

AR2420977

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
OF  
DOVE CREEK  
AND  
DOVE CREEK COMMUNITY ASSOCIATION OF GREELEY, INC.

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

OF

DOVE CREEK

AND

DOVE CREEK COMMUNITY ASSOCIATION OF GREELEY, INC.

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by W.A.G. Investments Limited Liability Company, a Colorado limited liability company, hereinafter referred to as "Declarant."

W I T N E S S E T H:

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

Lots 1 - 13 and all Common Areas, Utility and Drainage Easements, Private Driveways and Parking Areas of Dove Creek.

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; and (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

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; and

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.

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.

Section 3. "Association" shall mean and refer to Dove Creek Community Association of Greeley, Inc., a Colorado corporation, not-for-profit, its successors and assigns.

Section 4. "Association Maintenance Areas" shall mean those areas more particularly described hereinafter in Article IV, Section 4 of this Declaration.

Section 5. "Assessment" shall mean and refer to any assessment levied, charged, or assessed against an Owner in accordance with the provisions of this Declaration.

Section 6. "Assessable Unit" shall mean and refer to any Living Unit within a Lot within the properties which is subject to assessments.

Section 7. "Board" shall mean the Executive Board of the Association.

Section 8. "Bylaws" shall mean and refer to the duly adopted Bylaws of the Association, as the same may from time to time be amended.

Section 9. "Common Area" shall mean and refer to all real property and Improvements owned or leased by the Association which shall include, by way of example but without limitation, private driveways, parking areas, open common areas, drainage areas, Association walkways located adjacent to Units which provide access to the Common Area, and utility easements, as well as any personal property located on or used to maintain any portion of the common areas. 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 Plat of Dove Creek in the Real Estate Records of the Clerk and Recorder of Weld County, Colorado. The definition of Common Area shall expressly exclude any public streets or alleys as shown on the Plat of Dove Creek identified above. The Common Area shall be owned by the Association at the time of the conveyance of the first Unit.

Section 10. "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 11. "Developer" or Declarant shall mean and refer to W.A.G. Investments Limited Liability Company, 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 12. "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 13. "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 Weld 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 Weld County, Colorado, show the said Administrator as having the record title to the Lot.

Section 14. "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 15. "Improvements" shall mean and refer to all improvements now or hereafter constructed including, without limitation, exterior lighting, benches, walks and security areas within the project owned by the Association.

Section 16. "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 17. "Living Unit" or "Unit" shall mean and refer to any structure situated on a portion of a Lot and the land beneath and adjacent thereto as shown on the recorded Improvement Survey Plat for that Lot within the properties designated and intended for use and occupancy as a residence by a single family. "Living Unit" or "Unit" shall also have the same meaning for the purposes of this declaration as that term is defined in C.R.S. §38-33-103(30) as originally enacted or subsequently amended. Each Unit shall be located on a Lot, and the Declarant shall record prior to the transfer of title to any Unit an Improvement Survey Plat which establishes the exact location of the Unit on the Lot.

Section 18. "Lot" shall mean and refer to any numbered Lot shown as such upon any filing plat of Dove Creek recorded in Weld County, Colorado, with the exception of Common Area as heretofore defined.

Section 19. "Member" shall mean and refer to the Person designated as such pursuant to Article III.

Section 20. "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 portion of a Lot and/or Living Unit.

Section 21. "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 22. "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 an 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 an Association publication.

Section 23. "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 a portion of 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 portion of a 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 24. "Person" shall mean an individual, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Section 25. "Project or Properties" shall mean and refer to all real property which became subject to the Declaration.

Section 26. "Quorum of Owners" shall mean the representation by presence or proxy of Members who hold twenty percent (20%) of the outstanding votes entitled to be cast on any issue.

Section 27. "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 28. "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 29. "Single Family" shall have the same meaning as that term is defined in the zoning ordinance of the City of Greeley, County of Weld, 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 Greeley, County of Weld, Colorado.

Section 30. "Sewer Line" shall mean a lateral sanitary sewer line which provides sewage service to a Living Unit.

Section 31. "Sewer Line Easement" shall mean an easement which is five feet on either side of the sewer line as constructed for purposes of installation, operation, maintenance, repair and replacement of a Sewer Line and for access, ingress and egress, necessary for such installation, operation, maintenance, repair and replacement.

Section 32. "Utility Service Lines" shall mean any natural gas or electrical service lines which provide those services to a Living Unit.

Section 33. "Utility Service Line Easements" shall mean an easement which is five feet (5') on either side of a natural gas, electrical service line or cable television service line as constructed for purposes of installation, operation, maintenance, repair and replacement of the natural gas, electrical service line or cable television service line and for access, ingress and egress, necessary for such installation, operation, maintenance, repair and replacement of those utility services.



