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CDECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONSOFWESTBROOK VILLAGE COMMUNITY ASSOCIATION, INC.PURPOSE

THIS ASSOCIATION DECLARATION, made on the date hereinafter set forth, by F.M. PARTNERS of Longmont, a Colorado Limited Liability Partnership, hereinafter referred to as "Declarant."

## WITNESSETH:

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

Lots 1 through 15, Block 1; and  
Lots 1 through 14, Block 2; and  
Lots 1 through 17, Block 3; and  
Outlets A, B, C, D, E, F, G, H, and I,  
Westbrook Village Subdivision,  
City of Longmont, County of Boulder,  
State of Colorado

Recorded October 21, 1996, reception #01651539, Film 2164, Boulder County.

**Declaration of Covenants , Conditions, and Restrictions**  
**of**  
**Westbrook Village Community Association, Inc.**

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

OF

WESTBROOK VILLAGE COMMUNITY ASSOCIATION, INC.

PREAMBLE

THIS ASSOCIATION DECLARATION, made on the date hereinafter set forth, by F.M. PARTNERS of Longmont, a Colorado Limited Liability Partnership, hereinafter referred to a "Declarant."

WITNESSETH:

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

Lots 1 through 15, Block 1; and  
Lots 1 through 14, Block 2; and  
Lots 1 through 17, Block 3; and  
Outlots A,B,C,D,E,F,G,H, and I;  
Westbrook Village Subdivision,  
City of Longmont, County of Boulder,  
State of Colorado

Recorded October 21, 1996, reception #01651539, Film 2164, Boulder County.

WHEREAS, Declarant, will convey said real property, subject to the protective covenants, restrictions, reservations, and obligations as hereinafter set forth; and

WHEREAS, this Association Declaration is executed pursuant to and in furtherance of a common and general plan (a) to protect and enhance the quality, desirability and attractiveness of all property which may be subject to this Association 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 Association Declaration; (c) to define duties, powers and rights of the association; and (d) to define certain duties, powers and rights of owners of property which may become subject to this Association Declaration; and

NOW, THEREFORE, the Declarant with this Association Declaration states that the real property described in the Preamble is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth. Declarant hereby submits said real property described above with all easements, rights, and appurtenances thereto and improvements thereon to the provisions of the Colorado Commons Interest Ownership Act as it may be amended from time to time. If said Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

## SECTION I

### DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

**Section 1.1** "Act" means the Colorado Common Interest Ownership Act, C.R.S. SS 38-33.3-101, et seq., as it may be amended from time to time.

**Section 1.2** "Agencies" shall mean and collectively refer to the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD/FHA), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

**Section 1.3** "Allocated Interest" means the votes in the Association which is allocated to each of the Lots in the Project. Each Lot in the Planned Community has one vote.

**Section 1.4** "Allocated Assessment" means the total assessment liability allocated to each Lot in the Project and is determined by the following formulas:

(a) Common Assessment Liability. The Common Assessment levied upon all Lots on the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Lots within the Project.

(b) Association Maintenance Area Assessment Liability ("AMA"). AMA Assessment is levied upon the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Lots in Blocks 1 and 2, and is an assessment in addition to the Common Assessment.

(c) Total Assessment Liability shall mean the combined total of all assessments levied by the Associations against a lot.

**Section 1.5** "Architectural Review Committee" shall mean the committee that is formed by Section IX of this Declaration.

**Section 1.6** "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may from time to time be amended.

**Section 1.7** "Association" shall mean and refer to the Westbrook Village Community Association, Inc., a Colorado Corporation, not-for-profit, organized pursuant §38-33/3-301 of the Act, its successors and assigns, the Articles of Incorporation and Bylaws of which, as herein defined, along with this Declaration, shall govern the administration of the Planned Community, the Members of which shall be all the Owners of the Lots within the Planned Community.

**Section 1.8** "Association Fences" shall mean the fences located or to be located on the Common Area. The precise locations of the Association Fences shall be as determined by Declarant.

**Section 1.9** "Association Maintenance Areas", ("AMA's"), shall mean any portion of a lot located in blocks 1 and 2, excluding the Dwelling Unit, and excluding walkways, driveways, patios, decks or areas enclosed by fencing on such lots. The boundaries of the Association Maintenance Area on a Lot may be altered as specified in a written agreement approved and executed by the Owner of the Lot and the Association, as more particularly hereinafter provided in Section 5.5 herein.

**Section 1.10** "Assessment" shall mean and refer to any assessment levied, charged, or assessed against an Owner in accordance with his Allocated Interest and the provisions of this Declaration.

**Section 1.11** "Assessable Unit" shall mean and refer to any real property within the properties, which are subject to assessments.

**Section 1.12** "Board" or "Board of Directors" shall mean the Board of Directors of the Association. The term "Board of Directors" as used herein is synonymous with the term "Executive Board", as the latter term is used in the Act.

**Section 1.13** "Bylaws" shall mean and refer to the duly adopted Bylaws of the Association, as the same may from time to time be amended.

**Section 1.14** "City" shall mean the City of Longmont.

**Section 1.15** "Common Area", "General Common Areas", "Common Maintenance Areas", shall mean and refer to all real property and Improvements owned or leased by the Association which shall include, by way of example but without limitation, fencing enclosing common areas, all outlots, storm water detention facilities, exterior lighting on outlots, benches, security areas, and walkways owned by the Association. Said areas are intended to be devoted to the common use and enjoyment of all Owners, subject to the provisions hereof, and are not dedicated for use by the general public. It is the intention of Declarant that a triangular area generally located on the southwest side of outlot H, between lots 12 and 13, Block 3, shall be included as Common Area. Otherwise, Common Area shall expressly exclude any public streets or rights of way as shown on the Subdivision Plat and any other areas within the Project which shall also be dedicated to the City of Longmont.

The term "Common Area" as used herein is synonymous with the term Common Areas as the latter term is used in the Act.

**Section 1.16** "Common Expenses" shall mean expenses made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves.

**Section 1.17** "Cost of Enforcement" shall mean all fees, late charges, interest, expenses, including receiver's fees, and reasonable attorney's fees and costs incurred by the Association in connection with the collection of the Assessments and fines, or in connection with the enforcement of the terms, conditions, and obligations of this Declaration and of the rules and regulations of the Association.

**Section 1.18** "Community Declaration" shall mean this Community Declaration for Westbrook Village Community Association, Inc., the covenants, conditions, and restrictions, and all other provisions herein set forth in this entire document, as the same may from time to time be amended as herein provided, which shall be recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

**Section 1.19** "Dwelling Unit" or "Living Unit" shall mean and refer to any structure situated upon the properties designed and intended for use and occupancy as a residence by a single family.

**Section 1.20** "Developer", "Declarant" or "Company" shall mean and refer to F.M. Partners of Longmont, a Colorado Limited Liability Partnership, its successors as defined in §7-6-144, CRS 1973.

**Section 1.21** "Development Rights and Special Declarant Rights" shall mean the rights as defined by §38-33.3-103(14) of the Act reserved by the Declarant under Section 13 of this Declaration.

**Section 1.22** "Federal Mortgage Agencies" shall mean and refer to those Federal Agencies who have an interest in the properties, such as the Federal Housing Administration, the Veteran's Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interest.

**Section 1.23** "First Mortgage" shall mean and refer to any unpaid mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of Boulder County, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general and valorem tax liens and special assessments). "First Mortgage" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America is the original seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by said Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of Boulder County, Colorado show the said Administrator as having the record title to the Lot.

**Section 1.24** "First Mortgagee" shall mean and refer to an institutional or private lender who holds either a first deed of trust or a first mortgage on a Lot or Living Unit thereon.

**Section 1.25** "Guest" or "Related User" shall mean (a) any person who resides with an Owner within the Project; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Dwelling Unit within the Project, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract

purchaser.

**Section 1.26** "Improvements" shall mean and refer to, (a) all exterior improvements, structures and any appurtenances thereto or components thereof of every type or kind; (b) fencing, grading, excavation, filling or similar disturbance to the surface of the land including storm water detention and/or drainage facilities; (c) landscaping, exterior lighting, benches, walks; and (d) any change or alteration, modification, expansion, or addition to any previously approved Improvement, including any change of exterior appearance, finish material, color or texture.

**Section 1.27** "Institutional Mortgagee" or "Institutional Lender" shall mean and refer to a First Mortgagee which is a federally or state chartered bank, a federal or state savings bank, or savings and loan institution, a real estate investment trust, or any corporation whose primary business is the making, purchasing, or placing of mortgage loans, who shall perfect a first priority security position as to any Lot or Living Unit constructed within the Project.

