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FIRST AMENDMENT

TO

AMENDED DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

PUMPKIN RIDGE COMMUNITY ASSOCIATION

(A Common Interest Community)

Name of Common Interest Community: PUMPKIN RIDGE
Name of Owner's Association: PUMPKIN RIDGE COMMUNITY ASSOCIATION, INC.
Declarant: LAWRENCE H. HERTZKE and WEST COLORADO SQUARE, LTD.
Type of Common Interest Community:

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**EXHIBIT A
 OWNERS**

**FIRST AMENDMENT
TO
AMENDED DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR
PUMPKIN RIDGE COMMUNITY ASSOCIATION**

PREAMBLE

This FIRST AMENDMENT to the Amended Declaration of Covenants, Conditions, and Restrictions for Pumpkin Ridge Association, recorded on July 28, 2003, in the real estate records of the Weld County Clerk & Recorder's office, at Reception No. 3088350, is made by Pumpkin Ridge Association, a Colorado non-profit corporation (hereinafter referred to as the "Association"); Lawrence H. Hertzke and West Colorado Square, Ltd., a Colorado limited partnership (hereinafter referred to as the "Declarant"); and the undersigned Owners as identified in Exhibit A, attached hereto and incorporated herein by reference, (hereinafter referred to collectively as the "Owners").

WITNESSETH:

WHEREAS, a Declaration of Covenants, Conditions, and Restrictions for Pumpkin Ridge Association was recorded on January 14, 2003, at Reception No. 3023545, of the Weld County, Colorado, records (hereinafter referred to as "Original Declarations"); and

WHEREAS, a subdivision plat of the Pumpkin Ridge Subdivision, was recorded on March 21, 2003, at Reception No. 3043882, of the Weld County, Colorado, records (hereinafter referred to as the "Subdivision Plat"); and

WHEREAS, the Amended Declaration of Covenants, Conditions, and Restrictions for Pumpkin Ridge Association was recorded on July 28, 2003, at Reception No. 3088350 of the Weld County, Colorado records (hereinafter referred to as the "Original Declarations"); and

WHEREAS, the Original Declarations inadvertently included a description of real property for tracts of land that had not been subdivided into lots and blocks and were not intended to be subject to those covenants recorded on January 14, 2003 or the Declaration to which amendments are now being made; and

WHEREAS, the Original Declarations inadvertently defined the "Declarant" and the "Developer" to be Pumpkin Ridge Association, a Colorado non-profit corporation, rather than the intended Declarant and Developer, Lawrence H. Hertzke and West Colorado Square, Ltd.; and

WHEREAS, the Declarant and the undersigned Owners desire to modify, amend and restate in their entirety the Original Declarations as more fully provided hereinafter; and

WHEREAS, the undersigned Owners represent the owners of more than fifty percent (50%) of the lots within the subdivision, required for an amendment of the Declaration in accordance with the provisions of C.R.S. §38-33.3-217.

NOW, THEREFORE, the undersigned Owners, as record owners of more than fifty percent (50%) of the property, the Declarant, and the Association, do hereby publish and declare that the Declaration is hereby amended as set forth hereinafter. **Those provisions of the Declaration which are amended are identified in bold print, and either replace or are in addition to, the provisions of the Declaration recorded on July 28, 2003.**

ARTICLE 1 – PROPERTY SUBJECT TO DECLARATION

1.1 *Real Property.* Declarant is the owner of the following described property located in the **Pumpkin Ridge Subdivision**, City of Greeley, County of Weld, State of Colorado, more particularly described as the following **Lots and Blocks, as shown on the Subdivision Plat:**

**Block 1, Lots 1 through 5
Block 2, Lots 1 through 9
Block 3, Lots 1 through 7
Block 4, Lots 1 through 3
Block 5, Lots 1 through 6
Block 6, Lots 1 through 6
Block 10, Lots 1 through 5, 8, 9, 10, 11, 12
Block 11, Lots 1 through 5, 14 through 28
Block 12, Lots 1 through 5, 8 through 12
Block 13, Lots 1 through 22
Block 14, Lots 1 through 12
Block 15, Lots 1 through 10
Block 16, Lots 1 through 8
Block 17, Lots 1 through 19
Block 18, Lots 1 and 2
Block 19, Lots 1 through 8
together with Outlots A, B, C, D, E and F,
all as shown on the Subdivision Plat.**

Any real property described in the Original Declarations which is not set forth in this Declaration or which is not hereafter made subject to this Declaration in the manner hereinafter provided shall not be subject to any of the covenants,

conditions, restrictions, easements, reservations or other provisions of the Original Declarations or this Declaration.

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

1.3 *Property Subject to Covenants for Benefit of Owners.* Declarant, for itself, its successors and assigns, hereby declares that **the real** 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 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. **The provisions of this Declaration shall and do hereby amend and restate in their entirety the Original Declarations, which Original Declarations are hereby deemed revoked and terminated.**

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

ARTICLE 2 -- DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, the Articles of Incorporation, or any Amendments thereto, and the Bylaws or any Amendments thereto, shall have the following meanings:

2.1 Act shall mean and refer to the Colorado Common Interest Ownership Act found in Title 38 of the Colorado Revised Statutes. Any reference in

the Association Documents to the Act or a section of the Act shall refer to the Act as presently enacted or subsequently amended.

2.2 *Articles of Incorporation* shall mean the Articles of Incorporation of the Association, as the same may from time to time be amended.

2.3 *Association* shall mean and refer to the Pumpkin Ridge Association, a Colorado corporation, not-for-profit, its successors and assigns.

2.4 *Association Documents* shall mean this Declaration and any Supplemental Declaration, the Articles of Incorporation, the Bylaws, the Map and any procedures, rules, regulations, or policies adopted under such documents by the Association.

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

2.6 *Assessable Unit* shall mean and refer to any Lot within the subdivision which is subject to assessments.

2.7 *Board* shall mean the Executive Board of the Association.

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

2.9 *City* shall mean the city of Greeley, Colorado.

2.10 *Common Elements* shall mean all real and personal property now or hereafter owned by the Association for common use, enjoyment and benefit of the Owners; all drainage facilities within the subdivision.

2.11 *Common Expenses* shall mean all expenses expressly declared to become the expenses by this Declaration are the Bylaws of the Association, and all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements, all insurance premiums and insurance carried pursuant to the Declaration, all expenses lawfully determined to be common expenses by the Executive Board, and all expenses set forth and considered in the Budget, determined common expenses by the Executive Board.

2.12 *Common Water Line* shall mean a water line which services Association **Improvements.**

2.13 *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 to amended.