Section 34. "Water Line" shall mean a lateral water line which provides water service to a Living Unit on a Lot from a water main located beneath a street.

Section 35. "Common Water Line" shall mean a Water Line which services Association Maintenance Areas.

Section 36. "Water Line Easement" shall mean an easement which is five feet (5') on either side of the water line as constructed, for purposes of installation, operation, maintenance, repair and replacement of a Water Line (whether a Water Line or a Common Water Line) and for access, ingress and egress, necessary for such installation, operation, maintenance, repair and replacement.

## 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 Greeley, County of Weld, State of Colorado, and includes 13 Lots. Within those 13 Lots, the Declarant can build the maximum number of Units authorized under zoning laws of the City of Greeley and transfer those Units to third party purchasers. The Lots, Units, common area, private driveways, parking areas and drainage easements make up the Project known as Dove Creek.

## 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 Unit giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in this Declaration, or the 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 Units as defined in Article I, Section 23. Class A Members shall be entitled to one (1) vote for each Unit owned.

(d) Exercise of Vote. Class A Membership shall be appurtenant to and may not be separated from record ownership of a Unit, and such membership shall automatically transfer to the new Owner upon any sale, transfer, or other disposition of a Unit subject to the provisions of this Declaration and any Supplements thereto. There shall not be more than one (1) Class A Member for any Unit within the Project. Upon transfer, sale, or other disposition of all or some of the fee interest in a Unit, the then Owner shall automatically become

the Class A Member with respect to such Unit. 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 Unit 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 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 Board by said Documents.

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

ARTICLE IV

DUTIES AND POWERS OF THE DOVE CREEK  
COMMUNITY ASSOCIATION

Section 1 - General Duties and Powers of Association. The Dove Creek 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, the 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, access and parking areas and drainage and utility easements as contained herein. Except as otherwise specifically approved by resolution of the Executive Board of the Association, no Properties transferred to the Association by Declarant and no personal property transferred to the Association by the Declarant shall impose upon the Association any obligation to make monetary payments to the Declarant nor any affiliate of the Declarant, including, but not limited to, any purchase price, rent, charge or fee. The interest in property transferred to the Association by the Declarant shall not impose any unreasonable or special burden on the Association other than the duties set forth hereinafter.

Section 3 - Duty to Remove Snow from Private Access Driveways, Driveways, Parking Areas and Front Walks. Upon commencement of

Assessments, the Association shall remove snow as reasonably necessary from private access driveways, driveways, parking areas and from the walk leading from the front door of the Living Unit to the adjacent private street within the project. This duty shall not extend to any patio/deck area adjacent to a Living Unit.

Section 4 - Duty to Manage and Care for Association Maintenance Areas. Upon commencement of Assessments and following the installation of Common Areas and Lot landscaping by the Declarant, the Association shall manage, operate, care for, maintain and repair all landscaping or other Improvements (other than any private walks, private plantings of flowers and shrubs and patios/decks) installed in the Association Maintenance Areas by Declarant, including all irrigation systems therein and common water meters for irrigation water therefor on the Maintenance Areas. The Association shall keep the Association Maintenance Areas (other than private walks, private plantings of flowers and shrubs and patios/decks located in the Association Maintenance Areas) in a safe, attractive and desirable condition for the use and enjoyment of the Owner of the Unit on which the Association Maintenance Area is located. As provided hereinafter, the Owner of the Unit shall provide for maintenance, repair and replacement of any private plantings of flowers and shrubs, private walk or patio/deck in the Association Maintenance Areas of the Unit. If the Owner of a Unit desires to change the boundaries of the Association Maintenance Area located on his/her Unit, such Owner shall give written notice to the Association. Any such change shall be effective only upon the execution of a written agreement by and between such Owner and the Association setting forth the new boundaries of the Association Maintenance Area located on such Unit and containing such other terms and conditions as shall be deemed advisable by the Association in its sole discretion, which written agreement shall be recorded by the Association. The terms and conditions of any such written agreement between the Association and the Owner of a Unit shall run with title to such Unit and shall also be binding upon each subsequent Owner of such Privately Owned Unit. If a change or alteration to an Association Maintenance Area is approved in accordance with the foregoing, and if such change or alteration results in either an expansion or contraction of that Association Maintenance Area, the Association's duty to manage and care for the Association Maintenance Area, as provided herein, and the corresponding obligation of the Owner of the Unit to maintain the remainder of his/her Unit, as hereinafter provided, shall either be increased or decreased, as is appropriate; provided, however, that no such change to an Association Maintenance Area shall alter the amount of the assessment payable by the Owner thereof. Any such change or alteration to the Association Maintenance Areas shall only be made or done by the Association or its authorized agents or contractors approved by the Association.

