



2982241 08/28/2002 12:21P Weld County, CO
1 of 34 R 170.00 D 0.00 J.A. "Suki" Tsukamoto

241

**SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ROLLING HILLS RANCH PATIO HOMES II**

**Declarant: Rolling Hills Ranch LLC, a Colorado
limited liability company**

**Community Association: Rolling Hills Ranch Patio Homes II
Association**

THIS NEIGHBORHOOD OF PATIO HOME RESIDENCES IS PART OF THE ROLLING HILLS RANCH COMMON INTEREST COMMUNITY AND IS ALSO SUBJECT TO THE MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROLLING HILLS RANCH. THIS DECLARATION SHOULD BE READ TOGETHER WITH THE MASTER DECLARATION.

FEDERAL, STATE, AND LOCAL LAW MAY CONTAIN REQUIREMENTS AND RESTRICTIONS THAT ARE PARAMOUNT TO OR SUPERSEDE THE PROVISIONS OF THIS DECLARATION. OWNERS ARE ADVISED TO CONTACT THE TOWN OF JOHNSTON PRIOR TO INITIATING ANY CONSTRUCTION OR USE UPON THEIR LOTS THAT MAY BE PROHIBITED BY, OR AT VARIANCE WITH, TOWN OF JOHNSTOWN REQUIREMENTS.

After recording return to: Richard S. Gast, Myatt Brandes & Gast P.C., 323 South College, Suite 1, Fort Collins, CO 80524



TABLE OF CONTENTS

ARTICLE 1

GENERAL 2
 1.1 Property 2
 1.2 Submission of Property 2
 1.3 Master Declaration 2

ARTICLE 2

DEFINITIONS 2
 2.1 "Act" 3
 2.2 "Architectural Control Committee" 3
 2.3 "Assessments" 3
 2.4 "Association" 3
 2.5 "Bylaws" 3
 2.6 "Common Elements" 3
 2.7 "Common Expense Assessment" 3
 2.8 "Common Expense Liability" 3
 2.9 "Common Expenses" 3
 2.10 "Declarant" 3
 2.11 "Declaration" 4
 2.12 "Executive Board" 4
 2.13 "Master Association" 4
 2.14 "Master Association Area" 4
 2.15 "Master Declaration" 4
 2.16 "Member" 4
 2.17 "Mortgagee" 4
 2.18 "Neighborhood" 4
 2.19 "Person" 4
 2.20 "Plat" or "Plats" 4
 2.21 "Property" 4
 2.22 "Purchaser" 4
 2.23 "Residence" 5
 2.24 "Residential Use" 5
 2.25 "Rules and Regulations" 5
 2.26 "Security Interest" 5
 2.27 "Special Assessments" 5
 2.28 "Special Neighborhood Assessments" 5
 2.29 "Special Declarant Rights" 5
 2.30 "Subassociation" 5
 2.31 "Unit" or "Units" 5
 2.32 "Unit Owner" or "Owner" 5



ARTICLE 3

NEIGHBORHOOD 6

3.1 Name 6

3.2 Association 6

3.3 Planned Community 6

3.4 County 6

3.5 Legal Description 6

3.6 Maximum Number of Units 6

3.7 Boundaries of Units 6

3.8 Recording Data 6

3.9 Common Elements 6

3.10 Neighborhood Representatives 6

ARTICLE 4

ASSOCIATION AND MASTER ASSOCIATION 7

4.1 Powers and Authority 7

4.2 Membership and Allocation of Votes 7

4.3 Declarant Control 7

4.4 Master Association 7

4.5 Dissolution 8

ARTICLE 5

MAINTENANCE 8

5.1 Common Elements 8

5.2 Units 8

5.2.1 Residences 8

5.2.2 Landscaping/Other Improvements 8

5.2.3 Additional Maintenance 9

5.2.4 Association's Right to Perform Work 9

5.2.5 Association's Easement to Perform Work 9

5.2.6 Utilities 9

5.3 Damage by Owner 9

ARTICLE 6

ASSESSMENTS 10

6.1 Common Expense Assessments and Special Assessments 10

6.2 Neighborhood Assessments 10

6.3 Allocation of Assessments 10

6.4 Commencement of Assessments 11

6.5 Statement of Assessments 11

6.6 Exempt Property. 11

6.7 Personal Obligation to Pay Assessments. 11

6.8 Default Remedies. 11

6.9 Homestead. 12



ARTICLE 7

ARCHITECTURAL CONTROL 12

7.1 Architectural Control Committee 12

7.2 Rules and Regulations 12

7.3 Approval 13

7.4 Variances 14

7.5 Construction 14

7.6 Liability 14

7.7 Building Orientation and Energy Conservation Measures 14

7.8 Building Type 14

7.9 Building Size 14

7.10 Garages 14

7.11 Setbacks 15

7.12 Finish Materials and Colors 15

7.13 Roofs 15

7.14 Fences 15

7.15 Solar Panels 15

7.16 Vents 15

7.17 Signs 15

7.18 Satellite Dishes and Antennas 15

7.19 Clotheslines 15

7.20 Storage Tanks 16

7.21 Vegetable Gardens 16

ARTICLE 8

USE RESTRICTIONS 16

8.1 Construction Activities 16

8.2 Temporary Structures 16

8.3 Nuisance and Waste 16

8.4 Storage 17

8.5 Residential Use 17

8.6 Trash Restrictions 17

8.7 Animals 17

8.8 Common Elements 17

8.9 Insurance 18

ARTICLE 9

DRAINAGE AND SOILS CONDITIONS 18

9.1 Acknowledgment 18

9.2 Disclaimer 18

9.3 Moisture 18

9.4 Grading 18

9.5 Water Flow 18



9.6 Actions by Owners 18
 9.7 Radon Gas 19

ARTICLE 10

MORTGAGEE PROTECTION 19
 10.1 Introduction 19
 10.2 Notice 19
 10.3 Form of Request 21
 10.4 Rights of First Mortgagees 21
 10.5 Failure to Respond 22

ARTICLE 11

EASEMENTS 22
 11.1 Reciprocal Side Yard Easements 22
 11.2 Association Easement 22
 11.3 Utility Easements. 23
 11.4 Easement for Encroachments. 23

ARTICLE 12

SPECIAL DECLARANT RIGHTS 23
 12.1 Special Declarant Rights 23
 12.1.1 Completion of Improvements 23
 12.1.2 Sales, Management and Marketing 23
 12.1.3 Construction and Access Easements 23
 12.1.4 Master Association 23
 12.1.5 Merger 24
 12.1.6 Control of Association and Executive Board 24
 12.2 Additional Reserved Rights 24
 12.2.1 Amendment of Declaration 24
 12.2.2 Amendment of Plat 24
 12.2.3 Dedications 24
 12.2.4 Use Agreements 24
 12.2.5 Other Rights 24
 12.3 Rights Transferable 24

ARTICLE 13

MISCELLANEOUS PROVISIONS 24
 13.1 Enforcement 24
 13.2 Severability 25
 13.3 Conflict 25
 13.4 Duration 25
 13.5 Amendment 25
 13.6 Notice 25
 13.7 Waiver 26



2982241 08/28/2002 12:21P Weld County, CO
6 of 34 R 170.00 D 0.00 J.A. "Suki" Tsukamoto

13.8 Limited Liability 26

EXHIBIT A

PROPERTY DESCRIPTION 28

EXHIBIT B

EASEMENTS AND LICENSES 29



2982241 08/28/2002 12:21P Weld County, CO
7 of 34 R 170.00 D 0.00 J.A. "Suki" Tsukamoto

**SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ROLLING HILLS RANCH PATIO HOMES II**

This Supplemental Declaration of Covenants, Conditions and Restrictions for Rolling Hills Ranch Patio Homes II is made by Rolling Hills Ranch LLC, a Colorado limited liability company (the "Declarant").