2.14 *Design Review Committee* shall mean the committee that is formed by **this Declaration to govern the quality of workmanship, color of materials, harmony of external design with existing structures, and all other appearances of buildings and structures in the Project.**

2.15 *Developer* shall mean and refer to **Declarant, Lawrence H. Hertzke and West Colorado Square, Ltd., their 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.

2.16 *Executive Board* means the governing body of the Association.

2.17 *Exterior Association Fence* shall mean and refer to any fence located or to be located on the perimeter of the subdivision. The perimeter fence shall be installed at the expense of the individual Developer and thereafter shall be maintained by the Association. The perimeter fencing shall be PVC, split rail, or any similar fencing installed by the Developer.

2.18 *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.

2.19 *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 an 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 had 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.

2.20 *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.

2.21 *Improvements* shall mean and refer to all improvements now or hereafter constructed including, without limitation, all Association exterior boundary fencing, benches, walks, landscaping, sprinkling systems **or drip irrigation systems** and irrigation ditches within the Project owned or maintained by the Association.

2.22 *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 constructed with the Project.

2.23 *Lot* shall mean and refer to any numbered area of land shown as such upon any recorded final filing plat required by the City of Greeley, Colorado.

2.24 *Map* means all final plats of the subdivided parcels recorded on a phase by phase or filing basis, with the Clerk and Recorder, depicting a plan and elevation schedule of the property subject to this Declaration and in the supplements and amendments thereto.

2.25 *Member* shall mean and refer to the Person designated as such pursuant to this Declaration.

2.26 *Mortgage* shall mean and refer to a mortgage, deed of trust, or other similar security instrument held or owned by a Mortgagee which encumbers any Lot.

2.27 *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 the Association together with the name and address of the Mortgagee.

2.28 *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 Lot Owners. "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.

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



2.30 *Person* shall mean an individual, corporation, partnership, association, trust, or other legal entity, or combination thereof.

2.31 *Project, Property, or Properties* shall mean and refer to all Lots which are subject to the Declaration.

2.32 *Quorum of Owners* shall mean the representation by presence or proxy of Members who hold not less than twenty percent (20%) of the outstanding votes entitled to be case on any issue.

2.33 *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.

2.34 *Reimbursement Assessment* shall mean a charge against a particular Lot for the purpose of reimbursing the Association for expenditures and other costs the Association has paid, regarding any violation, directly attributable to the Owner of the Lot relating to the enforcement of the Declaration or the Rules and Regulations of the Association, together with late charges, interest, and attorneys' fees as provided for herein.

2.35 *Related User* shall mean any member of the Family of an Owner who resides with such Owner; guests and invites of an Owner; employees and agents of an Owner; and occupants, tenants and contract purchasers residing with an Owner who claim by or through an Owner.

2.36 *Rules and Regulations* shall mean those rules and regulations as may be adopted by the Executive Board for the management, preservation, safety, control and orderly operation of the Project and governing use of the Common Elements provided, however, that such rules and regulations shall be furnished to Owners prior to the time that they become effective.

2.37 *Single Family* shall have the same meaning as that term is defined in the zoning ordinance of the City of Greeley, County of Weld, State of Colorado.

2.38 *Successor Declarant* shall mean any successor or assignee of the Declarant who shall have all rights and obligations set forth in an instrument of succession or assignment executed by the Declarant or any subsequent declarant, or which may pass by operation of law.

2.39 *Supplemental Declaration* shall mean a written instrument containing covenants, conditions, restrictions, reservations, easements, or equitable servitudes, or any combination thereof, which may be recorded at a future date if the



annexation provisions of this Declaration are exercised by the Declarant or any subsequent declarant after recording of an assignment of Declarant rights.

2.40 *Undefined Terms* shall mean each term not otherwise defined in this Declaration, including any Maps thereof, shall have the same meaning specified or used in the Act.

ARTICLE 3 – THE PROJECT

3.1 *Property Subject To This Declaration.* The real property which is held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Greeley, County of Weld, State of Colorado and is more particularly described in Article 1 above, and which represents the original real property which is subject to this Declaration.

3.2 *Expansion Property.* The Declarant may, but shall in no way be required to, submit additional expansion property to this Declaration, which would make the property subject to the Association created herein. The legal description of the additional real property by lots and blocks of the Pumpkin Ridge subdivision, City of Greeley, County of Weld, State of Colorado, on which the expansion could occur are as follows:

Lot 7, Block 10,
Lot 2 through 12, Block 8
Lots 6 through 13, Block 11,
Lots 6 and 7, Block 12,
Lots 23, Block 13, and
Lots 1 through 5, Block 9.

3.3 *Manner of Expansion.* The Lots and Blocks above-described may become a part of the Association and subject to this Declaration effective upon the recording in the real estate records of Weld County, Colorado, a Supplemental Declaration meeting the requirements hereinafter set forth. A Supplemental Declaration shall be (A) executed and acknowledged by the Owner of the expansion property described therein; (B) shall, if the expansion property is not then owned by the Declarant, contain the executed and acknowledged written consent of the Declarant, for so long as the Declarant owns any Property subject to this Declaration; (C) shall contain an adequate legal description of the expansion property; (D) shall contain a reference to this Declaration which shall state its date of recording and the Reception Number of the recorded instrument in the real estate records of Weld County, Colorado; and (E) shall contain a statement that the expansion property is declared to be part of this Declaration and shall be subject to the provisions of this Declaration. Upon the recording of a Supplemental Declaration, the expansion property shall be subject to all of the covenants,



conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration.

3.4 *Maximum Number of Units.* Declarant reserves the right to create up to a total of Four Hundred (400) residences within this Project.

ARTICLE 4 – ASSOCIATION STRUCTURE AND FORMAT

4.1 *Association Name.* The name of the Association shall be Pumpkin Ridge Association. Every Owner shall be a Member of the Association.

4.2 *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 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.

4.3 *Membership.* Membership shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Declaration, Articles of Incorporation or Bylaws. Each Member shall have the rights, duties and obligation set forth in this Declaration, the Articles of Incorporation or Bylaws. Every Owner of a Lot shall be a Member of the Association.

4.4 *Voting.* The Association shall have one (1) class of voting membership, with Members entitled to one (1) vote for each Lot owned.

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

4.6 *Executive Board of the Association.* The number of Directors shall be as provided in the Articles of Incorporation and Bylaws. The Executive Board shall



have all powers for the conduct of the affairs of the Association which are enabled by law or the Declaration of Covenants or the Articles of Incorporation and its Bylaws which are not specifically reserved to Members, the Declarant or the Design Review Committee by said Documents. The Executive Board shall exercise its powers in accordance with this Declaration, the Articles of Incorporation and Bylaws.