**Section 1.28** "Lot" shall mean and refer to any numbered plot of land shown as such upon the recorded Plat of the Project, with the exception of any "outlot" as herein defined.

**Section 1.29** "Member" shall mean and refer to the Person designated as such pursuant to Section 1.36 below.

**Section 1.30** "Mortgage" shall mean and refer to a mortgage, deed of trust, or other similar security instrument held or owned by a Mortgagee which encumbers any Lot and/or Dwelling Unit.

**Section 1.31** "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 Association Declaration and the Bylaws, no Person shall be deemed a Mortgagee until written notice of such interest has been given to the Association together with the name and address of the Mortgagee.

**Section 1.32** "Notice" shall mean and refer to the date (a) written notice delivered personally or mailed to the last known address of the intended recipient, or (b) notice through an Association publication, which is delivered to the Dwelling Units. "Notice to Mortgagee" shall mean and refer to only written notice delivered personally or mailed to the last known address of the intended recipient and not notice through an Association publication.

**Section 1.33** "Outlot" shall mean any lettered plot of land as shown as such on any recorded Plat of the Project, with the exception of any "Lot" as herein defined.

**Section 1.34** "Owner" means any person, corporation, partnership, association, contract seller or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots, and shall include the purchaser under any executory land sales contract wherein the Administrator of Veteran's Affairs is seller, whether recorded or not, and whether owned by said Administrator or his assigns. The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assignee of any Owner but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

**Section 1.35** "Period of Declarant Control" shall mean that period of time as defined in Section 3.6 of this Declaration.

**Section 1.36** "Person" shall mean an individual, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

**Section 1.37** "Plat" shall mean the final plat recorded in the office of the clerk and Recorder of Boulder County.

**Section 1.38** "Private Yards" shall mean any Lot located in Block 3 and any portion of a Lot enclosed by either Association or private fencing in Blocks 1 and 2.

**Section 1.39** "Project" or "Property" shall mean and refer to all real property which became subject to this Association Declaration.

**Section 1.40** "Quorum of Owners" shall mean the representation by presence or by proxy of Members who hold fifty percent (50%) or more of the votes in the Association allocated to be cast on any issue.

**Section 1.41** "Single Family" shall mean and refer to a Dwelling Unit which includes an individual living alone; or any number of persons living together as a single household who are interrelated by blood, marriage, or adoption. The term shall also include not more than two (2) adults who are legally unrelated and who own the property together as tenants in common or as joint tenants or who are leasing the property under a lease with a term of not less than one (1) month and who have received written consent from the Association approving the ownership or tenancy.

## Section II

### **PROPERTY SUBJECT TO THIS DECLARATION**

**Section 2.1** Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Association Declaration is located in the City of Longmont, County of Boulder, State of Colorado, and is more particularly described in the Preamble.

**Section 2.2** Conveyances Subject to this Declaration. All easements, restrictions, conditions, obligations, reservations, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be Covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in the Project, and their respective heirs, successors, representatives or assigns.

Any instrument recorded subsequent to this Declaration and purporting to establish and effect any interest in the Project shall be subject to the provisions of this Declaration whether or not it makes any reference thereto.

**Section 2.3** Owner's Rights Subject to this Declaration. Each Owner shall own his or her lot in fee simple title and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

**Section 2.4** Identification of Lots. The identification number of each Lot and Block is shown on the Plat of the Project, which is recorded in the office of the Clerk, and Recorder of Boulder County. Said Plat is hereby incorporated herein and made a part of this Declaration.

**Section 2.5 Lot Boundaries.** The boundaries of each Lot are located as shown on the Plat of the Project.

### Section III

#### **ASSOCIATION STRUCTURE AND FORMAT**

**Section 3.1 Name.** The Association is The Westbrook Village Community Association, Inc. and is a planned community.

**Section 3.2 Purpose and Powers.** The Association, acting through its Board of Directors, shall have the power to perform functions and manage the Association to do anything that may be necessary or desirable to further the common interests of the Association, the Project, and its Members, to maintain, improve and enhance the Common Area and to improve and enhance the attractiveness and desirability of the Project. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all the power necessary or desirable to effectuate such purposes.

**Section 3.3 Board of Directors.** The affairs of the Association shall be managed by a Board of Directors as provided in the Articles of Incorporation and Bylaws, and may by resolution delegate authority to a Managing Agent for the Association. The Board of Directors shall have all of the powers, authority, and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association and Project.

**Section 3.4 Articles and Bylaws.** The purposes and powers of the Association and the rights and obligations with respect to its Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. If there is a conflict between either the Articles or Bylaws and the Declaration, the Declaration shall control. If the Articles conflict with the Bylaws, the Articles shall control.

#### **Section 3.5 Membership.**

(a) Basis. Membership shall be appurtenant with each Lot owned, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Association Declaration, Articles of Incorporation or Bylaws.

(b) Member's Rights and Duties. Each Member shall have the rights, duties and obligations set forth in this Association Declaration, the Articles of Incorporation and Bylaws. Membership of the Association at all times shall consist exclusively of all Lot Owners or, following termination of the Planned Community, of all former Lot Owners entitled to distributions of the proceeds under C.R.S. S38-33.3-128 of the Act, or their heirs, personal representative, successors or assigns.

(c) Voting Rights. The Association shall have one class of voting membership. Owners shall have one vote for each Lot owned. Upon transfer, sale, or other disposition of all or some of the fee interest in a Lot, and upon written notification to the Association, the then Owner shall automatically become the Member with respect to such Lot. The vote for any Lot, which is held by more than one (1) person may only be exercised by one (1) person, or if the Owner is a corporation, by an officer of such corporation. A written notice subscribed to by all of such persons or by such corporation, as the case may be,

designating one (1) of such persons or an officer of such corporation as the person entitled to cast the vote with respect to such Lot shall be delivered to the Secretary of the Association prior to the start of any annual or special meeting of the Association. Without this written notice, the vote for the Membership shall not be counted.

**Section 3.6 Declarant Control of the Association.** There shall be a "Period of Declarant Control" during which a Declarant may appoint and remove the officers and members of the Board. The Period of Declarant Control shall terminate no later than the earlier of:

- (a) Ninety days after conveyance of seventy-five percent (75%) of the Lots that may be created to owners other than Declarant: or
- (b) Two years after the last conveyance of a Lot by the Declarant in the ordinary course of business to owners other than Declarant: or
- (c) Two years after any right to add new Lots was last exercised: or
- (d) Such other time as the Declarant may, in its sole discretion, determine.

**Section 3.7 Election by Owners.** Not later than ninety (90) days after conveyance of twenty-five percent of the Lots that may be created to owners other than Declarant, at least one (1) member and not less than twenty-five (25) percent of the members of the Board of Directors must be elected by Owners other than the Declarant.

Not later than ninety (90) days after conveyance of fifty percent (50%) of the Lots that may be created to owners other than Declarant, not less than thirty-three and one third (33.333%) percent of the members of the Board of directors must be elected by Owners other than the Declarant.

Not later than the termination of the Period of Declarant control, the Owners shall elect a Board of Directors of at least five members, a majority of whom must be Owners other than the Declarant. The Board of Directors shall elect the officers of the Association. The Owners' Board of Directors shall take office upon termination of the Period of Declarant control upon election.

**Section 3.8 Delivery of Association Documents by Declarant.** Within 90 days after the Owners other than the Declarant elect a majority of the Members of the Board of Directors, the Declarant shall deliver without charge to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following:

- (a) The original recorded copy or certified copy of the recorded Declaration, as amended, the Association's Articles of Incorporation, together with a Certificate of Good standing, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been adopted;
- (b) An accounting of Association funds and financial statements from initial date the funds were received and ending on the date of the end of the Period of Declarant Control in accordance with §38-33.3-303(9)(b) of the Act;
- (c) The Association's funds or control thereof;
- (d) All of the personal property that has been represented by the Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the Common areas, including copies of plans and specifications used in the construction of any improvements in the Common Areas; and an inventory of these properties;
- (e) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;
- (f) Any other permits or agreements issued by governmental or quasi-governmental bodies applicable to the Project and which are currently in force or which were issued within one year prior to the date on which Owners other than

the Declarant took control of the Association;

(g) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;

(h) A roster of Owners/Members of the Association, eligible mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(i) Employment and/or service contracts in which the Association is a contracting party or in which the Association has any obligation to pay a fee to the persons performing the services.