**ARTICLE 1
GENERAL**

1.1 Property. Declarant is the owner engaged in development of the real property (the "Property") described on Exhibit A, attached and incorporated by reference.

1.2 Submission of Property. The Declarant publishes and declares that the Property shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Property or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, Declarant submits the Property to the provisions of the Act. To the extent this Declaration is silent on a matter covered by the Act, it is intended that the provisions of the Act apply. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

1.3 Master Declaration. In addition to being subject to this Declaration, the Property is subject to the Master Declaration of Covenants, Conditions and Restrictions for Rolling Hills Ranch (a Common Interest Community) (the "Master Declaration") as recorded with the Clerk and Recorder of Weld County, Colorado. As such, the Property is Annexed Property which is part of Master Association Area under the Master Declaration. For purposes of the Master Declaration, the Property is a designated Neighborhood of patio home Residences within the Rolling Hills Ranch Common Interest Community. To the extent not inconsistent with this Declaration, the provisions of the Master Declaration are incorporated in this Declaration by reference. In the event of any inconsistency between this Declaration and the Master Declaration, the terms of this Declaration shall control.

**ARTICLE 2
DEFINITIONS**

The following sections define words and phrases which, as used in this Declaration, have the meaning set forth below. In addition, applicable definitions contained in the Act when used herein have the meaning set forth in the Act except to the extent the Act allows a Declaration to define the same in a different way and this Declaration does so. Other terms in this Declaration may be defined in specific provisions of the Declaration and shall have the meaning assigned by such definition.



Some terms in this Declaration are defined in the Master Declaration and shall have the meaning assigned by the Master Declaration. Defined words and phrases, including both those defined in this Declaration, the Master Declaration and those defined in the Act, are indicated in this Declaration by capitalizing the first letter of a defined word or of each word in a defined phrase.

2.1 "Act" means the Colorado Common Interest Ownership Act as it may be amended from time to time.

2.2 "Architectural Control Committee" means the committee established for the purposes set forth in Article 7 of this Declaration.

2.3 "Assessments" means all Common Expense Assessments, Special Assessments, Neighborhood Assessments (including any Special Neighborhood Assessments), and any other assessments of the Association and the Master Association provided for in this Declaration or in the Master Declaration.

2.4 "Association" means the Rolling Hills Ranch Patio Homes II Association, a Colorado non-profit corporation.

2.5 "Bylaws" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

2.6 "Common Elements" means any Property within the Neighborhood owned or leased by the Master Association, other than a Unit, specifically including without limitation Outlots A and B, Rolling Hills Ranch Phase-14, Town of Johnstown, Weld County, Colorado plus all improvements and facilities now or hereafter located in or on such Outlots.

2.7 "Common Expense Assessment" means all assessments made for Common Expenses (other than Neighborhood Assessments).

2.8 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to this Declaration or the Master Declaration.

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

2.10 "Declarant" means Rolling Hills Ranch LLC, a Colorado limited liability company, its successor and assigns, or any Person or group of Persons acting in concert with Rolling Hills Ranch LLC, who:

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



2.10.2 Reserves or succeeds to any Special Declarant Right.

2.11 "Declaration" means this Supplemental Declaration of Covenants, Conditions and Restrictions, and any recorded instruments however denominated, that create this Neighborhood, and also including, but not limited to, the Plats of the Property recorded with the Clerk and Recorder of Weld County, Colorado, together with any amendments and supplements to such documents.

2.12 "Executive Board" means the Association's Board of Directors.

2.13 "Master Association" means the Rolling Hills Ranch Master Association, a Colorado non-profit corporation.

2.14 "Master Association Area" means the Property, together with any additional real property which is or may become subject to the Master Declaration.

2.15 "Master Declaration" means the Master Declaration of Covenants, Conditions and Restrictions for Rolling Hills Ranch, together with all amendments and supplements thereto, as recorded with the Clerk and Recorder of Weld County, Colorado.

2.16 "Member" means the Person, or if more than one, all Persons collectively, who constitute the Owner of a Unit.

2.17 "Mortgagee" means any Person who has a Security Interest in a Unit and who has provided written notice of such interest to the Association. "First Mortgagee" means a Mortgagee who has a First Security Interest in a Unit.

2.18 "Neighborhood" means the Property subject to this Declaration. The Neighborhood is a constituent common interest community which is part of the overall Rolling Hills Ranch Common Interest Community.

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

2.20 "Plat" or "Plats" mean collectively the plats of the Property recorded in the Clerk and Recorder's office of Weld County, Colorado, and all recorded amendments, corrections and replats.

2.21 "Property" means the real property described on Exhibit A.

2.22 "Purchaser" means a Person, other than a Declarant, who, by means of a transfer, acquires a legal or equitable interest in a Unit, other than:

2.22.1 A leasehold interest in a Unit of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

2.22.2 A Security Interest.

2.23 "Residence" means a single-family detached residential patio home dwelling constructed on a Unit.

2.24 "Residential Use" means use for dwelling or recreational purposes but does not include Units primarily used for commercial income from, or service to, the public.

2.25 "Rules and Regulations" means any instruments, however denominated, which are adopted by the Association or the Architectural Control Committee for the regulation and management of the Neighborhood, including any amendment to those instruments.

2.26 "Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation. "First Security Interest" shall mean and refer to a Security Interest in a Unit prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Weld County, Colorado, or other governmental authority having jurisdiction over the Neighborhood.

2.27 "Special Assessments" means the assessments for capital improvements described in Article 6.1 of this Declaration.

2.28 "Special Neighborhood Assessments" means the assessments for capital improvements described in Article 6.3 of this Declaration.

2.29 "Special Declarant Rights" means rights which Declarant has the right to exercise pursuant to the Act even though not required to enumerate in the Declaration.

2.30 "Subassociation" means the Association.

2.31 "Unit" or "Units" means a physical portion of the Neighborhood which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from a declaration and a plat. The term specifically includes the lots identified on the Plats.

2.32 "Unit Owner" or "Owner" means the Declarant or other Person who owns a Unit but does not include a Person having an interest in a Unit solely as security for an obligation. The

Declarant is the Owner of any Unit created in any declaration and a plat until that Unit is conveyed to another Person.

