORKS/PLANNING DIRECTOR APPROVAL

APPROVED THIS 4 DAY OF March A.D. 2002³ BY THE PUBLIC WORKS/PLANNING
DIRECTOR OF THE CITY OF EVANS.

Earl Smith
PUBLIC WORKS/PLANNING DIRECTOR

ATTEST: Keri Bety
CITY CLERK



CERTIFICATE OF APPROVAL BY CITY COUNCIL

APPROVED BY THE CITY COUNCIL OF EVANS, WELD COUNTY, COLORADO THIS 19th DAY OF November
A.D., 2002³

Sherry Melloy
MAYOR

ATTEST: Keri Bety
CITY CLERK