## SECTION IV

### **DUTIES AND POWERS OF THE ASSOCIATION**

**Section 4.1 Common Area Dedication.** The Declarant in recording the Subdivision Plat in the records of the Clerk and Recorder of Boulder County, Colorado, has designated certain areas of the Project as common Areas, more fully described as follows:

Outlots A,B,C,D,E,F,G,H, and I;  
Westbrook Village, City of Longmont,  
County of Boulder, State of Colorado

The Common Areas are not dedicated for use by the general public, but are dedicated to the common use and enjoyment of only the Owners of Lots located within the Project, and the Owner's Guests, as more fully provided for in this Declaration. The Association shall convey Outlot G to the City of Longmont upon acceptance of public improvements within the Project by the City.

**Section 4.2 Title to Common Areas.** The Declarant hereby covenants that it will convey to the Association fee simple title to the Common Areas prior to the conveyance of the first Lot within the Project to an Owner other than Declarant.

**Section 4.3 Duty to Accept Property and Facilities Transferred by Declarant.** The Association shall accept the title to any Common Areas and outlots. Real property interests transferred by Declarant to the Association shall consist of fee simple title to the Common Area, together with all improvements thereon, subject to this Declaration and easements, reservations, and rights of way of record. No real or personal property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, or charge of fee. The interest in property transferred to the Association by Declarant shall not impose any unreasonable or special burden on the Association other than the duties set forth hereinafter.

**Section 4.4 Duty to Manage and Care for Common Areas and Association Maintenance Areas (AMA).** Upon commencement of Common Assessments and following the installation of landscaping, common water lines, irrigation systems and related equipment, and other improvements thereon by Declarant in the Common and Association Maintenance Areas, the Association shall manage, operate, care for, maintain and repair all landscaping, common fences, or other improvements, (excluding dwellings, private walks, private driveways, patios/decks, private fences and any areas enclosed therein), installed thereon.

**Section 4.5 Changes in Association Maintenance Areas (AMA).** If the owner of a Lot desires to change the boundaries of the AMA located on such Lot, the Owner shall give written notice to the Association. Any change shall be effective only upon the execution of a written agreement by and between the Owner and the Association setting forth the new boundaries of the AMA, and containing

other terms and conditions as shall be deemed advisable by the Association in its sole discretion, which written agreement shall be Recorded by the Association and maintained in its permanent records.

The terms and conditions of any such written agreement between the Association and a Lot Owner shall run with title to the Lot and shall also be binding upon each subsequent Owner of the Lot.

If a change or alteration to an AMA is approved in accordance with the foregoing and if such change or alteration results in either an expansion or contraction of the Lot's AMA, the Association's duty to manage and care for the AMA, as provided herein, and the corresponding obligation of the Owner of the Lot to maintain the remainder of the Lot, as hereinafter provided, shall either be increased or decreased, as is appropriate; provided, however, that no such change to the AMA shall decrease the amount of the assessment payable by the Owner thereof. Any increase in the AMA may result in an increase in the assessment by an amount the Association deems appropriate.

**Section 4.6** Duty to Remove Snow from Driveways and Front Walks. Upon commencement of Assessments, the Association shall remove snow as reasonably necessary from public sidewalks, the driveways and from the walks leading from the front door of the Dwelling Unit to the adjacent street and/or to such driveway located on each Lot within the project. This duty shall not extend to any patio/deck area adjacent to a dwelling unit or any area enclosed by fencing.

**Section 4.7** Duty to Prepare Budgets. The Association shall prepare budgets for the Association.

(a) The Board of Directors shall cause the be prepared, at least sixty days prior to the commencement of each calendar year, a Budget for such calendar year. Within thirty (30) days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) days nor morethan sixty (60) days after delivery of the summary.

(b) Unless at that meeting of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. If the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(c) If the Board deems it necessary or advisable to amend a ratified Budget, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days, or more than sixty (60) days, after the delivery of the summary of the proposed amendment.

(d) Unless at that meeting of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated reject the Amended Budget, the Amended Budget shall be deemed ratified whether or not a quorum is present.

**Section 4.8** Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Association Declaration.

**Section 4.9** Duty to Provide Audit. The Association may provide for an annual report of the accounts of the Association. If required by a Government

Mortgage Agency such report may be an independent audit. Copies of the report will be made available to any Member who requests a copy of the same upon payment by such Member a reasonable cost for copying.

**Section 4.10 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 with which each Owner and their Guest shall strictly comply. Any such rules and regulations shall be reasonable and uniformly applied.

**Section 4.11 Power to Employ Managers, Consultants or Employees ("Agents").** The Association shall have the power to retain and pay for the services of "Agents" to undertake any of the management or functions for which the Association has responsibility under this Association Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to any such "Agents". Any such contract(s) or agreement(s) 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. Any contract or agreement with any such "Agents" shall be terminable by the Association without cause or termination fee or penalty upon thirty (30) days written notice.

**Section 4.12 Duty to Purchase Insurance.** The Board of Directors shall purchase all insurance policies relating to the Association and Common Areas within the Project as more particularly defined in Section VII of this Declaration. The Board shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, or termination of, insurance coverage's obtained on behalf of the Association.

**Section 4.13 Additional Association Rights and Duties.** Acting through the Board of Directors, the Association shall have the following rights and duties:

(a) To borrow money to improve the Common Areas and to mortgage said Areas as security for any such loan; provided, however, that the Association may not subject any portion of the Common Areas to a security interest unless such is approved by Owners to which at least eighty percent (80%) of the votes in the Association are allocated, including eighty percent(80%) of the votes allocated to Lots not owned by Declarant as more fully set forth in §38-33.3-312 of the Act.

(b) To convey or dedicate all or any part of the Common Areas for such purposes and subject to such conditions as may be agreed to by the Owners to which at least eighty percent (80%) of the votes in the Association are allocated, including eighty percent (80%) of the votes allocated to Lots not owned by the Declarant as more fully set forth in §38-33.3-312 of the Act.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of the Paragraph as more fully set forth in §38-33.3-312 of the Act.

(c) To suspend the voting rights of a Owner for any period during which any Assessment remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Declaration, Bylaws or Rules and Regulations.

(d) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(e) To enter into, make, perform or enforce any contracts, leases,

agreements, licenses, easements and rights-of-way, for the use of Common Areas by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate.

(f) To close or limit the use of the Common Areas temporarily while maintaining, repairing and making replacements in the common Areas, or permanently if approved by Owners to which at least eighty (80) percent of the votes in the Association are allocated.

(g) To make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions that it is obligated or permitted to perform under this Declaration.

(h) The Association may undertake any activity, function or service for the benefit of, or to further the interest of all, some, or any Member, on a self-supporting, Special Assessment or Common Expense Assessment basis.

**Section 4.14 General Corporate Powers.** The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Not For Profit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Association 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 Association Declaration or the Articles of Incorporation and Bylaws of the Association and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Association Declaration and the Articles of Incorporation and Bylaws of the Association.

**Section 4.15 Certain Rights and Obligations of the Declarant.** So long as there are unsold Lots within the Project owned by Declarant, the Declarant shall enjoy the same rights and assumes the same duties as they relate to each individual unsold Lot and provided for in Section XIII of this Declaration.

## SECTION V

### **ASSESSMENTS**

**Section 5.1 Obligation.** All Assessments shall be levied by the Association against each Lot according to its Allocated Interest and collected and disbursed by the Association. By acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, each Owner, covenants and agrees and shall be personally obligated to pay Assessments to the Association for; (a) Allocated Assessments, (b) Special Assessments, (c) Fines, (d) Individual Assessments, (e) Reimbursement Assessments, and (e) Cost of Enforcement, which shall be a continuing lien upon the Lot against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Lot shall be jointly and personally liable to the Association for the payment of all Assessments and Cost of Enforcement.

The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

**Section 5.2 Purpose of the Assessments.** The Assessments levied by the

Association shall be used exclusively for the purpose of (a) promoting the health, safety and welfare of the residents of the Project and the members of the Association, (b) providing for the improvement, repair, maintenance and reconstruction of the Common and Association Maintenance Areas, (c) provide hazard insurance and insuring insurable improvements upon the Common Areas, liability insurance covering all of the Common Areas located within the Project, and (d) satisfying any other purpose reasonable, necessary or incidental to such purposes, as the Board of Directors deems appropriate.

Such assessments shall include the establishment and maintenance of a reserve fund for the above stated purposes upon a periodic basis, provided, however, that such assessments levied during the Period of Declarant control may not be used for the purpose of construction of capital improvements.

**Section 5.3 Date of Commencement of the Assessments.** The first Assessments provided for herein shall commence on the first day of the month following the conveyance of a Lot to an Owner other than the Declarant.