ARTICLE 3 NEIGHBORHOOD

- 3.1 Name. The name of this Neighborhood is Rolling Hills Ranch Patio Homes II.
- 3.2 Association. The name of the Association is Rolling Hills Ranch Patio Homes II Association.
- 3.3 Planned Community. The Neighborhood is a planned community consisting of patio home Residences.
- 3.4 County. The name of every county in which any part of the Neighborhood is situated is Weld County, Colorado.
- 3.5 Legal Description. The legal description of the Property included in the Neighborhood is set forth in attached Exhibit A.
- 3.6 Maximum Number of Units. The maximum number of Units that the Declarant reserves the right to create within this Neighborhood is that maximum number allowed by any governmental entity having jurisdiction over the Neighborhood.
- 3.7 Boundaries of Units. The boundaries and the identifying number of each existing Unit are set forth on the Plats of the Property.
- 3.8 Recording Data. All easements and licenses to which the Neighborhood is presently subject are listed on Exhibit B, attached and incorporated by reference. In addition, the Neighborhood may be subject to other easements or licenses granted by the Declarant pursuant to the terms of this Declaration.
- 3.9 Common Elements. The Common Elements are as set forth in Article 2.6 above. The Declarant dedicates the Common Elements to the common use and enjoyment of all of the Owners of Units within the Master Association Area, subject to any restrictions referenced on the Plats and in this Declaration. All Common Elements are general Common Elements for the benefit of those Owners within the Master Association Area. The Neighborhood does not include any limited common elements nor may any Property be subsequently allocated as limited Common Elements.
- 3.10 Neighborhood Representatives. The Neighborhood is considered a single Neighborhood under the Master Declaration entitled to two (2) Neighborhood Representatives to represent its collective voting power in the Master Association.



ARTICLE 4 ASSOCIATION AND MASTER ASSOCIATION

4.1 Powers and Authority. The Association shall manage the business and affairs of the Neighborhood. To manage the Neighborhood business and affairs, the Association shall have and may exercise with regard to the Neighborhood all powers and authority of a unit owner's association under the Act (specifically including (i) the power to adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from the Owners of Units within the Neighborhood; and (ii) the power to assign its right to future income, including the right to receive Common Expense Assessments, provided the Association determines that such assignment will not impair the ability of the Association to perform its duties under this Declaration). The Association may adopt Rules and Regulations. Additionally, the Association, acting through its Executive Board, shall have the power, after notice and an opportunity to be heard, to levy reasonable fines and penalties for violations of any provision of this Declaration, the Bylaws and Rules and Regulations. The remedies for collection of any such fines and penalties shall be as provided in Article 6 below.

4.2 Membership and Allocation of Votes. All Unit Owners shall be members of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Each Unit shall be allocated one (1) vote in the Association. When more than one person holds a membership interest in any Unit, all such Persons shall be members. The votes for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

4.3 Declarant Control. Subject to the limitations of § 38-33.3-303 of the Act, the Declarant, or Persons designated by it, may appoint and remove the officers of the Association and members of the Executive Board for a period of five (5) years after the later of (a) recordation of this Declaration, or (b) recordation of the most recently recorded Amendment, if any, to this Declaration adding all or any part of the Development Property to this Declaration.

4.4 Master Association. All Common Interest Community-wide matters shall be managed by the Master Association. The Master Association shall have all of the powers and authority permitted pursuant to the Act necessary and proper to manage the business and affairs of the Common Interest Community. These powers specifically include, but are not limited to, the power to adopt and amend budgets for revenues, expenditures and reserves and collect Assessments as provided in the Master Declaration. However, the Master Association shall not operate as the exclusive Unit Owner's Association with respect to any Unit in this Neighborhood. The business and affairs of this Neighborhood shall be handled by the Association. As provided in the Master Declaration, all Unit Owners shall be members of the Master Association in addition to being members of the Association. Each Unit shall be allocated one (1) vote for election of the Neighborhood Representatives to the Master Association as provided in the Master Declaration. The

two Neighborhood Representatives elected by the Unit Owners shall be members of the Master Association's Executive Board.

4.5 Dissolution. **THE ASSOCIATION CANNOT BE DISSOLVED WITHOUT THE WRITTEN CONSENT OF THE TOWN OF JOHNSTOWN, OR SUCH OTHER GOVERNMENTAL ENTITY HAVING JURISDICTION OVER THE NEIGHBORHOOD.**

ARTICLE 5 MAINTENANCE

5.1 Common Elements. The Master Association shall be responsible for the management, improvement, maintenance, repair and replacement of all Common Elements for the benefit of Owners in the Master Association Area. If the Master Association fails to reasonably maintain Outlots A and B, Rolling Hills Ranch Phase-14, Town of Johnstown, Weld County, Colorado (the "Outlots"), the Town of Johnstown, or such other governmental entity having jurisdiction over the Neighborhood (the "Town") may serve written notice upon the Master Association or upon the Owners within the Neighborhood setting forth the manner in which the Master Association has reasonably failed to maintain the Outlots, and said notice shall include a demand that the Master Association commence curing such deficiencies of maintenance within 10 days following the date of such notice. If the Master Association has not commenced curing the deficiencies set forth in the notice within the 10 day period, the Town shall have the right to maintain the Outlots and to charge the costs incurred by the Town in performing such maintenance to the Master Association or the members of the Master Association. If the Town charges the members of the Master Association, such costs shall be collectible as Assessments and the Town shall have the same rights and remedies as the Master Association for collection of Assessments.

5.2 Units. The maintenance, repair and replacement obligations for the individual Units are as follows:

5.2.1 Residences. Except as provided below, the Association shall maintain the exterior of the Residences in this Neighborhood, including roofs, exterior wall materials, gutters and trim. Notwithstanding the foregoing, Unit Owners shall maintain, replace and keep in good repair all windows, doors (including garage doors), screens, skylights and patio areas on, in or about their Residences. The Association shall make such repairs and replacements and perform such other work to such exteriors as may be required so that they are aesthetically attractive and in functionally good condition at all times. Unit Owners are responsible for the interior of their Residences and all other maintenance and repair of their Residences which is not otherwise the responsibility of the Association under this Declaration.

5.2.2 Landscaping/Other Improvements. The Association shall maintain, repair and replace all exterior landscaping in the front yard of each Unit (except flower gardens installed by an Owner in compliance with Article 9.6.4 with the prior approval of the Architectural Control

Committee - no vegetable gardens are allowed on any Unit), and all front yard sprinkling systems. Owners shall maintain, replace and keep in good repair all driveways, parking spaces and sidewalks (if any) located on their Units, except that the Association shall be responsible for all snow removal from driveways and walkways located in the front yard area of the Units. Owners shall not impair or impede the Association's ability to perform its maintenance, repair and replacement obligations. Owners shall be responsible for maintaining, repairing and replacing all exterior landscaping installed within the fenced back yard areas on their Units, all back yard sprinkling systems, patios and decks (whether such patios and decks are in the front yard or the back yard), together with such other exterior improvements as are not otherwise the responsibility of the Association. For purposes of this Article 5.2.2, the front yard shall be the unfenced portion of a Unit adjacent to the street on which the Unit is located.

5.2.3 Additional Maintenance. Notwithstanding any other provision herein, the Executive Board may, at any time and from time to time, determine that the Association shall provide other maintenance to the exterior of the Residences or to any other improvements on the Units. Any such determination by the Executive Board must apply uniformly to all Units requiring such maintenance. Any such additional maintenance services may be terminated at any time as determined by the Executive Board.

5.2.4 Association's Right to Perform Work. In the event any Owner shall fail to satisfactorily perform any maintenance, repair or replacement obligations of such Owner, the Association may give written notice to the Owner of the work required to be performed, and, if such failure to perform the work continues for a period of thirty (30) days after such notice has been given, the Association may enter upon the Unit and perform the necessary maintenance, repairs or replacements. The cost of any such maintenance, repair or replacement shall be the obligation of the Owner and shall be added to and become a part of the Neighborhood Assessment to which the Unit is subject and the Association shall have a lien to secure such Neighborhood Assessment as provided by the Act and this Declaration.