4.7 *Period of Declarant Control.* Declarant shall be entitled to appoint and remove Members of the Executive Board and officers of the Association to the fullest extent under the Act during the Period of Declarant Control. The Period of Declarant Control shall be as set forth in C.R.S. §38-33.3.303. Declarant may voluntarily relinquish such power by recording a notice of relinquishment executed by Declarant, but in such event, Declarant may specify that certain actions of the Association or the Executive Board be approved by the Declarant during the time Declarant would otherwise be entitled to appoint and remove Directors and officers.

ARTICLE 5 – DUTIES AND POWERS OF THE ASSOCIATION

5.1 *General Duties and Powers of Association.* The Association has been formed to further the common interests of the Members of the Association. The Association, acting through its Executive Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members of the Association, to maintain, improve and enhance the Association fencing, and landscape areas, entry way greenbelt, any sprinkling system necessary to serve the landscape area and entry way greenbelt, any exterior signs which identify the subdivision, and to improve and enhance the attractiveness and desirability of the subdivision by enforcing architectural control standards described within this Declaration. The Association shall also maintain all of the property both real and personal owned by the Association and shall maintain all drainage facilities within the subdivision and shall maintain the perimeter fencing and walls, landscaping and landscaped areas.

5.2 *Duty to Accept Property and Facilities Transferred by Declarant.* The Association shall accept titled to any Improvements, including landscaping, sprinkling system, exterior electrical lines which services the Association fencing and exterior signage, if any, identifying the subdivision, 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 functions are not inconsistent with the terms of the Declaration. Except as otherwise specifically approved by resolution of the Executive Board of the Association, no personal property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant nor any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge or fee. The interest in property transferred to the

Association by Declarant shall not impose any unreasonable or special burden on the Association other than the duties set forth hereinafter.

5.3 *Duty to Manage and Care for Association Fences, Landscaping, Entry Way Greenbelt and Exterior Signage.* Upon commencement of the Common Assessments and following the installation of the exterior Association fences, landscaping, entry way greenbelt and exterior signage, the Association shall manage, operate, care for, maintain, repair and replace the exterior Association fences whether, landscaping, entry way greenbelt and exterior signage and keep the Association fences, landscaping, entry way greenbelt and exterior signage in a neat, attractive and desirable condition.

5.4 *Duty to Manage and Care for Common Water Lines, Exterior Sprinkling System and Exterior Electrical System.* Upon Commencement of Common Assessments and following the installation of the common water lines, exterior sprinkling system and exterior electrical system, the Association shall manage, care for, maintain, repair and replace all common water lines, exterior sprinkling system and exterior electrical system within the project. The Association shall also maintain, repair and replace any landscaping, pavement, curbing, gutter or other Improvement which is damaged or destroyed by the management, care, maintenance, repair or replacement, or the lack thereof, of the common water lines, exterior sprinkling system and exterior electrical system; 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 the obligations under this Section.

5.5. *Duty to Pay Water and Electrical Assessments.* The Association shall be obligated to pay all water and electrical assessments levied on any property or facilities transferred to or acquired and owned by the Association. The Association may contest the validity or applicability of any such water assessments or impositions so long as such contest does not jeopardize the title of the Association to any such property or facilities.

5.6 *Duty to Prepare Budgets.* The Association shall prepare budgets as elsewhere provided in this Declaration.

5.7 *Duty to Levy and Collect Assessments.* The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

5.8 *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.

5.9 *Duty to Comply with Development Agreement of the City of Greeley for Pumpkin Ridge Subdivision.* The Association acknowledges that by virtue of the Development Agreement for the Pumpkin Ridge Subdivision, recorded on March

21, 2003 at Reception No. 3043881 of the real estate records of Weld County, Colorado, the City shall have at its option and its sole discretion, the right to enter the Improvements of the Association as defined herein and make any and all repairs and replacements of landscaping, irrigation systems, shrubbery, and trees, at its expense, without prior notice to the Association. The City shall further have the right to place a notice of lien, which shall be superior to any lien of the Association, in an amount of up to one hundred and fifty percent (150%) of the City's cost of actions taken by the City upon each Lot subject to this Declaration. The City's right to exercise maintenance and lien rights shall occur if, and only if, the Association fails to provide adequate maintenance of the Association Improvements.

5.10 *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.

5.11 *Power to Enforce Declaration and Rules and Regulations.* The Association shall have the power to enforce the provisions of this Association Declaration and of its Rules and Regulations and shall take such action as the Executive Board of the Association deems necessary or desirable to cause such compliance by each Member of the Association and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (a) by entry upon any property within the Association Area (when a bonafide 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 upon to sixty (60) days following any breach by such Member or 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 Related User of such Member. The prevailing party shall be entitled to reimbursement from the non-prevailing party of all costs and expenses, including reasonable attorneys' fees.

5.12 *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.

5.13. *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.

5.14 *General Corporate Powers.* The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitation 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 an 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 6 – COVENANTS FOR ASSESSMENTS

6.1 *General.* The Association shall have the power to levy Assessments against the Lots and the Owners thereof, and each Owner, and, if more than one (1) Person, all such Persons, jointly and severally, by acceptance of the deed to a Lot, whether or not it shall be expressed in any such deed shall be deemed to covenant and agree expressly in any such deed to pay all such Assessments in the manner and for the purposes provided herein. Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessment, including the power and authority to determine all matters in connection with Assessment, 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.

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

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

6.4 *General Assessments.*

- a. *Purpose.* The General Assessment shall be used exclusively to promote the welfare of the Owners and, by way or example, but not by way of limitation, to improve, maintain and operate the

Association Improvements, including funding of an adequate reserve fund for maintenance, repair, replacement of the Association fencing whether interior or exterior for the subdivision, for landscaping, to maintain any sprinkling system or **drip irrigation system** necessary for landscaping, to pay any water or electrical assessments incurred to provide those services, to provide for external signage for the subdivision, and to pay annual insurance costs necessary to the Association, all tax liabilities assessed by any federal, state or local tax authority relating to obligations of the Association, any water or electrical assessments to the Association

- b. *Basis for Assessment.* For General Assessment purposes all Lots shall be assessed at One Hundred Percent (100%) of the General Assessment rate. The Developer anticipates that the first General Assessment shall be Twenty-four Dollars (\$24.00) per month **per Lot**, and shall not exceed Five Hundred Dollars (\$500.00) **per Lot** for the first year. The Developer reserves the right to increase or decrease the General Assessment for the first year of operation of the Association, and the amount listed above is an estimate based on current budget projections of the Developer for operating the Association. The General Assessment and Supplemental Assessment shall be allocated among the Lots equally.
- c. *Date of Commencement of General Assessments.* All General Assessments shall begin at the time of conveyance of a Lot to any purchaser(s) other than Declarant.

6.5 *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 ninety (90) days after the 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 Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as**

allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Owners.