**Section 5.4 The Assessment Lien.** The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Board and for Costs of Enforcement levied against such Lot when the Lot Owner fails to pay as required by this Declaration. Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including the power and authority to determine where, when, and how Assessments shall be paid to the Association and each Owner shall comply with such determination.

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances except the following:

(a) Real property ad valorem taxes and special assessments liens duly imposed by a Colorado governmental or political subdivision or special taxing district(s), or any other liens made superior by statute; and

(b) The lien of any loan evidenced by a first mortgage of record including deeds of trust and any executory land sales contract wherein the Administrator of Veterans Affairs (VA) is seller, whether such contract is owned by the VA or its assigns, and whether such contract is recorded or not, except to the extent the Act grants priority for assessments to the Association.

The Act does not affect the priority of mechanics or materialmen's liens.

(c) Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may prepare and record in the Office of the Clerk and Recorder of Boulder County, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

(d) The Lien for 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 Association Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

(e) Any First Mortgagee who acquires title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure will take the Lot free of any claims for unpaid Assessments and Cost of Enforcement.

against that Lot which have accrued prior to the time such First Mortgage acquires title to the Lot, except to the extent the Act grants lien priority for Assessments of the Association.

(f) Sale or transfer of any Lot shall not affect Assessment Liens except that sale or transfer of any Lot pursuant to foreclosure by any First Mortgagee, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale or deed in lieu of foreclosure shall relieve any Lot Owner from continuing personal liability for any Assessment thereafter becoming due, nor from the lien thereof.

(g) In any action by the Association to collect Assessments and/or Cost of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of any action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending action to the extent of the Association's Assessments and Cost of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any first Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage.

#### **Section 5.5 Common Assessments and Association Maintenance Assessments.**

(a) Common Assessment. All Lots within the Project shall be subject the Common Assessments.

(b) The Association Maintenance Area Assessment (AMA). The AMA Assessment shall be charged to all lots located in Blocks 1 and 2 as identified on the recorded final plat according to the Allocated Interest of each lot, and shall be in addition to the General Assessment.

**Section 5.6 Increase in Maximum Lot Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot by Declarant, the maximum assessment shall be Two Hundred Dollars (\$200.00) per Lot, per month.

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

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

(c) Monthly Assessments Below Maximum Assessment. The initial monthly Assessment for Lots shall be as follows:

(1) For Lots subject to Common Area Assessments only, the monthly

assessment shall be between Thirty dollars (\$30.00) and Forty-Five Dollars (\$45.00) per month. (Lots located in Block 3)

(2) For Lots subject to both the Common Area Assessment and the Association Maintenance Area Assessment the monthly assessments shall be between Seventy-Five Dollars (\$75.00) and Ninety Dollars (\$90.00). (Lots located in Blocks 1 and 2)

**Section 5.7 Supplementary Assessments.** In the event that the Board shall determine, at any time or from time to time, that the amount of the General or Association Maintenance Assessments are not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more Supplementary Assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each Supplementary Assessment, the Board shall revise the annual budget for such fiscal year as provided in Section 4.6 of this Declaration. Based on such revised or new Budget, the Board may make a Supplementary Assessment for such fiscal year against each Lot, the amount of which shall be determined by the Board as provided in Section 4 of this Article.

**Section 5.8 Special Assessments.** Special Assessments may be made for the purposes of raising funds for capital improvements and for any other Association purpose for which General Assessments may not or have not been made. Whether to make a Special Assessment and the amount thereof per Lot shall be determined by the Board; provided that no Special Assessment shall be valid unless approved by a majority vote of the Members present and voting in person or by proxy at any Annual Meeting of the Members of the Association or at any Special Meeting called for the purpose of considering such Special Assessment.

**Section 5.9 Reimbursement Assessments.** The Board of Directors may, subject to the provisions hereof, levy an Assessment against any Owner, if (a) the willful or negligent failure of the Owner or Owner's Guest to comply with this Declaration, Articles of Incorporation, the Bylaws, Rules and Regulations, or guidelines or rules adopted by the Architectural Review Committee have resulted in the expenditure of funds to cause such compliance; or (b) if due to the Owner or Owner's Guests willful neglect or destruction, funds are required to repair, maintenance and/or reconstruct Association Property; or (c) if a Owner or Owner's Guest 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; or (d) for the Cost of Enforcement. 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 Board of Directors of the Association that the Assessment is owing.

**Section 5.10 Time for Payments.** The Allocated Assessment for each Lot shall be payable, subject to Section 5.3, in twelve equal monthly installments, payable in advance, due on the first day of each month. Special and Supplementary Assessments shall be payable as provided in the resolutions authorizing the same. All installments of General, Supplementary, and Special Assessments shall be due and payable without notice or demand, and all Assessments shall be paid without any setoff or diminution of any kind. Any Assessment or installment thereof or other amount payable pursuant to this Section or under the Articles of Incorporation or its Bylaws, which is not paid when due shall bear interest from the date due until paid at the maximum rate permitted by law for interest, or such lesser rate as the Board shall determine and/or may be subject to a late charge as may be set and uniformly applied by the Board. All payments on account shall be first applied to interest and late charges and then to the Assessment payment due.

**Section 5.11 Working Capital.** The Association or Declarant shall require the Purchaser of any Lot from Declarant to make a deposit into the Working Capital Account of the Association equal to two (2) times the monthly Allocated Assessment applicable to the Lot currently being collected by the Association from its Members. Such deposit shall not relieve an Owner from making the regular payment of assessments as the same becomes due. Working Capital deposits collected shall not be refunded to the Owner upon the sale or transfer of a Lot nor shall an Owner be entitled to any interest on any working capital held by the Association. Upon sale or subsequent transfer of the Lot to another Owner (purchaser), the selling Owner may be reimbursed for his working capital deposit by the new Owner (Purchaser) of the Lot. Such reimbursement shall be the responsibility of the Selling Owner and the Association shall have no duty or responsibility to the Selling Owner for such reimbursement.

**Section 5.12 Estoppel Certificate.** Upon payment of a reasonable fee, not to exceed \$25.00, 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 setting forth the amount of any Assessments, if any, due or accrued and then unpaid with respect to such Lot and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association, for all purposes, that no greater or other amounts were then due or accrued and unpaid.

**Section 5.13 No Abatement.** No diminution or abatement of Assessments shall be allowed or claimed for any reason including, without limitation, from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance, or order of a governmental authority.

**Section 5.14 Rights of First Mortgagees.** Any First Mortgagee of a Lot within the Project may jointly or severally pay any tax or other charge which is in default and which may have become a charge or a lien against any common area of the Association, and any First Mortgagee may jointly or severally pay any overdue premium on hazard insurance policies or secure new hazard insurance coverage on the lapse of any such policy for the common area of the Association.

**Section 5.15 Effect of Non-Payment of Assessments: Remedies of Association.** Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association shall provide Notice of such delinquency and may (a) declare the entire balance of such General, Special or Supplementary Assessment due and payable in full; (b) charge interest from the due date at the maximum interest rate permitted by law, or such lesser rate as the Board may determine for each Assessment; (c) give notice, to the Owner that in the event payment with accrued interest is not paid within ten (10) days from the date of such notice, then the express contractual lien provided for herein shall be foreclosed; or (d) upon giving notice to the Owner, suspend the right of such Owner to vote or to use the Common Area until the Assessment and accrued interest is paid in full. The Association shall have the same remedies described herein in the event that any Reimbursement Assessment is not paid within thirty (30) days after service upon the owner of the Reimbursement Assessment.

**Section 5.16 Exempt Property.** The following property subject to this Association Declaration shall be exempted from the Assessments, a charge and lien created herein: (a) All properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use; (b) all Common Areas; and (c) all properties exempted from taxation by the State, Local or County Government on the terms and to the extent of such legal exemption.

## SECTION VI

### **USE AND RESTRICTIONS**

**Section 6.1 Nuisances.** No nuisance shall be permitted to exist or operate upon any property so as to jeopardize property values or to be detrimental to the well being of any other Member of the Association.

**Section 6.2 Restriction on Further Subdivision.** No Lot upon which a Living Unit has been constructed shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest herein shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.

**Section 6.3 Single-Family Residence.** No Dwelling Unit shall be used for any other purpose other than as a single-family residence, and no business or commercial activity shall be carried on or within the Project other than those home occupations defined as such in the City of Longmont Municipal Code.

**Section 6.4 Common Area Restriction.** All use and occupancy of the Common Area shall be subject to and governed by the Rules and Regulations adopted by the Association. No damage or waste shall be committed to the Common Area or Improvements located therein.