Section 5 - Duty to Manage and Care for Exterior Surfaces. "Exterior Surfaces" shall mean the exterior surfaces of Living Units on any Lot within the project including the exterior surfaces of walls, gutters and downspouts but excluding any portions thereof which are glass, any walks and driveways, any screens on windows and doors, the roof surface of the Living Unit, and the surface of any patio/deck located on a Lot, whether constructed of wood, concrete or other material. The Association shall maintain, repair and care for, as defined in this Section 6, all "Exterior Surfaces". The Owner of a Unit shall, at such Owner's cost and expense, be responsible for maintenance, repair and care of all glass on the Living Unit, all exterior doors on such Living Unit, the roof surface of the Living Unit, all screens on doors and windows of such Living Unit, and the surface of all patios/decks, walks and driveways located on the Residential Lot, whether constructed of wood, concrete or other material. The Association shall see that all such Exterior Surfaces are adequately painted, finished and maintained so as to present, at all times, a pleasing and attractive appearance. The nature and type of any painting or refinishing, including the color thereof, shall be within the sole

discretion of the Association. Such maintenance, repair and care of Exterior Surfaces shall be done at the expense of the Association except that, if the Association is required to incur costs and expenses of maintenance, repair or care due to the willful or negligent act or failure to act of an Owner or a related user of an Owner, the amounts incurred shall be payable by such Owner to the Association secured by a lien as provided above in this Declaration. Maintenance, repair and replacement of any glass surfaces, doors, screens on doors and windows on the Living Unit, the roof surface of the Living Unit and the surface of all patios/decks, walks and driveways located on the Lot whether constructed of wood, concrete or other material, shall be the responsibility of the Owner of the Unit who shall bear the expense thereof.

Section 6 - Duty to Manage and Care for Common Water Lines and Utility Service Lines. Upon commencement of Assessments and following the installation of the Common Water Lines and Utility Service Lines, the Association shall manage, care for, maintain, repair and replace all Common Water Lines and Utility Service Lines within the project so that the use and enjoyment by an Owner of his/her Living Unit to which such a Common Water Line or Utility Service Line is connected shall not be unreasonably interfered with or unreasonably interrupted. The Association shall also maintain, repair and replace any landscaping, pavement, curbing, gutter or other Improvements within or adjacent to the respective Water Line Easement or Utility Service Line Easement, as the case may be, which is damaged or destroyed by the management, care, maintenance, repair or replacement, or the lack thereof, of the Common Water Lines or Utility Service Lines; provided, however, that the Association shall not be liable, and each Owner hereby waives any and all right to claim against or recover from the Association, for any damage or destruction to any Improvements resulting from or related to the failure of the Association to comply with its obligations under this Section where such failure results from the inability of the Association to gain access to any Living Unit necessary for the proper performance of its obligations hereunder. No Owner shall have the right to maintain, repair, replace or remove any Common Water Line or Utility Service Line.

Section 7 - 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 8 - Duty to Prepare Budgets. The Association shall prepare budgets for the Association as elsewhere provided in this Declaration.

Section 9 - Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 10 - 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 11 - 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 12 - Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and 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 the 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 (unless 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 13 - 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 14 - 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 15 - 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 16 - General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado 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 Living Units 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 Living Unit, 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 Living Units 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 Living Unit shall not affect the liens for said charges except that sale or transfer of any Living Unit 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 Living Unit 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 Living Unit 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 for domestic water service to the Living Unit, exterior maintenance of the Living Units and 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.

(b) Basis for Assessment. For General Assessment purposes all Living Units which are or have been occupied shall be assessed at one hundred percent (100%) of the General Assessment rate.

(c) Increase in Maximum Living Unit Assessment. Until January 1 of the year immediately following the conveyance of the first Living Unit by Declarant, the maximum assessment shall be Two Hundred Fifty and no/100 Dollars (\$250.00) per Living Unit, per month.

(1) From and after January 1 of the year immediately following the conveyance of the first Living Unit by Declarant, the maximum 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 Living Unit by Declarant, the maximum 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 monthly assessment at an amount less than the maximum.