5.2.5 Association's Easement to Perform Work. The Association shall have an easement across each Unit permitting the Association, its agents, employees and independent contractors to enter upon the Unit as reasonably necessary in order to perform the work to be performed on the Unit by the Association pursuant to this Declaration. All persons performing such work shall use their best efforts to minimize interference with the Unit Owner's use and enjoyment of the Unit when performing such work.

5.2.6 Utilities. The Owners shall pay all utility charges (including water, sewer, gas, electricity, trash removal, telephone and other telecommunications) for their individual Units.

5.3 Damage by Owner. Notwithstanding anything to the contrary contained in this Declaration, in the event the need for the Association to maintain, repair or replace a Neighborhood Common Element or an improvement located on a Unit is caused by the willful act, negligence or other misconduct of an Owner or a member of such Owner's family or a guest, invitee or tenant of



an Owner or a member of such tenant's family, the cost of such repair, replacement or maintenance, to the extent not covered by Association insurance, shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for the same shall be assessed to such Owner as part of the Neighborhood Assessment in Article 6.2 below.

ARTICLE 6 ASSESSMENTS

6.1 Common Expense Assessments and Special Assessments. Annual Common Expense Assessments and Special Assessments shall be levied, collected, accounted for and used by the Master Association as provided in the Master Declaration.

6.2 Neighborhood Assessments. The Association, through its Executive Board, shall levy assessments ("Neighborhood Assessments") against Units within the Neighborhood for the purposes of promoting the health, safety and welfare of the Unit Owners; to fund the Association's maintenance obligations set forth in Article 5 above; for such other management, improvement, maintenance, repair and replacement expenses (including irrigation water costs) relating exclusively to the Neighborhood; to fund other services provided by the Association to Unit Owners; to provide such insurance as the Association deems necessary; to provide for reserves; and to provide for all other expenses incurred by the Association in performing its duties under this Declaration and the Act. The assessment year shall be January 1 to December 31, unless a different fiscal year is chosen by the Association's Executive Board. The Neighborhood Assessments shall be made annually against all Units based upon the Association's advance budget cash requirements needed by it to provide for administration and performance of its duties. The Neighborhood Assessments shall be collected in periodic installments as determined by the Executive Board. Annual increases in the Neighborhood Assessments shall not exceed ten percent (10%) over the previous year's assessment without the affirmative vote of the Owners of Units to which at least a majority of the votes in the Association are allocated at a meeting duly called for this purpose, except that increases in fixed costs (such as insurance or other costs) may be passed through to the Owners by permitting an automatic increase in the Neighborhood Assessments without a vote of the Owners to reflect any such fixed cost increase. Within thirty (30) days after the Executive Board adopts its advance budget for the Neighborhood, the Executive Board shall mail by first class mail, or otherwise hand-deliver, a summary of the budget to all Unit Owners and shall give written notice to the Owners of the meeting called for the purpose of ratifying the budget, which meeting shall not be less than fourteen (14) and no more than sixty (60) days after mailing or delivering the budget summary and notice. Unless at that meeting a majority of the votes allocated to all Units (not just a majority of a quorum) reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget last ratified must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

6.3 Allocation of Assessments. Common Expense Assessments and Special Assessments shall be allocated as provided in the Master Declaration. Neighborhood Assessments shall be allocated to the Units in the Neighborhood as follows: Each Unit's share of the liability for



Neighborhood Assessments shall be a fraction of the total Neighborhood Assessments, the numerator of which shall be one and the denominator of which shall be the total number of Units within the Neighborhood.

6.4 Commencement of Assessments. Neighborhood Assessments shall begin on the first day of the month in which conveyance of the first Unit to an Owner other than the Declarant occurs. The first installment of Neighborhood Assessments for each Unit shall be prorated according to the number of days remaining in the period of that first installment, and shall be prepaid to the end of such installment period at time of the initial conveyance.

6.5 Statement of Assessments. The Association shall, during business hours and for a reasonable fee as determined by the Executive Board, furnish a statement setting forth the amount of unpaid Neighborhood Assessments against a Unit upon the request of the Unit Owner, the Mortgagee, or the designee of either. The request and the Association's response shall be hand delivered or mailed by certified mail, postage prepaid, return receipt requested. The Association's failure to furnish such statement of Neighborhood Assessments within fourteen (14) days of receipt of a request shall cause the forfeiture of the Association's right to assert a lien of the priority provided by the Act upon the Unit for unpaid Neighborhood Assessments due as of the date of the request.

6.6 Exempt Property. The Common Elements and all properties dedicated to and accepted by the Town of Johnstown or any other public authority are exempt from the Neighborhood Assessments in this Declaration, except no land or improvements devoted to Residential Use shall be exempt from the Neighborhood Assessments.

6.7 Personal Obligation to Pay Assessments. Each Unit Owner, by acceptance of the deed for any Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay all Neighborhood Assessments. Such Neighborhood Assessments, including fees, charges, late charges, attorney fees, court costs, fines and interest charged by the Association, shall be the personal, joint and several obligation of the Unit Owner at the time when the Neighborhood Assessments or other charges became due. The personal obligation to pay any sums due the Association shall not pass to a successor in title unless expressly assumed by the successor.

6.8 Default Remedies. Any Neighborhood Assessment, charge, fee, fine or penalty provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the date due shall bear interest at a rate determined by the Executive Board, which rate shall not exceed that charged by the Internal Revenue Service on delinquent taxes. In addition, the Executive Board may assess a late charge thereon. Any Owner who fails to pay any Neighborhood Assessment, charge, interest, late charge, fee, fine, or penalty of the Association shall also be obligated to pay to the Association all costs and expenses incurred by the Association, including reasonable attorney's fees, in collecting the delinquent amount, whether or not suit is filed. The total amount due to the Association, including unpaid Neighborhood Assessments, fees, charges, fines, penalties, interest, late payment charges, costs and attorney's fees shall constitute a continuing



lien on the defaulting Owner's Unit, which lien shall have such priority, rights and characteristics as provided in the Act. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association, and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien. Foreclosure or attempted foreclosure of the Association's lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent amount due to the Association.

6.9 Homestead. The lien of the Neighborhood Assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to any Unit subject to this Declaration constitutes a waiver of the homestead exemption as against the Neighborhood Assessment lien.

ARTICLE 7 ARCHITECTURAL CONTROL

7.1 Architectural Control Committee. The Architectural Control Committee is established for the purpose of maintaining within the Neighborhood a consistent and harmonious general character of development and a style and nature of building design and visual appeal consistent with the natural beauty and features of the Neighborhood. The Architectural Control Committee shall consist of one to four Persons. The initial members of the Architectural Control Committee shall be appointed by the Declarant. At such time as the Declarant is no longer the Owner of one or more Units within the Neighborhood, then the members of the Architectural Control Committee shall be appointed by the Executive Board from among the Unit Owners within the Neighborhood. Initially, the Declarant appoints the following Persons as the members of the Architectural Control Committee:

Bruce Gillam
Wayne Hochstetler
Terrence Jones

A majority of the members of the Architectural Control Committee may designate a representative to act for it. In the event of a vacancy on the Architectural Control Committee, a majority of the remaining members shall have full authority to fill such vacancy. The members of the Architectural Control Committee shall not be entitled to any compensation for services rendered pursuant to this Declaration. However, members of the Architectural Control Committee shall be reimbursed by the Association for all costs and expenses incurred in performing their duties pursuant to the terms of this Declaration.