**Section 6.5 No Imperiling of Insurance.** Nothing shall be done or kept in or on any portion of the Project which might result in an increase in the premiums with respect to insurance obtained for all or any portion of the Project or which might cause cancellation of such insurance except with the prior written consent of the Association.

**Section 6.6 No Violation of Law.** Nothing shall be done or kept in or on any portion of the Project which would be in violation of any Statute, Rule, Ordinance, Regulations, Permit, or validly imposed requirement of any governmental body having jurisdiction over the Project.

**Section 6.7 Appearance.** All parts of the Project shall be kept in a clean, safe, and attractive condition, and no rubbish or refuse, or garbage shall be allowed to accumulate.

**Section 6.8 Restrictions on Signs.** No signs or advertising devices of any nature, including home occupation signs, shall be erected or maintained on any part of the Project (including, without limitation, any Lot, Dwelling, or Common Area), without the prior written approval of the appropriate Architectural Review Committee of the Community Association and/or Association. However, nothing shall prohibit the display of standard real estate signs permitted by the City of Longmont sign code, or for the display of marketing signs for Declarant so long as Declarant has Lots to sell in the Project.

**Section 6.9 Conditions for Architectural Control.** No improvements, alterations, repairs, additions, change of paint colors, excavations, changes in grade, or other work which in any way alters the exterior of any Lot, Dwelling Unit, Common Area, or the improvements located thereon, from its natural or improved state existing on the date such property was first subject to this Declaration and conveyed by Declarant to the original Owner, shall be made or done without compliance with the procedures set forth in Article IX for

Architectural Review, heretofore.

**Section 6.10 Rules and Regulations.** Every Owner, or Related User, shall strictly adhere to the Rules and Regulations adopted from time to time by the Association. The Board may adopt general rules, including but not limited to, rules to regulate potential problems relating to the use of the property and the well-being of the Members, such as keeping of animals, storage items, and the use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, signs, trash, trash containers, maintenance, signs, and removal of vegetation from the Lots.

**Section 6.11 Mineral Exploration.** No portion of the Project including, without limitation, any area within a Lot, shall be used to explore for or to remove any water, soil, hydrocarbons, or other minerals of any kind.

**Section 6.12 Restrictions on Parking and Storage.** No Lot, including the private drives, or parking areas, shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor-driven cycle, truck [except for 4 wheel drive pick-up trucks with gross weight under 10,000 lbs.], trucks with camper units extending above the height of the cab or extended beyond the length of the bed, or self-contained motorized vehicle (RV). The same shall be stored, parked, or maintained wholly within the garage area of a Dwelling Unit, or in such other area as may be designated by the Association for such parking, storage, display or accommodation, the making of such designation to be in the sole discretion of the Association. Except that nothing herein shall prohibit an Owner or Owner's Guest from temporarily parking such vehicles for a period of time not to exceed 24 hours. This restriction, however, shall not restrict trucks or other commercial vehicles within the Project, which are necessary for the construction, remodeling, or repair of Dwellings or the maintenance of the Common Area or Lots.

**Section 6.13 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;

- (a) Compliance with the Rules and Regulations of the Association;
- (b) Not creating a nuisance or disturbance; and
- (c) Complying with City of Longmont and Boulder County Health Department codes.

Any household pet shall be kept on its Owner's Lot, and must be kept at all times on a leash if taken from the Lot onto Association Common Areas. It shall be the obligation of pet owners to control the pet and remove waste.

**Section 6.14 Control of Antennas and Receiving Equipment.** No Exterior television antennas or transmitting devices, radio, ham radio transmission equipment or antennas, microwave transmission or receiving devices of any type shall be permitted in the Project unless approved by the Architectural Review Committee. Direct satellite-receiving dishes, not exceeding 18" in diameter, installed by Declarant or as approved by the Architectural Review Committee shall be permitted.

**Section 6.15 Underground Electric Lines.** All electric, television, radio, telephone line installations and connections from any property line of a Lot to a residence or other structures shall be placed underground, except that during the construction of a residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

**Section 6.16 No Hazardous Activities.** No activities shall be conducted on the project and on improvements constructed on the project, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any part of the Project and no open fires shall be lighted or permitted on the Project except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

**Section 6.17 No Annoying Light, Sound, or Odors.** No light shall be emitted from a Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others.

**Section 6.18 Dog Runs, Clotheslines, and Storage Areas.** Any clothesline, dog run, storage area or wood pile, free standing storage unit shall be subject to the provisions of this Association Declaration, Rules and Regulations of the Association and shall be subject to Architectural Review Committee requirements and approval. There shall be no outside storage areas, wood piles, free standing storage units on any Lot located in Blocks 1 and 2. Any such storage on Lots located in Block 3 shall be completely screened from view from adjacent lots, common areas or public right of ways, and shall be subject to review and approval of the Architectural Review Committee.

**Section 6.19 Garbage and Refuse Disposal.** No garbage, refuse, rubbish, or cuttings shall be deposited on any street, or on any Lot 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 and shall be stored in the garage, or in such a way as to not be visible from adjacent lots, common areas or public right of ways.

**Section 6.20 Repair.** No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers, or boats, may be performed on any Lot unless it is done within completely enclosed structures located in the Lot 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 and adjacent Lots. In no event shall such activity be performed anywhere within the Project for commercial purposes. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, and (subject to parking restrictions) camper, RV, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

**Section 6.21 Storage.** Except for barbecue gas tanks less than 40 pounds, no tanks for the storage of gas, fuel, oil, or other materials shall be erected, placed, or permitted above or below the surface of any Lot or Common Area.

**Section 6.22 Trash Burning.** Trash, leaves, and other similar materials shall not be burned within the Project.

**Section 6.23 Owner's Obligation Upon Resale of Lot.** Upon sale or transfer of any Lot, the deed or instrument transferring title shall contain a provision incorporating by reference the covenants and restrictions set forth in this Association Declaration, Rules and Regulations of the Association as adopted from time to time, as well as any applicable Supplementary Declarations.

**Section 6.24 Leases.** Any lease agreements between an Owner and a tenant shall provide that the tenant shall comply in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and rules and regulations of the Association and that any failure by the tenant to comply with the terms

and provisions of such documents shall be a default under the lease. Any lease agreement shall not relieve the Owner of any personal liability for the performance of and compliance with this Declaration. The Board may require information forms to be completed and security deposits to be made by tenants. Further, all leases shall be in writing, and a copy thereof shall be provided upon request to the Board of Directors, which may require the use of its approved lease form or the insertion of particular provisions. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has violated any provision of this Declaration, Rules and Regulations of the Association. No short-term leases (i.e., for terms less than one (1) month) shall be permitted and no time-sharing or such other forms of interval ownership shall be permitted.

**Section 6.25 Maintenance of Lots and Dwellings.**

(a) Maintenance of Dwellings and Landscaping. All Dwelling Unit exterior maintenance, repair and/or reconstruction shall be the sole responsibility and at the expense of the Owner together with the maintenance of the landscaping and fencing within each Dwelling Unit's individual Private Yard.

(b) Private Yards. All Lots located within Block 3 have private front, side, and rear yards and except for snow removal, are not subject to maintenance by the Association. Owners of Lots located within Association Maintenance Areas, "AMA's", (Blocks 1 and 2), may have a private rear yard at the option of the Owner. Said Private Yards shall be enclosed by a fence that has been approved by the Association or installed by Declarant and the landscaping and fencing thereon shall be totally maintained by the Owner, excluding the Association irrigation system.

If an AMA area Owner does not opt for a Private Yard, but wants to alter the landscaping, the Owner may do so with approval of the Association as provided in Section 4.5 of this Declaration.

(c) Association Responsibility. The maintenance obligation on the part of the Association shall apply to maintenance required by ordinary wear and tear and shall not apply to maintenance, repair and/or reconstruction resulting from neglect or destruction by an Owner or Owner's Guest.

If repair, maintenance and/or reconstruction is required due to such neglect or destruction by an Owner or Owner's Guest, the Board of Directors shall have the right, after Notice and Hearing, to charge the cost of such repair, maintenance and/or replacement, to such Owner by a Reimbursement Assessment in accordance with Section 5.9 hereof.

Determination of whether repairs, maintenance and/or reconstruction is the obligation of the Association and the determination of when and how such repairs shall proceed, shall rest solely with the Board of Directors, which will also have the sole responsibility for determining the kind and type of materials used in such repairs.