(d) Procedure for Monthly Assessments Below Maximum Assessment. It is anticipated that the initial monthly assessment shall be estimated to be between One Hundred Thirty and no/100 Dollars (\$130.00) and One Hundred Fifty and no/100 Dollars (\$150.00) per month based upon budget projections of the Declarant. It should be understood that the general monthly assessment may be raised by the 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 unit owners until it reaches the maximum level described in subparagraph 3 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 Living Unit 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 Living Unit assessment shall commence on the first day of the month following the issuance of a Certificate of Occupancy for the Living Unit by the City of Greeley.

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 Living Unit Owners and shall set a date for a meeting of the Living Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Living Unit 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 Living Unit Owners must be continued until such time as the Living Unit 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 Living Unit, the amount of which shall be determined by the Board as provided in Section 5 of this Article.

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 Living Unit 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 Living Unit owned within the Association. There shall be two (2) levels of General Assessments 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 for unimproved Lots: general liability insurance costs, weed control costs, snow removal costs and general administrative overhead necessary to operate the Association. The second level of assessment by the Association shall be for Improved Living Units. "Improved Living Units" shall be defined to mean any Living Unit upon which residential construction has been completed as of the date the assessment is due. The Improved Living Unit assessment shall include those costs incurred by the Association for each completed Living Unit for: general liability insurance costs, lawn maintenance costs, sprinkler system operation and maintenance costs, snow removal costs, trash removal, domestic water and sewer charges, any common area expense not otherwise described, deferred maintenance costs for private streets and parking areas 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 Living Unit. No Owner, including the Declarant/Developer, shall be exempt from General Assessments within the Association, and all Owners shall pay either an Unimproved Lot assessment or an Improved Living Unit assessment from the date said Owner acquires title.

Section 10 - Time for Payments. The General Assessment for each Living Unit or Lot shall be payable, subject to Section 12 of this Article V, in twelve equal monthly installments due on the first day of each month and shall become delinquent if not paid by the tenth (10th) day of each month. 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 or Living Unit and a portion of the Lot to secure payment of any Assessment and other amounts due and owing to the Association with respect to that Lot or Living Unit which shall be created and enforced as provided in Colorado Revised Statutes §38-33.3-316 or any subsequent amendment thereto.

Section 12 - Working Capital. The Association or Declarant may require the Owner of any Living Unit who purchases that Living Unit from Declarant to make a contribution to capital equal to one month's general assessment currently being collected by the Association from its members with the Association, which sum shall be held by the Association as and for working capital. Such deposit shall not relieve an Owner from making the regular payment of assessments as the same become due. Any amount collected shall not be refunded to the Owner upon the sale or transfer of a Living Unit. No owner shall be entitled to interest on any amount provided as working capital to the Association. The provisions of this Section 12 shall not apply to the Declarant or any successor in interest to the Declarant. Upon transfer of any Living Unit, an Owner shall be entitled to a credit from the purchaser for the working capital contribution which has been allocated to that Living Unit.

Section 13 - Estoppel Certificate. Upon payment of a reasonable fee and upon written request of any Owner, First Mortgagee or any person with any right, title or interest in a Living Unit or intending to acquire any right, title or interest in a Living Unit, the Association shall furnish a written statement setting forth the amount of any Assessments, if any, due or accrued and then unpaid with respect to such Living Unit and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Living Unit, 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 14 - 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.

Section 15 - Rights of First Mortgagees. Any First Mortgagee of a Living Unit 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 Dove Creek Community Association of Greeley, Inc.

Section 16 - 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 or Units have been constructed shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Living Unit and 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 Residence. 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 Greeley 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, regulation, 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, 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 or Living Unit) without the prior written approval of the appropriate 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 guest or member 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.

Section 11 - Mineral Exploration. No portion of the Project including, without limitation, any area within a Lot shall be used to explore for or to remove any water, soil, hydrocarbons or other minerals of any kind.

Section 12 - Restrictions on Parking and Storage. Except as expressly heretofore provided, no Lot or Living Unit, including the private drives or parking areas, unless specifically designated by the Association therefore, shall be used as a storage or display area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat or accessories thereto, motordriven cycle, truck, self-contained motorized vehicle or any type of business vehicle used in any business of the owner or any family member of the owner except as a temporary expedience for loading, delivery or emergency. The same shall be stored, parked or maintained within the garage area of the Living Unit. This restriction, however, shall not restrict commercial vehicles within the properties which are necessary for the construction of residential dwellings or for the maintenance of the Common Area or Lots within the Project.