6.6 *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 have been made. Whether to make a Special Assessment and the amount thereof per Lot shall be determined by the Board; provided that no Special Assessment shall be valid unless approved by a majority vote of the Members present and voting in person or by proxy at any Annual Meeting of the Members of the Association or at any Special Meeting thereof called for the purpose of considering such Special Assessment.

6.7 *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 Design 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.

6.8 *Time For Payments.* The General Assessment for each Lot shall be payable, subject to this Article, monthly, quarterly, semi-annually, or in one (1) installment with that payment being due on or before June 1 of each year, as agreed by the Lot Owner and the Association. 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 set off or diminution of any kind. Any Assessment or installment thereof or other amount payable pursuant to this Declaration or any other Association Documents 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 the Act, 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 Executive Board. All payments on account shall be first applied to interest and later charges and then to the Assessment payment due.

6.9 *Lien for Assessment and Other Amounts.* The Association shall have a lien against each Lot to secure payment of any Assessment and other amount due and owing to the Association with respect to that Lot which shall be created and enforced as provided in the Act.

6.10 *Working Capital.* The Association shall require that the first (1st) Owner of a Lot other than Declarant who purchases that Lot from Declarant to make a non-refundable contribution of working capital to the Association which shall be One Hundred Fifty Dollars (\$150.00), which sum shall be held by the Association as and for working capital. Said figure may be amended from time to time by the Association. Such payment shall not relieve an Owner of a Lot from making the regular payment of Assessments for Lots as the same become due. The amount collected as working capital shall not later be refunded to the original Owner upon the sale or transfer of a Lot. No Owner shall be entitled to interest on any amount provided as working capital to the Association. The provisions of this Section shall not apply to the Declarant or any successor in interest to the Declarant. Upon transfer of any Lot, an Owner shall be entitled to reimbursement from the purchaser for the working capital contribution which has been allocated to that Lot.

6.11 *Estoppel Certificate.* Upon payment of a reasonable fee and upon written request of any Owner or First Mortgagee, or any person with any right, title or interest in a Lot or intending to acquire any right, title, or interest in a Lot, the Association shall furnish a written statement stating forth the amount of any Assessments, if any, due or accrued and then unpaid with respect to such Lot and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association, for all purposes, that no greater or other amounts were then due or accrued and unpaid. Said Certificate shall be provided by the Association within fourteen (14) days of receipt of the request.

6.12 *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.

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



ARTICLE 7 – USE AND OTHER RESTRICTIONS

7.1 *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.

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

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

7.4 *No Violation of Law.* Nothing shall be done or kept in or on any portion of the Project which would be in violation of any Statute, Rule, Ordinance, Regulations, Permit, or validly imposed requirement of any governmental body.

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

7.6 *Restrictions on Signs.* No signs or advertising devices of any nature shall be erected or maintained on any part of the Project (including, without limitation, any Lot) without the prior written approval of the Design Review Committee of the Association. The sign shall be approximately 18” X 24” in height and width, with no more than three signs on any Lot. During the period of construction of Lots within the subdivision, the Declarant retains the right to approve larger signs submitted by realtors or builders to advertise the availability of properties being built within the subdivision.

7.7 *Conditions for Design Control.* No original construction improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot, residence 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 Design Control.

7.8 *Rules and Regulations.* Every Owner or guests or members of the family, or Related User, and employees shall strictly adhere to the Rules and Regulations adopted by the Association. The Executive 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 containers, maintenance, and removal of vegetation on the properties.

7.9 *Restrictions on Parking and Storage.* Except as expressly heretofore provided, no Lot, including the private drives, or parking areas, unless specifically designated by the Association therefore, shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, motor home, bus, boat trailer, hauling trailer, running gear, boat or accessories thereto, motor-driven cycle, truck, self-contained motorized vehicle, automobile or any type of commercial vehicle which an Owner uses for a business purpose, jet ski or motor-driven snow ski equipment, except as a temporary expedience for loading, delivery, or emergency. The same shall be stored, parked or maintained within the garage area of a residential home. This restriction, however, shall not restrict trucks or other commercial vehicles within the Project which are necessary for the construction of residential dwellings or the maintenance of the Lots. This section shall not prohibit the Owner of a Lot from parking a recreational vehicle on a temporary basis for purposes of loading or unloading that recreational vehicle, but not allow the recreational vehicle to be parked as described herein for a period of more than 72 hours. The parking of any recreational vehicle for more than 72 hours shall be a violation of this Declaration.

7.10 *Animals within Project.* No animals shall be kept or harbored within the Project except that any Owner may keep a reasonable number of household pets, subject to existing ordinances of the City of Greeley, Colorado. Any such household pet shall be kept in the interior of any residential home or the interior of any fenced Lot within the subdivision. Such pet must be kept at all times on a leash if the pet is taken from the interior of any residential home unless within a fenced yard or approved dog run. It shall be the obligation of each Owner owning a pet to control it in accordance with existing ordinances of the City of Greeley, Colorado. It shall be the responsibility of each Owner to maintain any Lot or Common Area used in any manner by any pet to avoid any noise or odor or nuisance to any other Owner with the Association. The Executive Board of the Association may, at any time, create Rules and Regulations regarding the keeping of animals within the subdivision, and all Owners shall be subject to this covenant which requires that the Owners comply with 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 Association Documents.

7.11 *Control of Antennas Receiving Equipment and Solar Panels.* **The use of certain types of receiving equipment is subject to rules and regulations issued by the Federal Communications Commission which preempts the ability of the Association to control the placement of such equipment. As of the date of this Declaration, the types of receiving equipment which do not require architectural review and approval include: (A) a "dish" antenna which is thirty-nine inches (39") or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or (B) an antenna which is thirty-nine inches (39") or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable). Solar panels are expressly**

prohibited unless approved in writing by the Design Review Committee of the Association.

7.12 *Underground Electric Lines.* All electric television, radio, telephone line installation and connection from any property line of a Lot or other structures shall be placed underground, except that during the construction of residential home, the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

7.13 *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.

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

7.15 *Dog Runs, Dog House, and Temporary Structures.* No dog run, dog house, storage area, temporary structure, trailer tent, shack, garage, barn or other outbuilding shall be constructed on any Lot at any time for either a temporary or permanent use without the prior submission to and approval by the Design Review Committee of the Association. Any exterior storage, if approved by the Design Review Committee, must be a part of the residence and shall be finished with the same exterior materials as have been incorporated in the single-family residence.

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

7.17 *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 residence which screen the sight and sound of the activity from the street and from adjoining property nor shall any such activity be performed on the Common Area. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

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

7.19 *Trash Burning.* Trash, leaves, and other similar materials shall not be burned within the Project.

7.20 *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 assign, 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 8 -- INSURANCE

8.1 *Insurance.* All insurance carried by the Association regarding any improvements within the subdivision shall be governed by the provisions of this Article.