(b) Failure to Maintain. In the event an Owner of any Lot in the Project fails to maintain the property and the improvements situated thereon as provided herein, the Association, after notice to the Owner, and upon approval by the Board of Directors, shall have the right to enter upon the Lot to correct, repair, maintain and/or reconstruct the landscaping, drainage, and/or the exterior of the Dwelling Unit thereon. All costs related to such correction, repair, or restoration shall become a Reimbursement Assessment upon such Lot and, as such, shall be regarded as any other Assessment with respect to collection, Cost of Enforcement, and to other lien rights of the Association and remedies

provided for non-payment.

**Section 6.26 Association Irrigation System.** An irrigation system has been installed to irrigate landscaping on the Common and AMA areas. The system is owned and operated, and maintained by the Association.

Owners of Lots located within AMA areas are required to use the Association irrigation system and may not disconnect from the system or tamper with or turn off the system without the express written permission of the Association. No changes, additions or modifications to the system may be made without written permission. All connections or modifications to the system must be made by an Association approved contractor. If special irrigation needs are required within AMA areas, an Owner shall obtain approval of the Association to install a privately owned system to supplement the Association system. Such private systems shall be connected to the Owners water system and meter.

**Section 6.27 Association and Private Fences.** Except as provided in Section 6.25, the Association shall maintain, repair and/or replace fencing adjacent to any outlet or common area and a lot (except for fencing on the north lot line of lots 13-17, Block 3), or any fencing located adjacent to any outlet or common area and property located outside of the Project. The Association shall also maintain the fencing located on the west lot line of Lot 14, Block 1.

## **SECTION VII**

### **INSURANCE**

**Section 7.1 Insurance.** All insurance, other than title insurance, carried in connection with the Project, Common Area, Association Maintenance Areas, and Improvements thereon, shall be governed by the provisions of this Section VII.

**Section 7.2 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 and economically feasible, from responsible companies duly authorized and licensed to do insurance business in the State of Colorado.

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

Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and which shall be consistent with the requirements of any First Mortgagees. Any loss falling within the deductible portion of a policy shall be borne by the Association. The cost and expense of all insurance obtained by the Association shall be paid out of Association funds collected by Assessments and otherwise as elsewhere provided in this Association Declaration.

**Section 7.3 Insurance for Common Area, and Fidelity Insurance.** The

Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available from a carrier with a A.M. Best's Insurance Rating of Class "A" or better if reasonably available, or, if not reasonably available, the most nearly equivalent rating:

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

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

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

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

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

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

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

All policies of insurance in this Section shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Association or their Guests and shall provide that the policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the insured, as well as to the First Mortgagees of Dwellings who have requested notice of cancellation or modification from the Association. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of any Dwelling upon written request. The insurance shall be carried in blanket form naming the Association, as the insured, as trustee and attorney in fact for all Owners, and their respective First Mortgagees and each Owner shall be an insured person under such policies with respect to liability arising out of any such Owner's membership in the Association, and the amount of coverage

to be provided shall be one and one half times the Association's estimated annual operating expenses and reserves.

**Section 7.4 Association Insurance as Primary Coverage.** If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any other insurance.

**Section 7.5 Workmen's Compensation and Employer's Liability Insurance.** The Association may obtain and maintain workman's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

**Section 7.6 Notice of Loss to First Mortgagees.** Provided that a First Mortgagee has, in writing, requested the following information and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event there shall be any damage to or destruction of the Common Area which shall be in excess of Ten Thousand Dollars (\$10,000.00), timely written notice of any such damage or destruction shall be given by the Association of such Mortgagees.

**Section 7.7 Annual Review of Insurance Policies.** All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

**Section 7.8 Distribution of Insurance Proceeds by the Association.** In the event that the Association is required to distribute any insurance proceeds directly to an Owner for losses to property, any such distribution shall be made jointly payable to the owner and any First Mortgagee of record, as defined in Section 17, Article 1 of this Association Declaration.

**Section 7.9 Other Insurance.** The Association may obtain insurance coverage against such additional risks as it shall determine to be appropriate.

## SECTION VIII

### **VARIOUS RIGHTS AND EASEMENTS**

**Section 8.1 Association Easements.** Declarant hereby expressly creates and reserves for the benefit of the Association, its designees, successors and assigns, the following easements:

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

(b) Easements Over Lots for Snow Removal. Easements over and across the Lots as may be necessary or appropriate for the Association to remove snow from walks and driveways located on Lots, and for access, ingress and egress necessary for such snow removal.

**Section 8.2 Owner Easements.** Declarant hereby expressly creates and reserves for the benefit of each Lot, and for the benefit of the Owner of such

Lot, the following easements:

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

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

(d) Owners' Rights in Association Maintenance Areas. Subject to the provisions of this Association Declaration, each Owner of a Lot in the Association shall have an exclusive right to use and enjoy such Lot including any Association Maintenance Areas located thereon.

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

**Section 8.3 Easements Deemed Appurtenant.** The easements and rights created in this Article shall be binding upon and inure to the benefit of the Association or each Lot in the project and the Owner of each such Lot, as the case may be, and all conveyances of and other instruments affecting title to any such Lot or Common Area shall be deemed to grant and reserve the easements and rights as are provided for herein, even though no specific reference to such easements appears in any such conveyance.

**Section 8.4 Emergency Access Easement.** An easement and right-of-way for ingress, egress and access for service and emergency vehicles is hereby granted to all police, fire protection, ambulance and all other similar emergency agencies or persons over, across, on and through any and all Common Areas now or hereafter established in the Project.

**Section 8.5 Northern Colorado Water Conservancy District Pipeline Easement.** Declarant has entered into easement and license agreements with the Northern Colorado Water Conservancy District (NCWCD) for The Southern Supply Project, a water pipeline located on Outlots D, F, and I, as identified on the recorded plat of the Project. The Association shall comply with the terms, conditions, provisions and obligations of the Final Rule and Order recorded July 1, 1996 on Film 2138 as Reception No. 1621510 and with a License Agreement recorded July 1, 1996 on Film 2138 as Reception No. 1621501.

## SECTION IX

### ARCHITECTURAL REVIEW

#### Section 9.1 Required Approval by Community Association Architectural

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

**Section 9.2 Activation of the Architectural Review Committee.** The initial Architectural Review Committee and the provisions of this Article shall not be activated or effective until the earlier of; (a) the date the Board of Directors of the Association elects to activate the Architectural Review Committee; or (b) the date 51% of all Members vote to direct the Board of Directors to activate the Architectural Review Committee. Thereafter the Board of Directors shall send notice to all Members advising the Members of the activation of the Architectural Review Committee and the effectiveness of the provisions of this Article (Notice of Activation) and shall Record the Notice of Activation. On the date of Recordation of the Notice of Activation, all of the provisions of this Article shall become effective and the Architectural Review Committee shall have the powers and duties set forth in this Association Declaration.

**Section 9.3 Deactivation and Reactivation of the Architectural Review Committee.** The Board of Directors of the Association may elect, from time to time, to deactivate a previously activated Architectural Review Committee. Thereafter, the Board of Directors shall send notice to all Members advising the Members of the deactivation of the Architectural Review Committee ("Notice of Deactivation") and shall Record the Notice of Deactivation. Thirty (30) days after the date of the Notice of Deactivation the provisions of this Article shall be suspended and the Architectural Review Committee shall no longer have the powers and duties set forth in this Article or as may be provided elsewhere in this Association Declaration. The Architectural Review Committee may be reactivated and deactivated, from time to time, in accordance with the provisions set forth in Section 2 above this Section.

**Section 9.4 Membership of Committee.** Members of the Architectural Review Committee may, but shall not necessarily be, Members of the Association. Members of the Architectural Review Committee shall be appointed within ninety (90) days after the date of the Notice of Activation. Members of the Architectural Review Committee may be removed at any time by the Board of Directors of the Association and shall serve for such term as may be designated by the Board of Directors of the Association or until resignation or removal by the Board of the Association.

**Section 9.5 Improvement to Property Defined.** "Improvement to Property," requiring approval of the Architectural Review Committee, shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure or other improvements, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) Initial landscaping, re-landscaping, planting, clearing or removing of trees, shrubs, grass or plants; (e) any change or alteration of any previously approved Improvement to Property including any change of exterior appearance, color or texture; and (f) any other matter requiring approval as described in this Declaration.

**Section 9.6 Approval of Improvements Required.** After the activation of the Architectural Review Committee, the approval of the Architectural Review

Committee shall be required for any Improvement to Property on any Privately Owned 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 by Declarant, or under written guidelines or rules promulgated by the Architectural Review Committee because approval in such case or cases is not reasonably required to carry out the purposes of this Association Declaration.