Section 13 - Animals Within the 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 Greeley, Colorado. Any such household pet shall be kept in the interior of any Living Unit. No owner of a pet shall use any device to attach the animal by leash to the exterior of any Living Unit or Lot within the Project. In the event an Owner of a Living Unit or related user of a Living Unit does not keep a pet within the interior of any Living Unit, the Executive Board of the Association may take such action as is necessary to have the pet removed from the Project. It shall be the obligation of each Owner owning a pet to control it in accordance with the existing ordinances of the City of Greeley, Colorado. It shall be the responsibility of each owner to maintain any Lot, Living Unit 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.

Section 14 - 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 appropriate Architectural Review Board of the Association.

Section 15 - 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 16 - 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 17 - No Annoying Light, Sound or Odors. No light shall be emitted from any Lot or Living Unit which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot or Living Unit which is unreasonably loud or annoying; and no odor shall be emitted on any Lot or Living Unit which is noxious or offensive to others.

Section 18 - Dog Runs and Storage Areas. No dog run of any type shall be allowed within the Project. Any storage area for wood shall be screened or covered so the wood is not within view of neighboring units, any public street or any common area of the Project and shall be subject to the provisions of the provisions regarding architectural control.

Section 19 - 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 a clean and sanitary condition.

Section 20 - 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 motorcycle, together with those activities normally incident and necessary to such washing and polishing.

Section 21 - 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 22 - Trash Burning. Trash, leaves and other similar materials shall not be burned within the Project.

Section 23 - Owner's Obligation Upon Resale of Living Unit. The deed or instrument transferring title to any Living Unit shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration, as well as any applicable Supplementary Declarations.

Section 24 - 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 25 - 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 Dove Creek.

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 borne by the Association. 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 3 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 Units 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 Living Units. Each Owner shall be responsible for obtaining general liability and property insurance

for any Living Unit 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 the Dove Creek 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 workmen'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 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 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 Article I, Section 14 of 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 AND PARTY WALL PRESUMPTIONS

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

(a) Easements Over Lots for Maintenance of Exterior Surfaces of Living Units. Easements over and across each Lot and the Living Unit thereon as may be necessary for the maintenance, repair and upkeep of the Exterior Surface, as defined herein, of such Living Unit, and for access, ingress and egress, necessary for such maintenance, repair and upkeep.

(b) Easements Over Lots for Maintenance of Common Area. Easements over and across Lots as may be necessary or appropriate for the Dove Creek Community 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.

(c) Easements Over Lots and Living Units for Maintenance of Association Maintenance Areas. Easements over and across the Lots and Living Units, including the Association Maintenance Areas, as may be necessary or appropriate for the Association to maintain, repair and replace any portion of the Association Maintenance Areas, and for access, ingress and egress, necessary for such maintenance, repair and replacement.

(d) Easements Over Lots and Living Units for Snow Removal. Easements over and across the Lots and Living Units as may be necessary or appropriate for the Dove Creek Community Association to remove snow from walks and driveways adjacent to Living Units, and for access, ingress and egress, necessary for such snow removal.

(e) Water Line Easements for Common Water Lines. A Water Line Easement over, across, under and through each Water Line (as constructed) Easement Area within which is located a Common Water Line, together with an easement for access, ingress and egress, necessary for such maintenance, repair and replacement of any Common Water Line.

(f) Utility Service Line Easements. A Utility Service Line Easement over, across, under and through each Lot and Living Unit within the Project which has a width of five feet (5') from the center line of any such utility line as constructed which shall allow for the maintenance, repair and replacement, together with access, ingress and egress, necessary for such maintenance, repair and replacement for utility services that provide service to any Living Unit within the Project said easement being granted not only to the Association but any utility company franchised by the City of Greeley to provide those services.

Section 2 - Owner Easements. Declarant hereby expressly creates and reserves for the benefit of each Lot and Living Unit, and for the benefit of the Owner of such Lot and Living Unit, 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, Living Unit or 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) Owners' Rights in Association Maintenance Areas. Subject to the provisions of this Declaration, each Owner of a Lot or Living Unit in the Association shall have an exclusive right to use and enjoy such Lot and Living Unit, including any Association Maintenance Areas located thereon.

(e) 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 Dove Creek Community Association or each Lot and Living Unit in the Project, and the Owner of each such Lot or Living Unit, as the case may be, and all conveyances of and other instruments affecting title to any such Lot, Living Unit 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 - Emergency Access Easement. An easement and right-of-way for ingress, egress and access for service and emergency vehicles is hereby granted to all police, fire protection, ambulance and all other similar emergency agencies or persons over, across, on and through any and all private roads and ways now or hereafter established in the Project.

Section 5 - 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 Living Unit.

Section 6 - Party Wall Presumptions.