7.2 Rules and Regulations. The Architectural Control Committee shall have the right, but not the obligation, to establish Rules and Regulations specifying the procedures, standards and



guidelines (in addition to those generally described in Article 7.3 below) related to the purposes and duties of the Architectural Control Committee under this Declaration. For as long as the Declarant has the right to appoint members of the Architectural Control Committee, the Declarant shall approve any such Rules and Regulations prior to their use and implementation. If the Declarant has surrendered its right to appoint members of the Architectural Control Committee or there is no Person acting as Declarant and no Person holding Declarant rights, the Executive Board shall approve all Rules and Regulations prior to their implementation.

7.3 Approval. No Residence, building, fence, wall, structure or other item referenced in applicable Rules and Regulations shall be erected, placed or altered on any Unit until the plans and specifications, along with a plot plan, have been approved by the Architectural Control Committee. Three complete sets of plans and specifications shall be submitted to the Architectural Control Committee. The plans and specifications shall include the following minimum information:

- Floor plans of all levels of any Residence, which plans shall contain sufficient detail to describe the elements of the floor plan design;
- Total square footage for each level of any Residence.
- Building elevations on all sides of the proposed structure containing sufficient detail to determine roof form and material, window locations, siding material, and door placement.
- A written description of the materials to be used in the roof and exterior walls of the structure.
- The color of any paint or stain to be applied to the improvements.

The Architectural Control Committee shall approve plans and specifications submitted to it only if it determines that the construction, alteration, and additions contemplated thereby, and in the location as indicated, will comply with this Declaration and will serve to preserve and enhance the values of the Units within the Neighborhood and will maintain a harmonious relationship among structures, vegetation, topography, and the overall design of the Neighborhood. The Architectural Control Committee shall consider the quality of workmanship, type of materials, and harmony of exterior design with other Residences located in the Neighborhood. All construction on a single Unit shall be of the same type materials, color and design.

Approval by the Architectural Control Committee shall be in writing or indicated by endorsement on the plans and specifications submitted for approval. In the event the Architectural Control Committee fails to approve or disapprove the plans and specifications submitted to it by the Owner of a Unit within thirty (30) days after submission, then such approval shall be deemed to have been given. However, no building, other structure or landscaping shall be erected or allowed to remain on any Unit which violates this Declaration. The issuance of a building permit or license by the Town of Johnstown, Colorado, or other governmental authority having jurisdiction over the Neighborhood, shall not prevent or prohibit the Architectural Control Committee or a Unit Owner from enforcing the terms and provisions of this Declaration. The approval by the Architectural Control Committee of any plans and specifications shall not be deemed a waiver of any right to



withhold approval of any similar plans and specifications, or other matters subsequently or additionally submitted for approval by the same Owner or by another Owner. Any approval granted shall not be considered approval of the structural safety or integrity of the improvements to be constructed or conformance of such improvements with building codes, zoning ordinances, subdivision regulations, or other governmental rules and regulations applicable to the Property. Furthermore, any approval granted shall not be considered a permit to build under applicable governmental regulations.

7.4 Variances. Where circumstances such as topography, property lines, location of trees, vegetation or other physical interference require, the Architectural Control Committee may, by a majority vote and in its sole and absolute discretion, allow reasonable variances from the provisions of this Article. All costs and expenses incurred in processing the variance shall be paid in advance by the party requesting the variance.

7.5 Construction. Construction of a Residence or other structure approved by the Architectural Control Committee shall commence within three (3) months after approval of the plans and specifications, and the Owner shall thereafter proceed diligently with such construction. The Residence shall be completed to the point of issuance of a certificate of occupancy within six (6) months following the date of commencement of construction. The Architectural Control Committee in its sole and absolute discretion may extend any of the foregoing time periods for good cause.

7.6 Liability. The Architectural Control Committee shall not be liable to any Owner for any loss, cost, expense or damage, including attorney's fees, suffered by such Owner as a result of any decision made by the Architectural Control Committee unless such action is taken in bad faith or with malice against an Owner.

7.7 Building Orientation and Energy Conservation Measures. Owners are encouraged to design living spaces and glass areas to take advantage of solar orientation. Other energy conservation measures should include R-13/R-30 insulation and thermal windows.

7.8 Building Type. No building or other structure shall be erected, altered, placed or permitted to remain on any lot other than one Residence per Unit, with attached garage.

7.9 Building Size. Residences shall not exceed two stories in height, except where constructed on a slope permitting a full walkout basement. Each Residence shall have a minimum fully enclosed floor area devoted to living purposes as set forth on Exhibit B-4 of the Public Improvements Development Agreement for Town of Johnstown Rolling Hills Ranch Phase-14, recorded with the Clerk and Recorder of Weld County, Colorado (the "Development Agreement").

7.10 Garages. Each Residence shall include an attached garage having space for at least two standard size automobiles. All garages shall have two exterior light fixtures placed on either side of the garage door. Each Owner shall keep the garage door closed except when the door must be open for purposes of ingress to or egress from the garage.

7.11 Setbacks. Residences and other structures shall be located within such setbacks as are required by applicable governmental ordinances or regulations.

7.12 Finish Materials and Colors. Materials such as brick, masonry, stone, tile, composition or wood (properly maintained) lap siding are recommended as the dominant materials for Residences. The front of each Residence shall include brick, masonry, stone or tile accent in an amount satisfactory to the Architectural Control Committee. Typically not more than two of the above primary finish materials (in addition to glass) should be used for a single Residence. Finish materials should be painted or stained in earth tones or neutral colors. Limited use of stronger colors for accent or other purposes may be allowed. The Architectural Control Committee will provide a color palette from which Owners may select exterior finish colors. Additional restrictions and requirements are as set forth in Section 11.4 of the recorded Development Agreement.

7.13 Roofs. The minimum roof pitch shall be 5:12. The roof material for all residences shall be dimensional fiberglass/asphalt composition shingles and the specific shingle type, weight, color and profile must be first approved by the Architectural Control Committee before installation.

7.14 Fences. No fences will be allowed on any Unit, except as otherwise approved in writing by the Architectural Control Committee.

7.15 Solar Panels. No solar panels shall be erected or maintained on any Unit without having first been approved, in writing, by the Architectural Control Committee with regard to materials, color and placement of such panels.

7.16 Vents. All vents (except heat vents) shall be placed on the side of the roof closest to the rear Unit line.

7.17 Signs. Except as employed and utilized by the Declarant, no signs, banners, billboards, poster boards, or advertising structure of any kind shall be erected or maintained on any Unit or structure for any purpose whatsoever, except such signs as have been approved by the Architectural Control Committee in writing. The Architectural Control Committee may permit, in addition to signs for identification of Residences, a reasonably sized sign advertising property for sale or signs used by a builder or contractor to advertise the property during construction.