8.2 *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 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 standard Mortgagee's Clause in favor of all First Mortgagees who have an interest within the project.

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

8.3 *Insurance for Association Improvements.* The Association shall maintain insurance covering the Association **Improvements** and liabilities of the Association, insuring the Association in an amount not less than \$1,000,000.00 covering bodily injury, personal injury and property damage liability arising out of a single occurrence and such other risks as shall customarily be covered with respect to projects similar in construction, location and use within Colorado.



8.4 *Workman's Compensation and Employer's Liability Insurance.* The Association may obtain and maintain workman's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

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

8.6 *Other Insurance.* The Association may obtain insurance coverage against such additional risks as it shall determined to be appropriate.

ARTICLE 9 -- VARIOUS RIGHTS AND EASEMENTS

Declarant hereby expressly creates and reserves for the benefit of the Association, its designees, successors and assigns, the following easements:

9.1 *Easements Over Lots for Maintenance of Perimeter Landscaping Area and Underground Ditches.* An easement shall exist over and across each Lot within the subdivision as may be necessary or appropriate for the Association to perform duties and functions which it is obligated or permitted to perform under this Declaration including the use, enjoyment, maintenance, repair and replacement of any portion of the Association fencing, landscaping area as shown on the plat for the subdivision, underground irrigation ditches as shown on the plat and/or access, ingress and egress necessary for such use, enjoyment, maintenance, repair and replacement of any landscaping within the perimeter landscaping area or entry way island or underground ditches located within the subdivision.

9.2 *Easements for Association Fences.* Easements over and across each Lot within the subdivision upon which the Declarant installs or constructs Association fencing either interior or exterior, as may be reasonable and necessary for the installation, construction, operation, maintenance, repair and replacement of the Association fences, and for access, ingress and egress necessary for such installation, construction, operation, maintenance, repair and replacement.

9.3 *Owner Easement.* Declarant hereby expressly creates and reserves for the benefit of each Lot, and for the benefit of the Owner of such Lot, a valid, currently existing easement for any encroachment, and for the maintenance of the same, which results from any portion of a single-family residence or improvement associated with that residence, on a Lot which encroaches upon an adjoining Lot, whether as result of errors in construction of any improvements by an Owner or reconstruction, repair, shifting, settlement or movement of such single-family residence or improvements, which easement shall exist for so long as such single-family residence or improvement exists.



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

9.5 *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.

ARTICLE 10 -- ARCHITECTURAL AND DESIGN REVIEW

10.1 *Activation of the Association Design Review Committee.* The initial Association Design Review Committee and the provisions of this Article shall not be activated or effective until the earlier of (A) the date the Executive Board of the Association elects to activate the Association Design Review Committee, or (B) the date fifty-one percent (51%) of the Members vote to direct the Executive Board to activate the Association Design Review Committee. Thereafter, the Executive Board shall send notice to all Members advising the Members of the activation of the Association Design Review Committee and the effectiveness of the provisions of this Article ("Notice of Activation") and shall record the Notice of Activation. On the date of recordation of the Notice of Activation, all of the provisions of this Article shall become effective and the Association Design Review Committee shall have the powers and duties set forth in this Declaration.

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

10.3 *Membership of Committee.* Members of the Association Design Review Committee may, but shall not necessarily be, Members of the Association. Members of the Association Design Review Committee shall be appointed within ninety (90) days after the date of the Notice of Activation. Members of the Association Design Review

Committee may be removed at any time by the Executive Board of the Association or until resignation or removal by the Board of the Association.

10.4 *Improvement to Property, Defined.* "Improvement to Property" requiring approval of the Association Design 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 buildings, 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 the property including any change of exterior appearance, color or texture.

10.5 *Approval of Improvements Required.* After the activation of the Association Design Review Committee, the approval of the Association Design Review Committee shall be required for any improvement to the property on any Lot within the project, except for any improvement to property made by Declarant and except as prior approval may be waived or certain improvements to property may be exempted in writing or under written guidelines or rules promulgated by the Association Design Review Committee because approval in such case or cases is not reasonably required to carry out the purposes of this Declaration.

10.6 *Committee Guidelines or Rules.* The Association Design 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 Improvements 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 contraction 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.

10.7 *Submission of Plans.* Prior to commencement of work to accomplish any proposed Improvement to Property, the Owner or its duly authorized representative proposing to make such Improvement to Property ("Applicant") shall submit to the Association Design Review Committee shall reasonably request samples of materials and colors as the Association Design Review Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property ("Plans"). The Association Design Review Committee may require submission of additional Plans or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Association Design Review Committee of all required materials in connection with the proposed Improvement to Property, the Association Design Review Committee may postpone review of any materials submitted for approval.

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

10.9 *Design Review Fee.* The Association Design Review Committee may, in its Guidelines or Rules, provide for the payment of a reasonable processing fee to accompany each request for approval of any proposed Improvement to Property. The Association Design 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.

10.10 *Decision of Committee.* The decision of the Association Design Review Committee shall be made within thirty (30) days after receipt by the Association Design Review Committee of all materials required by the Association Design 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 therefore shall be stated. The decision of the Association Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Association Design Review Committee.

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

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

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

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

10.15 *Notice of Completion.* Upon completion of any Improvement of property, the Applicant may give written Notice of Completion to the Association Design Review Committee. Until the date of receipt of such a Notice of Completion, the Association Design Review Committee shall not be deemed to have notice of completion of such initial Improvements or Improvements to Property.

10.16 *Inspection of Work.* The Committee or its duly authorized representative shall have the right to inspect any Improvement to Property. The Committee's right of inspection of improvements shall terminate thirty (30) days after the work or Improvement shall have been completed and the respective Owners shall have given written notice to the Committee of such completion. The Committee's right to inspection shall not be terminated pursuant to this Section in the event plans for the construction of

Improvement or modification of Improvements have not been previously submitted to it by the Applicant/Owner. If, as a result of any inspection, the Committee finds that such Improvements have been initiated without obtaining approval of the plans therefore, or is not being constructed in substantial compliance with the plans approved by the Committee, the Committee shall have the right to initiate a civil action seeking injunctive relief against the Owner of the property and any contractor or subcontractor who is completing the Improvements without compliance with the provisions of this Declaration. Should the Committee be successful in obtaining injunctive relief against the Owner, any contractor or subcontractor involve in construction of Improvements, the Committee shall be entitled to receive from the Owner all costs of the action, including reasonable attorneys' fees. It is the intent of this Section to give the Committee the ability to prevent any construction within the subdivision of any type of Improvement that has not been previously approved by the Design Review Committee.