(a) Definition. For purposes of this Declaration, "Party Walls" shall mean and refer to any two (2) one-hour fire walls which are part of the original construction of Living Units as defined herein which are placed immediately adjacent to or on a Lot line and immediately adjacent to one another with the intent that those Party Walls define a physical barrier between the two (2) Living Units.

(b) General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence, willful acts or omissions shall apply.

(c) Reciprocal Easements. Mutual reciprocal easements for support are hereby established, declared and granted for all Party Walls constructed or to be constructed on Lots subject to this Declaration. Every deed, whether or not expressly so stating, shall be deemed to convey and be subject to such easements.

(d) Cost of Repair and Maintenance. The cost of repair and maintenance of any Party Wall shall be borne in proportion to their use by the Owners of the Living Units on either side of the Party Wall. If one of the Owners who uses the Party Wall refuses to pay that Owner's proportionate share of the cost of repair or maintenance, then the Owner(s) may cause the

Party Wall to be repaired and shall be entitled to assess the cost attributable against the nonpaying Owner subject to this Declaration and collect the same by civil action in the State Courts of Colorado. Should a suit be commenced to recover the cost of repair and maintenance of any Party Wall, the prevailing party shall be entitled to recover the cost of repair and maintenance, together with reasonable attorney's fees and all costs associated with the completion of the civil action.

(e) Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it, and if any other Owner of the adjacent Living Units subject to this Declaration shall thereafter make use of the Party Wall, that Owner shall contribute the cost of restoration in proportion to such use, without prejudice, however, to the right of any restoring Owner to request a contribution from the other Owner under any rule of law regarding liability for negligence, willful acts or omissions. If one Owner causes the Party Wall to be restored and any other Owner uses the Party Wall and does not contribute to the cost of the Party Wall's restoration, the Owner who caused the Party Wall to be restored shall be entitled to assess the costs attributable against the nonpaying Owner, and the same shall be collected by civil action in the State Courts of Colorado. Should a suit be commenced to recover the cost of restoration of any Party Wall, the prevailing party shall be entitled to recover the cost of restoration, together with reasonable attorney's fees and all costs associated with the completion of the civil action.

(f) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors-in-title.

#### ARTICLE IX

##### ARCHITECTURAL REVIEW

Section 1 - Required Approval by Community Association Architectural Committee. Notwithstanding any provision contained in this Article to the contrary, approval of Improvements to Property, as well as approval of waivers and variances, shall also be required by the Architectural Committee under the Community Declaration before and after activation of the Dove Creek Architectural Review Committee.

Section 2 - Activation of the Dove Creek Architectural Review Committee. The initial Dove Creek 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 Dove Creek Community Association elects to activate the Dove Creek Architectural Review Committee; or (b) the date 51% of the Members vote to direct the Executive Board to activate the Dove Creek Architectural Review Committee. Thereafter the Executive Board shall send notice to all Members advising the Members of the activation of the Dove Creek 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 Dove Creek Architectural Review Committee shall have the powers and duties set forth in this Declaration.

Section 3 - Deactivation and Reactivation of the Dove Creek Architectural Review Committee. The Executive Board of the Dove Creek Community Association may elect, from time to time, to deactivate a previously activated Dove Creek Architectural Review

Committee. Thereafter, the Executive Board shall send notice to all Members advising the Members of the deactivation of the Dove Creek 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 Dove Creek 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 Dove Creek Architectural Review Committee may be reactivated and deactivated, from time to time, in accordance with the provisions set forth in Section 2 above and this Section 3.

Section 4 - Membership of Committee. Members of the Dove Creek Architectural Review Committee may, but shall not necessarily be, Members of the Dove Creek Community Association. Members of the Dove Creek Architectural Review Committee shall be appointed within ninety (90) days after the date of the Notice of Activation. Members of the Dove Creek Architectural Review Committee may be removed at any time by the Executive Board of the Dove Creek Community Association and shall serve for such term as may be designated by the Executive Board of the Dove Creek Community Association or until resignation or removal by the Board of the Dove Creek Community Association.

Section 5 - Improvement to Property Defined. "Improvement to Property", requiring approval of the Dove Creek 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 6 - Approval of Improvements Required. After the activation of the Dove Creek Architectural Review Committee, the approval of the Dove Creek Architectural Review Committee shall be required for any Improvement to Property on any Privately Owned Lot or Living Unit within the Dove Creek Community Association Area, 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 Dove Creek Architectural Review Committee because approval in such case or cases is not reasonably required to carry out the purposes of this Declaration.

Section 7 - Committee Guidelines or Rules. The Dove Creek 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 8 - 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 Dove Creek Architectural Review Committee at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Dove Creek 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 Dove Creek 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 Dove Creek Architectural Review Committee of all required materials in connection with the proposed Improvement to Property, the Dove Creek Architectural Review Committee may postpone review of any materials submitted for approval.