7.18 Satellite Dishes and Antennas. No exterior satellite dishes or antennas shall be allowed unless permitted by law and applicable Town of Johnstown, Colorado (the "Town") ordinances. The Architectural Control Committee may adopt Rules and Regulations consistent with law regarding the placement and screening of antennas, satellite dishes and other devices.

7.19 Clotheslines. No clotheslines shall be allowed on any Unit.



7.20 Storage Tanks. No elevated storage, filter or fuel tanks, swimming pools, cisterns or any similar protuberances above ground level shall be erected, placed or permitted upon any part of a Unit.

7.21 Vegetable Gardens. No vegetable gardens shall be allowed on any Unit.

ARTICLE 8 USE RESTRICTIONS

8.1 Construction Activities. During the construction of a Residence or other structure on a Unit, the Owner and Owner's builder shall maintain the Unit in a clean and neat condition. No building materials shall be permitted to remain exposed upon any Unit or street except as is necessary during the period of construction. Each Owner shall be liable for the repair and cleanup of the Common Elements, streets and other portions of the Property to the extent necessitated by the conduct or omission of the Owner or the Owner's builders. Further construction activity restrictions are as follows:

8.1.1 All trash and debris shall be cleaned weekly and stored in such a manner as to prevent it being scattered by the wind.

8.1.2 There shall be no construction activity before 7:00 AM or after 7:00 PM on weekdays, or before 8:00 AM or after 4:00 PM on weekends and recognized national holidays.

8.1.3 Any dogs on the construction site must be on a leash or within the body of a vehicle and shall not constitute a nuisance.

8.1.4 Concrete trucks will be allowed to "clean out" only on the site on which they were called. It shall be the contractor's responsibility to remove all concrete debris upon completion of construction and prior to landscaping.

8.1.5 Sanitation facilities must be provided on or for each construction site.

8.1.6 Restrictions contained in Section 10 of the recorded Development Agreement.

8.2 Temporary Structures. Except as employed and utilized by the Declarant, no temporary mobile home, tent, trailer, garage, storage shed, barn or any other structure erected or placed on any Unit covered by this Declaration shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation on a Unit or the streets adjacent to any Unit.

8.3 Nuisance and Waste. No noxious or offensive activity shall be permitted in or on any Unit or on the Common Elements nor shall anything be done therein which may be or become an

annoyance or nuisance to any Owner. No waste shall be committed on any Unit or any part of the Common Elements.

8.4 Storage. Boats, trailers, campers, trucks (other than pickup trucks), motor homes, recreational vehicles, snowmobiles, all terrain vehicles, and inoperable vehicles of any type shall not be stored or parked on any Unit or the streets adjacent to any Unit for more than seventy-two (72) hours in any calendar week, except and if so permitted by Town Ordinances, (a) within a fully enclosed garage, or (b) for any Unit which is a corner Unit (a Unit bounded on two sides by streets) within the area lying between the back of the Residence on the Unit and the rear line of the Unit, provided that the referenced items are screened from view behind a fence at least 5 feet high, or (c) for any Unit other than a corner Unit, within the area lying between the Residence on the Unit and the sideline of the Unit and not extending beyond the front or the back of the Residence, provided that the referenced items are screened from view behind a fence at least 5 feet high. For purposes of this provision, any disassembled or partially disassembled car, truck, motorcycle, or other vehicle or any car, truck, motorcycle, or other vehicle which has not been moved under its own power for more than seven (7) days shall be considered an inoperable vehicle subject to this provision, and the 72-hour period referenced above shall commence at the end of the seventh day. No vehicle intended for commercial purposes may be stored or parked on a Unit or the streets adjacent to a Unit, except in an enclosed garage.

8.5 Residential Use. Each Unit shall be used as a site for a patio home Residence and for no other purpose. No commercial business or trade shall be conducted on any Unit, except such home occupations as defined and permitted under applicable zoning codes or regulations.

8.6 Trash Restrictions. Trash, refuse, garbage, and other solid, semi-solid, and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate on any Unit, and shall be disposed of in a sanitary manner. No Unit shall be used or maintained as a dumping ground for such materials. All containers shall be kept in a neat, clean, and sanitary condition and shall be stored inside a garage or other approved structure. No trash, litter, or junk shall be permitted to remain exposed upon any Unit and visible from adjacent streets or other Units. Burning of trash on any Unit is prohibited.

8.7 Animals. No animals, livestock or poultry of any kind shall be raised, kept or bred upon any Unit or the Common Elements except household pets provided such pets comply with all governmental regulations, are not kept, bred or maintained for any commercial purpose, and do not constitute a nuisance. Furthermore, household pets such as dogs and cats must be restricted by leash or chain or confined by fence within the Unit, and must at all times be within the control of the Owner.

8.8 Common Elements. There shall be no obstruction of the Common Elements nor shall anything be altered or constructed on, removed from, or stored upon the Common Elements.



8.9 Insurance. No Owner shall permit anything to be done or kept in or on a Unit or on the Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common Elements, or which would be in violation of any law.

ARTICLE 9 DRAINAGE AND SOILS CONDITIONS

9.1 Acknowledgment. The soils within Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of a Residence or other structure if the Residence, the other structures and the Unit on which they are constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils.

9.2 Disclaimer. The Declarant, its managers and members shall not be liable for any loss or damage to any Residence or other structure or to any Person, caused by, resulting from, or in any way connected with soil conditions on any Unit, including, by example and not limitation, expansive soils.

9.3 Moisture. Each Owner of a Unit shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Residence constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Residence or other Residences.

9.4 Grading. Each Owner of a Unit shall maintain the elevation, grading, and drainage patterns of the Unit as indicated in the subdivision plans on file with the Town of Johnstown, Colorado.

9.5 Water Flow. The Owner of a Unit shall not impede or hinder in any way the water falling on or passing through the Unit from reaching the drainage courses established for the Unit and the Neighborhood.

9.6 Actions by Owners. By accepting title to a Unit, each Owner covenants and agrees:

9.6.1 Not to install improvements, including, but not limited to, landscaping, items related to landscaping, walls, walks, driveways, parking pads, patios, fences, Residences, additions to a Residence, outbuildings, or any other item or improvement which will change the grading of the Unit.

9.6.2 To fill with additional soil any back-filled areas adjacent to the foundation of a Residence and in or about the utility trenches on the Unit in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Unit.



9.6.3 Not to water the lawn or other landscaping on the Unit excessively.

9.6.4 Not to plant flower beds (especially annuals) adjacent to or within four (4) feet of the foundation and slabs of a Residence.

9.6.5 Not to install any gravel beds in a manner which will result in water ponding in the gravel areas, whether due to non-perforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.

9.6.6 Not to install a moisture barrier (such as polyethylene) under any gravel.

9.6.7 Not to alter, obstruct, or obliterate, in any manner, any drainage swales, pans, easements, or channels located or installed, or required to be located or installed, upon the Property pursuant to established drainage plans.