10.17 *Notice of Noncompliance.* If, as a result of inspections or otherwise, the Association Design Review Committee finds that any Improvement to Property has been done without obtaining the approval of the Association Design Review Committee, or was not done in substantial compliance with the approved Plans or other materials furnished to, and any conditions imposed by, the Association Design Review Committee, or has not been accomplished as promptly and diligently as possible, then the Association Design Review Committee shall notify the Applicant in writing of the noncompliance, which notice shall be given, in any event, within thirty (30) days after the Association Design Review Committee receives a Notice of Completion form 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.

10.18 *Failure of Committee to Act After Completion.* If, for any reason other than the Applicant's act or neglect, the Association Design Review Committee fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the Association Design 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.

10.19 *Appeal to Association Board of Finding of Noncompliance.* If the Association Design Review Committee gives any notice of noncompliance, the Applicant may appeal to the Executive Board of the Association by giving written notice of such appeal to the Executive Board of the Association and the Association Design Review Committee within thirty (30) days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Association Design Review Committee shall request a finding of noncompliance by the Executive Board of the Association by giving written notice of such request to the Association and the Applicant within thirty (30) days after delivery to the Applicant of a notice of noncompliance from the Association Design Review Committee. In either event, the Executive Board of the Association or a tribunal appointed pursuant to the Bylaws of the Association shall hear

the matter in accordance with the provisions of the Bylaws for notice and hearing, and the Executive Board of the Association shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

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

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

10.22 *Committee Power to Grant Variances.* The Association Design Review Committee may authorize variances from compliance with any of the provisions of this Declaration for Property in the Project when circumstances such as, but not limited to, topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidences in writing and shall become effective when signed by a majority of the Members of the Executive Board or a majority of the Members of the Association Design Review Committee. If any such variance is granted, no violation of the provision of this Declaration for Property in the Project shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for property in the project for any purpose except as to the particular Property and particular provisions covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with restriction 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.

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

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

10.25 *Records of Action.* The Association Design Review Committee shall report in writing to the Executive Board of the Association all final action of the Association Design Review Committee and the Executive Board shall keep a permanent record of such reported action.

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

10.27 *Non-liability for Committee Action.* There shall be no liability imposed on the Association Design Review Committee, any Member of the Committee, and Committee Representative, the Association, any Member of the Executive Board of either, or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Association Design Review Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Association Design 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.

10.28 *Construction Period Exception.* Until such time as all of the residential homes are built upon Lots within the Project, all actions regarding architectural and

design control shall be decided by the Declarant without participation by the Executive Board of the Association. The Declarant may incorporate and utilize any or all of the provisions of this Article to arrive at its decision. **The Declarant may, but shall not be required to, transfer the responsibilities for architectural design and control to the Executive Board of the Association by providing the Board written notice and recording, in the real estate records of Weld County, Colorado, a notice of transfer prior to the time that construction is complete on all Lots within the Project.**

ARTICLE 11 -- TERMINATION AND AMENDMENT OF DECLARATION

11.1 *Termination.* This Declaration shall continue in effect until and unless terminated as provided in accordance with the provisions of the Act.

11.2 *Amendment.* Unless terminated as provided above, each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods often ten (10) years each except for provisions stated in this Declaration, 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 the Act.

ARTICLE 12 -- RIGHTS RESERVED BY DECLARANT

12.1 *Special Declarant Rights.* Declarant hereby reserves the right for itself and its successors, from time to time until seventy five percent (75%) of the Lots are sold or as provided by statute, whichever is longer, 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. *Sales Management and Marketing.* The right to maintain sales offices, management offices, signs advertising the project and models.
- c. *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.
- d. *Master Association.* The right to make the Project subject to a Master Association.
- e. *Merger.* The right to merge or consolidate the Project with another Project of the same form of ownership.

- f. *Control of Association and Executive Board.* The right to appoint or remove any officer of the Association or any Executive Board Member.
- g. *Amendment of Declaration.* The right to amend this Declaration in connection with the exercise of any Development Rights.
- h. *Amendment of Map.* The right to amend the map in connection with the exercise of any Development Rights.

12.2 *Additional Reserved Rights.* In addition to the Special Declarant Rights set forth above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

- a. *Declaration.* 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, exception and exclusions for the benefit of an 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.

12.3 *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 the **real estate records of Weld County, Colorado**. Such instrument shall be executed by the transferor Declarant and the transferee.

12.4 *Interpretation.* Recording of amendments to this Declaration and Map in the **real estate records** of Weld County, Colorado shall automatically:

- a. Vest in each existing Lot Owner the reallocated Allocated Interest appurtenant to the Lot; and
- b. Vest in each existing Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot.

Upon the recording of an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the

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

12.5 *Maximum Number of Lots.* The maximum number of Lots in the Project shall not exceed Four Hundred (400) Lots or the maximum number of Lots allowed by any governmental entity having jurisdiction over the Property, pursuant to any development plan for the Property and the Development Property. Declarant shall not be obligated to expand the Project beyond the number of Lots initially submitted to this Declaration.

12.6 *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.

12.7 *Construction Easement.* Declarant expressly reserves the right to perform warranty work, repairs and construction work and to store materials in secure areas in Lots and **Improvements**, 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 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 for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the property. 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 easements shown on the subdivision plat.

12.8 *Termination of Development Rights.* Unless otherwise provided for in the Act, the development rights reserved by Declarant, for itself, its successors and assigns, shall expire ten (10) years from the date of recording this Declaration, unless the development rights are (A) extended as allowed by law, or (B) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the expansion and development rights by Declarant.

**ARTICLE 13 – ALLOCATION OF COMMON EXPENSE LIABILITY,
VOTING IN THE ASSOCIATION**

13.1 *Allocated Interests.* The Common Expense Liability in the Association allocated to each Lot shall be determined by using a formula in which the numerator is one (1) and denominator is the total number of Lots subject to this Declaration or any subsequent amendment of this Declaration which are shown on the **Map** and recorded in the real estate records of Weld County, Colorado.

13.2 *Voting.* The number of votes in the Association shall be determined on the basis of one (1) vote being allocated to each Lot Owner, as determined by the total number of Lots that have been submitted to this Declaration or any subsequent amendment of this Declaration which are shown on the **Map** and recorded in the real estate records of Weld County, Colorado.