Section 9 - Criteria for Approval. The Dove Creek 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 Dove Creek Community Association Area 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 Dove Creek Community Association Area; that the Improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the Dove Creek Community Association Area 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 Dove Creek Community Association. The Dove Creek Architectural Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Dove Creek Architectural Review Committee may deem appropriate.

Section 10 - Architectural Review Fee. The Dove Creek 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 Dove Creek 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 determined in any other reasonable manner, such as based upon the estimated cost of the proposed Improvement to Property.

Section 11 - Decision of Committee. The decision of the Dove Creek Architectural Review Committee shall be made within thirty (30) days after receipt by the Dove Creek Architectural Review Committee of all materials required by the Dove Creek 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 Dove Creek Architectural Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Dove Creek Architectural Review Committee.

Section 12 - Appeal to Association Board. If the Dove Creek 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 Dove Creek Community Association by giving written notice of such appeal to the Dove Creek 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 Dove Creek Community Association shall hear the appeal in accordance with the provisions of the Bylaws of the Dove Creek Community Association for Notice and Hearing, and the Executive Board for the Dove Creek Community Association shall decide whether or not the proposed Improvement to Property or the conditions imposed by the Dove Creek Architectural Review Committee shall be approved, disapproved or modified.

Section 13 - 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 Dove Creek Architectural Review Committee within thirty (30) days after the date of receipt by the Dove Creek Architectural Review Committee of all required materials including, in the case of Initial Improvements, final working drawings.

Section 14 - 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 Greeley, Colorado.

Section 15 - 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 Dove Creek Architectural Review Committee in connection with the proposed Improvement to Property, any conditions imposed by the Dove Creek Architectural Review Committee and in compliance with the conditions and restrictions of this Declaration.

Section 16 - Notice of Completion. Upon completion of any Improvement of Property, the Applicant may give written Notice of Completion to the Dove Creek Architectural Review Committee. Until the date of receipt of such a Notice of Completion, the Dove Creek Architectural Review Committee shall not be deemed to have notice of completion of such Initial Improvements or Improvement to Property.

Section 17 - Inspection of Work. The Dove Creek Architectural Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate thirty (30) days after the Dove Creek Architectural Review Committee shall have received a Notice of Completion from the Applicant.

Section 18 - Notice of Noncompliance. If, as a result of inspections or otherwise, the Dove Creek Architectural Review Committee finds that any Improvement to property has been done without obtaining the approval of the Dove Creek 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 Dove Creek Architectural Review Committee, or has not been accomplished as promptly and diligently as possible, then the Dove Creek 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 Dove Creek 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 19 - Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Dove Creek Architectural Review Committee fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the Dove Creek 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 20 - Appeal to Association Board of Finding of Noncompliance. If the Dove Creek Architectural Review Committee gives any notice of noncompliance, the Applicant may appeal to the Executive Board of the Dove Creek Community Association by giving written notice of such appeal to the Executive Board of the Dove Creek Community Association and the Dove Creek 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 Dove Creek Architectural Review Committee shall request a finding of noncompliance by the Executive Board of the Dove Creek Community Association by giving written notice of such request to the Dove Creek Community Association and the Applicant within thirty (30) days after delivery to the Applicant of a notice of noncompliance from the Dove Creek Architectural Review Committee. In either event, the Executive Board of the Dove Creek Community Association or a Tribunal appointed pursuant to the Bylaws of the Dove Creek Community Association shall hear the matter in accordance with the provisions of the Bylaws for Notice and Hearing, and the Executive Board of the Dove Creek Community 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 21 - Correction of Noncompliance. If the Executive Board of the Dove Creek Community 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 Dove Creek Community Association. If the Applicant does not comply with the Executive Board of the Dove Creek Community 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 Dove Creek Community 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 Dove Creek Community Association may levy a Reimbursement Assessment against the Owner of the Privately Owned Lot or Living Unit for such costs and expenses. The right of the Dove Creek Community Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Dove Creek Community Association may have at law, in equity, or under this Declaration.

Section 22 - No Implied Waiver or Estoppel. No action or failure to act by the Dove Creek Architectural Review Committee or the Dove Creek Community Association shall constitute a waiver or estoppel with respect to future action by the Dove Creek Architectural Review Committee with respect to any Improvement to Property. Specifically, the approval by the Dove Creek 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 23 - Committee Power to Grant Variances. The Dove Creek Architectural Review Committee may authorize variances from compliance with any of the provisions of this Declaration for property in the Dove Creek Community Association Area 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 Dove Creek Architectural Review Committee. If any such variance is granted, no violation of the provisions of this Declaration for property in the Dove Creek Community Association Area 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 Dove Creek Community Association Area 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 24 - Compensation of Members. Members of the Dove Creek 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 Dove Creek Community Association.