9.7 Radon Gas. **Elevated levels of naturally occurring radon gas may be present in some residential structures in Colorado. Governmental authorities have voiced concerns about the possible adverse effects on human health from long term exposure to high levels of radon gas. Each Owner is responsible to conduct such Owner's own investigation and consult with such experts as such Owner deems appropriate with respect to the presence or absence of radon gas in the soil on that Owner's Unit. Furthermore, each Owner shall solely responsible for the mitigation of radon gas on such Owner's Unit. The Declarant, its managers and members, and the builder of the initial Residence on a Unit shall not be liable for the existence of radon gas in any Residence, for any loss or damage to any Residence or other structure, or for any injury to any Person caused by, or resulting from, or in any way connected with the existence of radon gas on any Unit.**

ARTICLE 10 MORTGAGEE PROTECTION

10.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the case of conflict, this Article shall control.

10.2 Notice. Each First Mortgagee, upon written request to the Association, shall be entitled to:

10.2.1 Receive copies of budgets, notices of Assessments or any other notice or statement provided under this Declaration by the Association to the Unit Owner covered by such Security Interest.

10.2.2 Receive any audited or unaudited financial statement of the Association within ninety (90) days following the end of any fiscal year which is prepared for distribution to the Owners.

10.2.3 Receive copies of notices of meetings of the Owners.

10.2.4 Receive notice of all material amendments (the "Material Amendments") to this Declaration, the Bylaws or the Articles of Incorporation of the Association. Material Amendments to this Declaration include adding, deleting, or modifying any provision regarding the following:

- assessment basis or assessment liens;
- any method of imposing or determining any charges to be levied against Unit Owners;
- reserves for maintenance, repair or replacement of Common Elements;
- maintenance obligations;
- allocation of rights to use Common Elements;
- any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Units;
- reduction of insurance requirements;
- restoration or repair of Common Elements;
- the addition, annexation or withdrawal of land or from the Project Area;
- voting rights;
- restrictions affecting leasing or sale of a Unit; or
- any provision which is for the express benefit of First Mortgagees.

10.2.5 Receive notice of any extraordinary actions ("Extraordinary Actions") of the Association. Extraordinary Actions include the following:

- merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association);
- determining not to require professional management if that management has been required by a majority of First Mortgagees;
- expanding the Association to include land not presently contained within the description of the Property and the Development Property which increases the overall area of the Property and the Development Property or number of Units by more than 10%;
- abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements (except for (a) granting easements which are not inconsistent with or which do not interfere with the intended Common Elements' use; (b) dedicating Common Elements as

required by a public authority; (c) limited boundary-line adjustments made in accordance with the provisions of this Declaration or (d) transferring Common Elements pursuant to merger or consolidation with an non-profit entity formed for purposes similar to the Association);

- using insurance proceeds for purposes other than construction or repair of the insured improvements; or
- making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20% of the annual operating budget.

10.2.6 Receive notice of any property loss, condemnation or eminent domain proceeding affecting the Common Elements resulting in losses greater than ten percent (10%) of the annual budget.

10.2.7 Receive notice of any default under this Declaration of the Owner of a Unit in which the First Mortgagee holds a First Security Interest.

10.2.8 Examine the books and records of the Association on the same terms as any Owner.

10.2.9 Receive notice of any termination, lapse or material modification of an insurance policy held by the Association.

10.2.10 Receive notice of any proposal to terminate this Declaration or dissolve the Association at least thirty (30) days before any action is taken.

10.2.11 Receive any other notice or copy provided for elsewhere in this Declaration.

10.3 Form of Request. The request of a First Mortgagee shall specify which of the above it desires to receive or examine and shall indicate the address to which any such notice or document shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee, and in the event of multiple requests from purported holders of the same interest, the Association shall honor the most recent request received.

10.4 Rights of First Mortgagees. Notwithstanding any other provisions of this Declaration, unless at least sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each mortgage owned) have given their prior written approval, the Association shall not be entitled to:



10.4.1 Terminate the constituent common interest community that is the Neighborhood for reasons other than substantial destruction or condemnation of the Common Elements.

10.4.2 Abandon, partition, subdivide, convey or encumber the Common Elements or any portion thereof. (The granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of the Common Elements by the Association shall not be deemed a conveyance within the meaning of this provision.)

10.4.3 Use hazard insurance proceeds for losses to any Common Elements other than to repair, replace, or reconstruct the damaged property.

Additionally, a majority of the First Mortgagees shall have the right to demand professional management and to demand an audit of the Association's financial records.

10.5 Failure to Respond. The failure of any First Mortgagee to respond within thirty (30) days to any written request of the Association delivered by certified mail, return receipt requested, for approval of any matter set forth in Article 10.4 above shall constitute an approval of such matter.

ARTICLE 11 EASEMENTS

11.1 Reciprocal Side Yard Easements. Each Owner shall have a mutual, reciprocal, nonexclusive perpetual easement, right and privilege to use and enjoy the adjacent side yard of any Unit or Units adjoining such Owner's Unit (the "Side Yard Easement"). The specific location and dimensions of any Side Yard Easement on a Unit shall be as described in the deed conveying such Unit from Declarant to an Owner other than Declarant. Each Owner shall not use the Side Yard Easement in such a way as to interfere with the use and enjoyment of such area by the Owner of the Unit on which the Side Yard Easement is located. No buildings or other structures shall be constructed or placed within the Side Yard Easement, except for (a) Residence eaves, gutters, downspouts and other overhanging portions of a Residence which may project into the Side Yard Easement area, and (b) Declarant-installed fences (and any replacement fences in the same location as the original Declarant-installed fences). Maintenance and repair obligations with regard to the Side Yard Easement area shall be as set forth in Article 5.2 of this Declaration.

11.2 Association Easement. The Association shall have an easement over, across and upon each Unit for the purpose of allowing the Association, its agents, employees and independent contractors to enter upon the Unit as reasonably necessary in order to perform the work referenced in Article 5 above. The Association shall direct the persons performing such work to use best efforts to minimize interference with Unit Owners' use and enjoyment of the Unit in performing such work. Unit Owners shall not impair or impede the Association's ability to perform the work referenced in Article 5 above.



11.3 Utility Easements. Declarant hereby creates permanent easements across each Unit for the underground construction, placement, maintenance, repair and replacement of utility lines (including water, sewer, gas, electricity, telephone and other telecommunications) to serve any other Unit in the Neighborhood. Such utility easements shall burden each Unit for the use and benefit of: (1) the Owners of each Unit served by such lines, (2) the Declarant, and (3) the Association.

11.4 Easement for Encroachments. In the event any portion of the Common Elements encroaches upon any Unit or any Unit encroaches upon the Common Elements or another Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for such encroachment and for the repair and maintenance of the same shall exist in favor of the Unit Owner whose improvements are encroaching or the Association so long as the encroachment exists. Such encroachments and easements shall not be considered to impair or otherwise adversely affect the marketability of title to either the Common Elements or the Units.

ARTICLE 12 SPECIAL DECLARANT RIGHTS

12.1 Special Declarant Rights. Declarant reserves the right for the maximum time limit allowed by law (or, to the extent no such time limit is fixed by law, for a period of five (5) years after the later of (a) recordation of this Declaration or (b) recordation of the most recently recorded Amendment, if any, to this Declaration) to perform the acts and exercise the rights specified below (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

12.1.1 Completion of Improvements. The right to construct and complete improvements within the Neighborhood.

12.1.2 Sales, Management and Marketing. The right to maintain sales offices, construction offices, management offices, and signs, flags and other on-site marketing and sales promotion materials advertising the Neighborhood and models within the Neighborhood. The Declarant shall have the right to determine the number of models and the size and location of any sales offices, management office, and models. The Declarant shall also have the right to relocate any sales offices, management offices, and models from time to time at its discretion. After the Declarant ceases to be the Owner of a Unit, the Declarant shall have the right to remove any sales offices, management offices, and models from the Neighborhood.