**Section 9.7 Committee Guidelines or Rules.** The Architectural Review Committee may issue guidelines or rules relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property. Such guidelines or rules may specify circumstances under which the strict application of limitations or restrictions under this Association 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 Association Declaration. Such guidelines or rules may elaborate or expand upon the provisions herein relating to procedure and criteria for approval. Such guidelines or rules may specify rules and restrictions pertaining to the construction of Improvements to property, including, for example, the storage of construction materials and hours of construction operations. Such guidelines or rules shall have the same force and effect as if they were set forth in and were a part of this Association Declaration.

**Section 9.8 Submission of Plans.** Prior to commencement of work to accomplish any proposed Improvement to Property, the Owner or its duly authorized representative proposing to make such Improvement to Property ("Applicant") shall submit to the Architectural Review Committee at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Architectural Review Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property ("Plans"). The Architectural Review Committee may require submission of additional Plans or other information prior to improving or disapproving the proposed Improvement to Property. Until receipt by the Architectural Review Committee of all required materials in connection with the proposed Improvement to Property, the Architectural Review Committee may postpone review of any materials submitted for approval.

**Section 9.9 Criteria for Approval.** The Architectural Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the Project in the vicinity of the proposed Improvement to Property; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Project; that the Improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the Project or the enjoyment thereof by Owners; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association or other Owners within the Project. The Architectural Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Architectural Review committee may deem appropriate.

**Section 9.10 Architectural Review Fee.** The Architectural Review Committee may, in its guidelines or rules, provide for the payment of a fee to

accompany each request for approval of any proposed Improvement to Property. The Architectural Review Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner. In the event that the Committee, in its sole discretion requires the services of an outside expert, consultant, architect, etc., to review the applicants proposed improvements, the applicant shall be required to reimburse the Association for the actual cost for such services.

**Section 9.11 Decision of Committee.** The decision of the Architectural Review Committee shall be made within thirty (30) days after receipt by the Architectural Review Committee of all materials and payment of all fees required by the Architectural Review Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefore shall be stated. The decision of the Architectural Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Architectural Review Committee.

**Section 9.12 Appeal to the Association Board.** If the Architectural Review Committee denies, imposes conditions on, or refuses approval of a proposed Improvement to Property, the Applicant may appeal to the Board of Directors of the Association by giving written notice of such appeal to the Architectural Review Committee within twenty (20) days after such denial or refusal. The Board of Directors 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 Board of Directors for the Association shall decide whether or not the proposed Improvement to Property or the conditions imposed by the Architectural Review Committee shall be approved, disapproved or modified.

**Section 9.13 Failure of Committee to Act on Plans.** Subject to payment of any required fees, 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 Architectural Review Committee within thirty (30) days after the date of receipt by the Architectural Review Committee of all required materials including, in the case of Initial Improvements, final working drawings. The

**Section 9.14 Obtaining Governmental Approvals.** Applicant shall obtain, prior to commencement of construction of any Improvements to Property, all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any governmental authority having jurisdiction ("Governmental Approvals") in order for Applicant to construct, operate and maintain the Improvements to Property. The Governmental Approvals shall be deemed to include, but not limited to, building approvals by City of Longmont.

**Section 9.15 Prosecution of Work After Approval.** After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible in complete conformity with the description of the proposed Improvement of Property, any materials submitted to the Architectural Review Committee in connection with the proposed Improvement to Property, any conditions imposed by the Architectural Review Committee and in compliance with the conditions and restrictions of this Association Declaration.

**Section 9.16 Notice of Completion.** Upon completion of any Improvement of Property, the Applicant may give written Notice of Completion to the Architectural Review Committee. Until the date of receipt of such a Notice of

Completion, the Architectural Review Committee shall not be deemed to have notice of completion of such Initial Improvements or Improvement to Property.

**Section 9.17 Inspection of Work.** The Architectural Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to, during, and after completion, provided that the right of inspection shall terminate thirty (30) days after the Architectural Review Committee shall have received a Notice of Completion from the Applicant.

**Section 9.18 Notice of Noncompliance.** If, as a result of inspections or otherwise, the Architectural Review Committee finds that any Improvement to Property has been done without obtaining the approval of the Architectural Review Committee, or was not done in substantial compliance with the approved Plans or other materials furnished to, and any conditions imposed by, the Architectural Review Committee, or has not been accomplished as promptly and diligently as possible, then the Architectural Review Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within thirty (30) days after the Architectural Review Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance. In the event of non-compliance by the applicant, the Association shall be entitled to obtain injunctive relief.

**Section 9.19 Failure of Committee to Act After Completion.** If, for any reason other than the Applicant's act or negligence, the Architectural Review Committee fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the Architectural Review Committee of written Notice of Completion from the Applicant, the Improvement to Property shall be deemed to be in compliance if the Improvement to Property was, in fact, completed as of the date of the Notice of Completion.

**Section 9.20 Appeal to Association Board of Finding of Noncompliance.** If the Architectural Review Committee gives any notice of noncompliance, the Applicant may appeal to the Board of Directors of the Association by giving written notice of such appeal to the Board of Directors and the Architectural Review Committee within thirty (30) days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Architectural Review Committee shall request a finding of noncompliance by the Board of Directors 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 Architectural Review Committee. In the event the Board of Directors 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 Board of Directors of the Association shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

**Section 9.21 Correction of Noncompliance.** If the Board of Directors 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 or receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board of Directors ruling within such period the Board of Directors, may, at its option, record a Notice of Noncompliance against the real property on which the noncompliance exists, may remove the non-complying 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 the Applicant does not promptly repay such expenses, the Board of Directors may

levy a Reimbursement Assessment against the Owner of the Privately Owned 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 Association Declaration.

**Section 9.22 No Implied Waiver or Estoppel.** No action or failure to act by the Architectural Review Committee or the Association shall constitute a waiver or Estoppel with respect to future action by the Architectural Review Committee with respect to any Improvement to Property. Specifically, the approval by the Architectural Review Committee of any Improvement to Property shall not be deemed a waiver of any right or an Estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to Property.

**Section 9.23 Committee Power to Grant Variances.** The Architectural Review Committee may authorize variances from compliance with any of the provisions of this Association Declaration for property in the Project when circumstances such as, but not limited to, topography, natural obstructions, hardship, aesthetic or environmental considerations may require or be deemed appropriate by the Committee. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Review Committee or the Board of Directors. If any such variance is granted, no violation of the provisions of this Declaration for property in the Project shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Association 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 all governmental laws and regulations affecting the property concerned, including, but not limited to, development guides and zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

**Section 9.24 Compensation of Members.** Members of the Architectural Review Committee may receive reimbursement of out-of-pocket expenses incurred by them in the performance of their duties hereunder as compensation for the performance of such duties if approved by the Board of Directors of the Association.

**Section 9.25 Meetings of Committee.** The Architectural Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Review Committee may, from time to time, by resolution in writing adopted by a majority of the members, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for or on behalf of the Architectural Review Committee, except the granting of approval to any Improvement to Property and granting of variances. The action of such Committee Representative within the authority of such Committee or the written consent or the vote of a majority of the members of the Architectural Review Committee shall constitute action of the Architectural Review Committee.

**Section 9.26 Records of Actions.** The Architectural Review Committee shall report in writing to the Board of Directors of the Association all final action of the Architectural Review Committee and the Board shall keep a permanent record of such reported action.

**Section 9.27 Estoppel Certificates.** The Association shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Architectural Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to

whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

**Section 9.28 Nonliability for Committee Action.** There shall be no liability imposed on the Architectural Review Committee, any member of the Committee, any Committee Representative, the Association, any member of the Board of Directors, or Declarant, for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural Review Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Architectural Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

**Section 9.29 Construction Period Exception.** During the course of actual construction of any approved Improvement to Property, and provided construction is proceeding with due diligence, the Architectural Review Committee shall temporarily suspend the provisions contained in this Association Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided that, during the course of any such construction, nothing is done which will result in a violation of any of the provisions of this Association Declaration upon completion of construction and nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

## **SECTION X**

### **TERMINATION AND AMENDMENT OF DECLARATION**

**Section 10.1 Termination.** This Association Declaration shall continue in effect until and unless terminated as provided in this Section. This Association Declaration may be terminated at any time only upon the approval, in writing, of at least seventy-five percent (75%) of the Association Members and seventy-five percent (75%) of the Institutional Mortgagees and any federal mortgage agency with an interest in this Project.

The termination of this Association Declaration shall be evidenced by a Certificate of the Association executed by its President and Secretary certifying as to facts effecting the termination, which shall become effective upon being recorded in the Public Records of Boulder County, Colorado.

This Section may not be amended without consent of all Owners and of all Mortgagees required to approve termination of this Association Declaration, anything to the contrary notwithstanding.