Section 25 - Meetings of Committee. The Dove Creek Architectural Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Dove Creek 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 Dove Creek 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 Dove Creek Architectural Review Committee shall constitute action of the Dove Creek Architectural Review Committee.

Section 26 - Records of Actions. The Dove Creek Architectural Review Committee shall report in writing to the Executive Board of the Dove Creek Community Association all final action of the Dove Creek Architectural Review Committee, and the Board shall keep a permanent record of such reported action.

Section 27 - Estoppel Certificates. The Dove Creek Community Association shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Dove Creek 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 28 - Nonliability for Committee Action. There shall be no liability imposed on the Dove Creek Architectural Review Committee, any member of the Committee, any Committee Representative, the Dove Creek Community 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 Dove Creek Architectural Review Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Dove Creek 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 29 - 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 or its successor or assign without participation by the Executive Board of the Association or the Dove Creek Architectural Review Committee. The Declarant, its successor or assign, may incorporate and utilize any and all provisions of this Article IX to arrive at its decision. The Declarant, its successor or assign, may also ask the Executive Board to activate the Architectural Review Committee prior to completion of construction upon all Lots within the Project, in which event, the Declarant's, its successor or assign's ability to control architectural decisions shall no longer be exclusive and shall be governed by the provisions of this Article IX involving the use of an Architectural Review Committee.

#### 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 or Living Units, if any. The assessment as to each

Lot or Living Unit shall be equal to the assessment against every other Lot and Living Unit. 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 or Living Unit, 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 Dove Creek Community 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 Dove Creek Community 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 Living Unit 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 or Living Unit 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 or Living Unit 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 or Living Unit 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 or Living Units, 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 Declarant's right of expansion and special amendment 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 Owner to sell, transfer or convey a Lot or Living Unit;
- (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 or Living Unit within the Project.
- (16) make a decision by the 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 Weld County. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 4 - Maximum Number of Living Units. The maximum number of Living Units in the Project shall not exceed the number allowed by any governmental entity having jurisdiction over the Property pursuant to any development plan for the Property. Declarant shall not be obligated to expand the Project beyond the number of Living Units initially submitted to this Declaration.

Section 5 - 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 6 - Construction Easement. Declarant expressly reserves the right to perform warranty work, repairs and construction work and to store materials in secure areas on Lots and on 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.

#### ARTICLE XIV

##### REQUIRED ALLOCATION OF INTERESTS AND RESPONSIBILITY FOR COMMON ELEMENTS

Section 1 - Allocated Interests. The common expense liability and voting in the Association allocated to each Living Unit 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 Living Units 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 Greeley and recorded with the Weld County Clerk and Recorder; and

(b) The number of votes in the Association, on the basis of one (1) vote being allocated to each Living Unit Owner as determined by the total number of Living Units 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 Greeley and recorded with the Weld County Clerk and Recorder.

#### 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. Invalidation 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 reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 5 - Litigation Limitations. So long as the Declarant or any successor-in-interest has an interest in the Project, the Association shall not use its financial resources to defray any costs of opposing the development activities of the Declarant so long as they remain consistent with the general intent of any development plan identified by the Declarant. Nothing in this Section shall be construed to limit the rights of members to act as individuals or in affiliation with other members or groups in an action against the Declarant.


Section 6 - Conflicts of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and Bylaws of the Association, the Articles of Incorporation shall control.

Section 7 - Owners' Right to Examine. Each Lot or Living Unit Owner shall have a right to examine the books and records of the Association at any reasonable time.

Section 8 - Registration by Owner of Mailing Address. Each Owner shall register a mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Executive Board of the Association shall be sent by certified mail, postage prepaid, to the office of the Association of Dove Creek at such address as is identified by the Association in writing to each owner.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the 9 day of Nov., 1994.

W.A.G. Investments Limited Liability  
Company, a Colorado Limited Liability  
Company, Declarant

By:   
JOHN DENNIS GIBBON

STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 9<sup>th</sup>  
day of November, 1994, by JOHN DENNIS GIBSON a Manager of W.A.G.  
Investments Limited Liability Company, a Colorado Limited Liability  
Company.

WITNESS my hand and official seal.

*[Signature]*  
Notary Public  
My Commission Expires: 2-2-1997

*[Circular Stamp]*