12.1.3 Construction and Access Easements. The right to use easements through the Common Elements for the purpose of making improvements and to provide access within the Neighborhood.

12.1.4 Master Association. The right to make the Neighborhood subject to a master association other than the Master Association referenced in this Declaration.



12.1.5 Merger. The right to merge or consolidate the Neighborhood with another common interest community of the same form of ownership.

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

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

12.2.1 Amendment of Declaration. The right to amend the Declaration in connection with the exercise of any Development Rights or in connection with the qualification or continued qualification for FHA or VA loan guarantees, and for compliance with FNMA, GNMA, FHLMC requirements or any other available financing programs. Declarant shall also have the right to amend this Declaration to comply with the requirements of the Act in the event any provision contained in this Declaration does not comply with the Act.

12.2.2 Amendment of Plat. The right to amend the Plat in connection with the exercise of any Development Rights.

12.2.3 Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of the Unit Owners.

12.2.4 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 Common Elements, which may or may not be a part of the Neighborhood for the benefit of the Unit Owners.

12.2.5 Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

12.3 Rights Transferable. Any Special Declarant Right or additional reserved right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by recording an instrument describing the rights transferred. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 Enforcement. Enforcement of any provision of this Declaration, the Act, the Bylaws, and any Rules and Regulations shall be by appropriate proceedings at law or in equity against those



Persons violating or attempting to violate any such provision. Such proceedings may be for the purpose of removing a violation, restraining or enjoining a future violation, recovering damages for any violation, foreclosing a lien, obtaining such other and further relief as may be available, or any combination thereof. Such proceedings may be instituted by an Owner, by the Architectural Control Committee, or by the Association. In the event it becomes necessary to commence such proceedings, the prevailing party shall be entitled to recover the costs and reasonable attorney's fees incurred in connection with such proceedings. In addition, the Association may levy fines and penalties in accordance with the Act. The Rules and Regulations adopted by the Association shall provide for notice to the affected Unit Owner, or such Owner's lessee, and hearing before any such fines are assessed. The unpaid fines shall be added to the Assessments against the Unit of such Unit Owner. The failure to enforce any provision of this Declaration, the Act, the Bylaws and the Rules and Regulations shall not preclude or prevent the enforcement thereof for a further or continued violation, whether such violation shall be of the same or of a different provision. The Association shall not be liable to reimburse any Unit Owner for attorney's fees or costs incurred in any suit brought by a Unit Owner to enforce or attempt to enforce this Declaration.

13.2 Severability. If any provision or term of this Declaration is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration.

13.3 Conflict. If there is any conflict between the Declaration and the provisions of the Act, the provisions of the Act shall control. In the event of a conflict between this Declaration and the Bylaws, the Declaration shall control. In the event of a conflict between this Declaration and the Master Declaration, this Declaration shall control. Above all, Town Ordinances and other governmental laws shall control over the Declaration and the Bylaws, but enforcement of the Declaration and the Bylaws shall be as provided in Article 13.1 above.

13.4 Duration. The covenants, conditions and restrictions of this Declaration shall run with the Property, shall be binding on all Unit Owners, their legal representatives, heirs, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided in this Declaration or the Act.

13.5 Amendment. Except as otherwise provided in this Declaration or the Act, this Declaration may be amended at any time by a written and recorded instrument containing the consents of the then record Owners of sixty-seven percent (67%) of the Units subject to this Declaration, including at least a majority of these Owners other than Declarant. Furthermore, during any period of Declarant control, all Material Amendments and Extraordinary Actions must have the approval of the FHA or VA, if FHA or VA has guaranteed any loans secured by Units. Additionally, during any period of Declarant Control, Declarant shall provide a copy of all amendments to this Declaration to the FHA or VA if FHA or VA has guaranteed any loans secured by Units.

13.6 Notice. Unless otherwise required by this Declaration or the Act, notice of matters affecting the Neighborhood may be given to Unit Owners by the Association, or by other Unit Owners, in the following manner: Notice shall be hand delivered or sent by United States mail, first



2982241 08/28/2002 12:21P Weld County, CO
33 of 34 R 170.00 D 0.00 J.A. "Suki" Tsukamoto

**EXHIBIT A
PROPERTY DESCRIPTION**

**LOTS 28 THROUGH 83, INCLUSIVE, AND OUTLOTS A AND B, ROLLING
HILLS RANCH PHASE-14, TOWN OF JOHNSTOWN, WELD COUNTY,
COLORADO, ACCORDING TO THE RECORDED PLAT.**

2982241 08/28/2002 12:21P Weld County, CO
34 of 34 R 170.00 D 0.00 J.A. "Suki" Tsukamoto

EXHIBIT B EASEMENTS AND LICENSES

Easements and licenses appearing on the Plat of the Property, as the same may be amended.

Easements and licenses provided in the Declaration.

Right of way for COUNTY ROADS 30 feet wide on either side of section and township lines as established by ORDER OF THE BOARD OF COUNTY COMMISSIONERS FOR WELD COUNTY, recorded OCTOBER 14, 1989 in BOOK 86 at PAGE 273.

Right-of-way easement for PIPELINE purposes as granted to ARTIE P. GREGG, JAMES S. GRAY AND WELD COUNTY SCHOOL DISTRICT RE-5J, A GOVERNMENT SUBDIVISION OF THE STATE OF COLORADO by instrument recorded FEBRUARY 3, 1967 in BOOK 578 AS RECEPTION NO. 1499870, said right-of-way easement not being specifically defined.

Right-of-way easement and Agreement for PIPELINES, POWER LINES, AND OTHER purposes as granted to RESOURCE GATHERING SYSTEMS, INC. ("RGS") by instrument recorded APRIL 7, 1994 in BOOK 1435 AS RECEPTION NO. 2382439, said right-of-way easement being an area of ground which is measured 25 feet in both directions from the center line of the routing during construction activities, and an area of ground which is measured 12.5 feet in both directions from the center line of the routing during operations, transportation and maintenance activities.

The right of way shall be routed as close as reasonably practicable to the following: The right of way shall enter the property at the northeast corner of the SE/4 of Section 6, Township 4 North, Range 67 West, 6th P.M., thence run south along the east Section line a distance of approximately 1,500 feet to a tank battery/treater facility.

Terms, conditions and provisions of EASEMENT AND SURFACE USE AGREEMENT, between ROBERT F. BROWN AND BEVERLEY A. BROWN and ELK EXPLORATION, INC., A CALIFORNIA CORPORATION recorded JANUARY 14, 1994 in BOOK 1422 as RECEPTION NO. 2369332.

Terms, conditions and provisions of AGREEMENT, between DONALD T. PURVIS, RICK L. PODTBERG and ROBERT F. BROWN AND JOYCE M. REICHERT recorded JANUARY 29, 1996 in BOOK 1529 as RECEPTION NO. 2473693.

Easements for roadways, ditches, pipelines, irrigation and other purposes as shown on plat of Recorded Exemption No. 1059-06-4-RE1929 recorded October 3, 1996 in Book 1570 as Reception No. 2513891.