ARTICLE 14 – MORTGAGEE’S RIGHTS

14.1 *Notice to Mortgagee.* Each holder of a First Deed of Trust on any Lot shall, upon written request by such holder to the Executive Board, receive any of the following:

- a. Copies of budgets, notices of assessments, insurance certificates or any other notices or statements provided under this Declaration by the Association to the Owner of the Lot covered by the Deed of Trust;
- b. Any audited or unaudited financial statements of the Association, if such statements are prepared, 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 of the Association Improvements;
- f. Notice of commencement of any condemnation or eminent domain proceedings with respect to any part of the Association Improvements or any Lot within the Project;
- g. Notice of any default of the holder's Owner which is not cured by the Owner within thirty (30) days after the giving of notice by the Association to the Owner of the existence of the default;
- h. The right to examine the books and records of the Association at any reasonable time;
- i. Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

14.2 *Actions Requiring Both Member and First Mortgagee Approval.* Error! Bookmark not defined. 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 it's Members:
 - (i) by act or omission, change, waive or abandon any scheme of architectural design of or maintenance of the Association Improvements;
 - (ii) fail to maintain full current replacement cost fire and extended insurance coverage on the Association Improvements;
 - (iii) use hazard insurance proceeds for Association Improvements property losses for purposes other than to repair, replace or reconstruct such property;
 - (iv) 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);



- (v) effectuate any decision to terminate professional management and assume self-management of the Association Improvements;
- (vi) any change in the voting method;
- (vii) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (viii) change the method of determining or the amount of reserves for maintenance, repair and replacement of the Association Improvements;
- (ix) change or alter in any respect the required insurance coverages or fidelity bonds;
- (x) change the Association or Owner responsibility for maintenance and repair of the Association Improvements;
- (xi) Seek to expand or contract the Project, subject, however to the Special Declarant's right of expansion and development rights set forth within this Declaration;
- (xii) change the interests in the Association Improvements;
- (xiii) attempt restoration or repair of the Improvements (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- (xiv) attempt a termination for reasons other than substantial destruction or condemnation.

14.3 *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 Improvements 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 Improvements of the Association, and any First Mortgagee(s) making such payments shall be entitled to immediate reimbursement therefor from the Association.

14.4 *Implied Approval.* Implied approval by a First Mortgagee shall be assumed when a First Mortgagee fails to submit a response to any written proposal



for amendment of the Declaration within thirty (30) days after said First Mortgagee receives written notice of the proposed amendment provided the notice was delivered by certified or registered mail with return receipt requested. Any of the mortgagee rights referred to in this Article shall be subject to this implied approval section.

ARTICLE 15 -- GENERAL PROVISIONS

15.1 *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. The Association or any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Declaration, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the **Association Documents**, shall in no event be deemed a waiver of the right to do so thereafter.

15.2 *Severability.* Invalidation of any one 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.

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

15.4 *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.

15.5 *Conflicts of Provisions.* In case of any conflict between **Association Documents**, 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. In case of any conflict between this Declaration and the Design Review Guidelines, the Design Review Guidelines shall control.

15.6 *Owners' Right to Examine.* Each Lot Owner shall have a right to examine the books and records of the Association at any reasonable time.

15.7 *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 at such address as is identified by the Association in writing to each Owner.

15.8 *No Representations or Warranties.* No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant or its agents and employees, in connection with any portion of the Project, or any Improvement, or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

15.9 *Disclaimer Regarding Safety.* DECLARANT AND THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROJECT. BY ACCEPTING A DEED TO PROPERTY WITHIN THE PROJECT, EACH OWNER ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS, AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROJECT.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the 13 day of January, 2004.

ASSOCIATION:

DECLARANT:

PUMPKIN RIDGE COMMUNITY ASSOCIATION

LAWRENCE H. HERTZKE

By: Dale Souther
Dale Souther, President

Lawrence H. Hertzke

WEST COLORADO SQUARE, LTD.

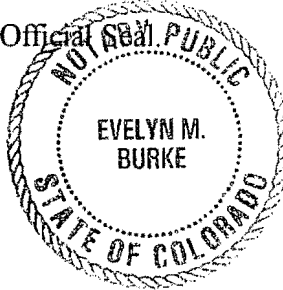
By: Lawrence H. Hertzke
Lawrence H. Hertzke, Manager

STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 13 day of January, 2004, by Dale Souther, as President of Pumpkin Ridge Community Association.

Witness my Hand and Official Seal.

My Commission Expires:
5-19-2007



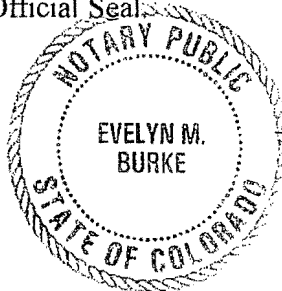
Evelyn M. Burke
Notary Public

STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 13 day of January, 2004, by Lawrence Hertzke.

Witness my Hand and Official Seal.

My Commission Expires:
5-19-2007



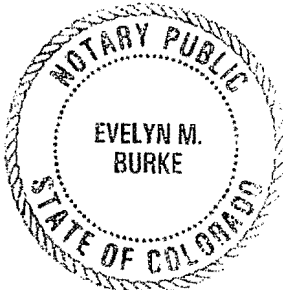
Evelyn M. Burke
Notary Public

STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 13 day of January, 2004, by Lawrence Hertzke, as Manager of West Colorado Square, Ltd.

Witness my Hand and Official Seal.

My Commission Expires:
5-19-2007



Evelyn M. Burke
Notary Public



**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PUMPKIN RIDGE COMMUNITY ASSOCIATION**

OWNERS

Tract 4,
Outlots B through F,
Lots 2 through 12, Block 8
Lots 1 through 5, Block 9,
Lots 7 through 12, Block 10,
Lots 1 through 28, Block 11,
Lots 1, through 12, Block 12,

Lots 2 through 23, Block 13,
Lots 1 through 12, Block 14,
Lots 6 through 10, Block 15,
**PUMPKIN RIDGE SUBDIVISION,
City of Greeley,
County of Weld, State of Colorado.**

**HERTZKE FAMILY LIMITED PARTNERSHIP II,
A COLORADO LIMITED LIABILITY COMPANY**

By: *Lawrence H. Hertzke*

AND

**WEST COLORADO SQUARE, LTD.,
A COLORADO LIMITED PARTNERSHIP**

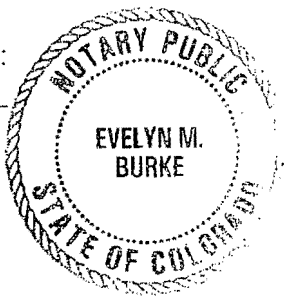
By: *Lawrence H. Hertzke*
LAWRENCE H. HERTZKE, MANAGER

STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 13 day of January, 2004, by Lawrence H. Hertzke, as Manager of Hertzke Family Limited Partnership II, a Colorado limited liability company; and by Lawrence H. Hertzke, as Manager of West Colorado Square, Ltd., a Colorado limited partnership

Witness my Hand and Official Seal.

My Commission Expires:
5-19-2007



Evelyn M. Burke
Notary Public



3145147 01/16/2004 02:05P Weld County, CO
49 of 50 R 251.00 D 0.00 Steve Moreno Clerk & Recorder

EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PUMPKIN RIDGE COMMUNITY ASSOCIATION

OWNERS

Lot 6, Block 6,
Lot 4, Block 10
Lot 17, Block 17
PUMPKIN RIDGE SUBDIVISION,
City of Greeley,
County of Weld, State of Colorado.

MOUNTAIN VISTA BUILDERS, INC.,
A COLORADO CORPORATION

By: [Signature]

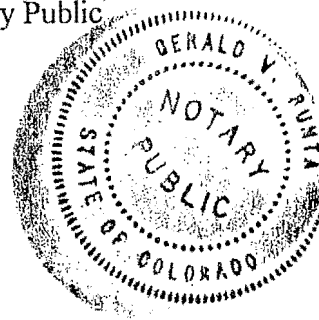
STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 13th day of January, 2004, by Jim Conine, as President of Mountain Vista Builders, Inc., a Colorado corporation.

Witness my Hand and Official Seal.

My Commission Expires:
10-2-04

[Signature]
Notary Public





**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PUMPKIN RIDGE COMMUNITY ASSOCIATION**

OWNERS

**Lots 2 through 5, Block 1,
Lots 2 through 6 and 8, Block 2,
Lots 1, 3, and 6, Block 3,
Lots 2 and 3, Block 4,
Lots 4 and 6, Block 5,
Lots 2 through 5, Block 6,
Lots 2 through 5, Block 7,
Lots 2 and 3, Block 10,**

**Lots 1 and 5, Block 15,
Lots 1 through 8, Block 16,
Lots 1 through 6, 8 through 14, 18, 19, Block 17
Lots 1 and 2, Block 18,
Lots 3 through 8, Block 19,
PUMPKIN RIDGE SUBDIVISION,
City of Greeley,
County of Weld, State of Colorado.**

**PUMPKIN RIDGE LLC
A COLORADO LIMITED LIABILITY COMPANY**

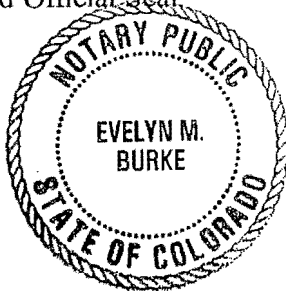
By: *Dale Southern*

STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 13 day of January, 2004, by Dale Southern, as manager of Pumpkin Ridge, LLC, a Colorado limited liability company.

Witness my Hand and Official Seal

My Commission Expires:
5-19-2007



Evelyn M. Burke
Notary Public

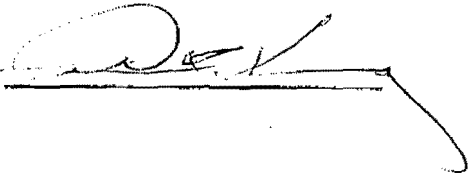


**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PUMPKIN RIDGE COMMUNITY ASSOCIATION**

OWNERS

**Lot 7, Block 6,
Lot 1, Block 7,
Lot 1, Block 8,
Lot 6, Block 10
PUMPKIN RIDGE SUBDIVISION,
City of Greeley,
County of Weld, State of Colorado.**

**KEM-CONSTRUCTION, LLC
A COLORADO LIMITED LIABILITY COMPANY**

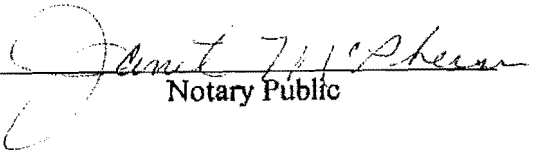
By: 

STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 15 day of January, 2004, by William R. Krug, as President of KEM Construction, LLC., a Colorado limited liability company.

Witness my Hand and Official Seal.

My Commission Expires:
4-2-05


Notary Public

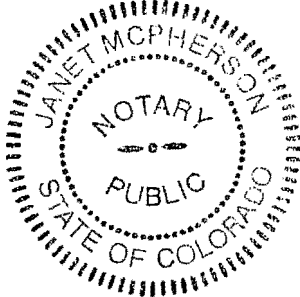
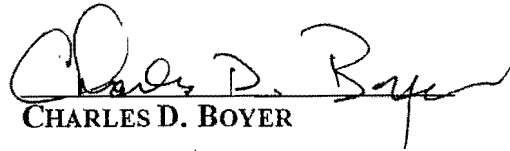




EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PUMPKIN RIDGE COMMUNITY ASSOCIATION

OWNERS

Lot 7, Block 3,
PUMPKIN RIDGE SUBDIVISION,
City of Greeley,
County of Weld, State of Colorado.

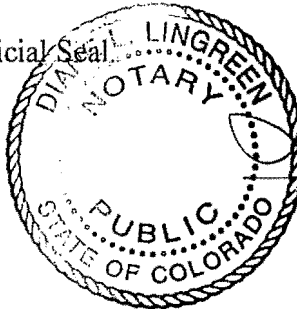

CHARLES D. BOYER

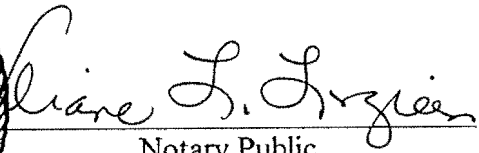
STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 14th day of January, 2004, by Charles D. Boyer.

Witness my Hand and Official Seal

My Commission Expires:
9/27/04




Notary Public

My Commission Expires 9/27/2004

3145147 01/16/2004 02:05P Weld County, CO
50 of 50 R 251.00 D 0.00 Steve Moreno Clerk & Recorder

EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PUMPKIN RIDGE COMMUNITY ASSOCIATION

OWNERS

Lot 5, Block 5,
Lots 1 and 2, Block 19
PUMPKIN RIDGE SUBDIVISION,
City of Greeley,
County of Weld, State of Colorado.

CENTENNIAL HOME BUILDERS, INC.,
A COLORADO CORPORATION

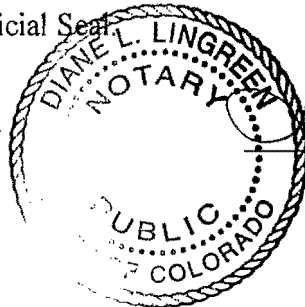
By: 

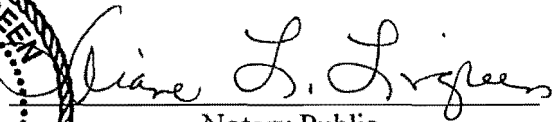
STATE OF COLORADO)
) ss
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 14th day of January, 2004, by Michael Nolan, as President of Centennial Home Builders, Inc., a Colorado corporation.

Witness my Hand and Official Seal

My Commission Expires:
9/27/04




Notary Public

My Commission Expires 9/27/2004