**Section 10.2 Amendment.** Unless terminated as provided in Section 10.1, each and every provision of this Association Declaration shall run with and bind the land for a term of twenty (20) years from the date recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each except for provisions stated in Article XII, Section 2, which identify specific voting requirements for those actions to be authorized. This Association Declaration may be amended during the first twenty (20) year period by an instrument approved in writing by not less than 75% of the Members of all classes and by 75% of the First Mortgagees who have given the association notice of their interest in any Lot, and thereafter by any instrument approved in writing by not less than 75% of the Members, and 75% of said First Mortgagees. Such amendment or revocation shall be effective when

duly recorded; provided, however, that any amendment or revocation must comply with the statutes of the State of Colorado and the resolutions and ordinances of Boulder County and the City of Longmont.

**Section 10.3 Special Amendment.** Notwithstanding the provisions of Section 10.2, if Declarant shall determine that any amendments to this Association Declaration or any amendment to the Articles of Incorporation or Bylaws of the shall be necessary in order for existing or future mortgages to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, then, Declarant shall have and does specifically reserve the right and power to make and execute any such amendments without obtaining the approval of the Owners or First Mortgagees.

Each such amendment of this Association Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to (a) closing of the sale of the last Lot by Declarant to an Owner other than Declarant, or (b) a date which is ten years (10) after the date this Declaration is recorded, whichever shall occur first; and any amendment must contain if necessary the written approval of the Veterans Administration or the Federal Housing Administration of the U.S. Department of Housing and Urban Development.

**Section 10.4 Recording.** A copy of each amendment shall be attached to a certificate certifying that the amendment as duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed and shall be executed by the Institutional Mortgagees of record at the time the amendment is adopted as well as any Federal Mortgage Agency with an interest in the project. The amendment shall be effective when said certificate and a copy of such amendment are recorded in the public records of Boulder County, Colorado.

## SECTION XI

### **CONDEMNATION, DAMAGE OR DESTRUCTION**

**Section 11.1 Damage or Destruction To Common Area.** In the event of damage or destruction to all or a portion of the Common Area due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, the Association shall present to the Members a notice of a Supplemental Assessment for approval by the membership as provided for in Article V, Section 7 of this Association Declaration. If such assessment is approved, the Association shall levy such assessment and proceed to make such repairs or reconstruction. If such assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by the written consent of seventy-five percent (75%) of the Owners other than Declarant, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the First Mortgagees of their respective Lots, if any. The assessment as to each Lot shall be equal to the assessment against every other Lot. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than sixty (60) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on the Lot, and may be enforced and collected in the same manner as any assessment lien provided for in this Association Declaration.

**Section 11.2 Owner-Caused Damage.** If, due to an act, negligence, or omission of an Owner or a Guest of an Owner, whether by virtue of the exercise by such Owner or Guest of any easement or right granted to him herein or otherwise,

loss or damage shall be caused to any property, including the Common or Association Maintenance Areas, and, in the case of damage to property, if such Owner does not promptly repair and restore any such damaged property to the condition it was in prior to such damage at such owner's sole cost and expense, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner.

The amount of such loss or damage may be collected by the Association from such Owner as a Reimbursement Assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Lot of such Owner as provided elsewhere in this Association Declaration for assessments or other charges.

**Section 11.3 Condemnation Procedure.** In the event proceedings are initiated by any governmental agency, seeking to take by eminent domain the Common Area, any part thereof or any interest therein, any improvement thereon, with a value (including loss of value to the balance of the Common Area and improvements thereof), as reasonably determined by the Association in excess of \$10,000, the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Area or improvement thereon sought to be so condemned, to all First Mortgagees, Members, and to the Declarant. They shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings, pursuant to which the Common Area or any part thereof or any interest therein, or any improvement thereon or any part thereof is relinquished without giving all First Mortgagees, Members, and Declarant at least fifteen (15) days prior written notice thereof.

In the event following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking shall be payable to the Association, subject to the rights of all First Mortgagees. If seventy-five percent (75%) or more of the Owners approve the repair and restoration of the remainder of the Common Area, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that seventy-five percent (75%) or more of the Owners do not duly and promptly approve the repair and restoration of the remainder of the Common Area, the Association shall disburse the net proceeds of such award to the Owners, the Owner of each Lot receiving One (1) equal share for each owned Lot, provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances. No provision of this Association Declaration or of any other document relating to the Project shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage or seller or holder of any Veterans Administration installment contract for sale of real estate on such Owner's Lot in the case of a distribution to an Owner of insurance proceeds or condemnation award for losses to or taking of Common area, or both.

## SECTION XII

### MORTGAGEE'S RIGHTS

**Section 12.1 Notice to Mortgage.** Each holder of a first deed of trust on any Lot shall, upon written request by such holder to the Board, receive any of the following:

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

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

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

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

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

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

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

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

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

**Section 12.2 Actions Requiring Both Member and First Mortgagee Approval.**  
Notwithstanding anything to the contrary set forth in this Association Declaration, the Association shall not:

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

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

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

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

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

(5) effectuate any decision to terminate professional management and

assume self-management of the Properties;

(6) any change in the voting method;

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

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

(9) change or alter in any respect the required insurance coverage's or fidelity bonds;

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

(11) change the boundaries of any lot;

(12) change the Allocated Interests in the general Common Areas;

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

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

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

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

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

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

### SECTION XIII

#### **RIGHTS RESERVED BY DECLARANT**

**Section 13.1 Development and Special Declarant Rights.** In addition to other rights reserved herein, the Declarant expressly reserves unto itself the following Development Rights and Special Declarant Rights (Declarant Rights) which may be exercised, where applicable, anywhere within the Project:

(a) To complete the improvements indicated on the recorded plat;

(b) To use, and to permit others to use, easements through the Common Areas as may be necessary for construction within the Project and for the purpose of discharging the Declarant's obligations under the Act and this Declaration;

(c) To maintain business/sales offices, parking spaces, management

offices, storage areas, construction shop and yard, signs, flags, advertising materials, model homes and any other facilities Declarant deems appropriate for completion and marketing of the Project;

(d) To appoint or remove any officer of the Association or a member of the Board of Directors during the Period of Declarant Control subject to the provisions of Section 3.7 of this Declaration;

(e) To amend the Declaration and/or Plat in connection with the exercise of any Declarant Rights;

(f) To create permanent easements on or across Common Areas during the Period of Declarant Control;

(g) To exercise any other Declarant Right created by any other provisions of this Declaration.

**Section 13.2 Use of Rights by Declarant.** The exercise of Declarant Rights by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Lot by any Owner nor the access, enjoyment or use of the Common Areas;

**Section 13.3 Interference with the Declarant Rights.** Neither the Association, the Board of Directors, nor any Owner may take any action or adopt any rule that will interfere with or diminish Declarant Rights without the prior written consent of the Declarant.

**Section 13.4 Declarant Rights Transferable.** Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred by Declarant to any Person by an instrument describing the Rights transferred and recorded in the Office of the Clerk and Recorder of Boulder County.

**Section 13.5 Successor Rights.** No successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in an instrument or succession or assignment or which pass by operation of law. The rights and obligations set forth in this Article XIII shall cease when new dwelling construction contemplated within the Project is 100% completed and are to be construed as development rights which are independent of any rights that the Declarant may have by membership in the Association.

#### SECTION XIV

##### **COMPULSORY ARBITRATION**

All controversies, claims and matters of difference, including all questions as to whether the right to arbitrate any questions exists, excepting these matters for which this Declaration specifically provides another method of settlement or enforcement, arising between or among the Owners, the Association, the Board, shall be settled by arbitration in Boulder, Colorado, according to the rules and practices of the American Arbitration Association from time to time in force, except that if such rules and practices shall conflict with the Colorado Rules of Civil Procedure or any other provision of Colorado law then in force, such Colorado rules and provisions shall govern. This submission and agreement to arbitrate shall be specifically enforceable. Arbitration may proceed in the absence of either party if notice of the proceedings has been given to such party. The parties agree to abide by all awards rendered in such proceedings. Such awards shall be final and binding on all parties to the extent and in the manner provided by the Colorado Rules of Civil Procedure, and the costs of arbitration including reasonable attorney's fees shall be borne by the losing

party thereto unless the arbitrators specify otherwise. All awards of the arbitrators may be filed with the Clerk of the District Court of Boulder County, State of Colorado, as a basis of declaratory or other judgment and for the issuance of execution, and at the election of the party asking such filing, with the Clerk of one or more other courts, state or federal having jurisdiction over the party against whom such an award is rendered or that person's property. No party shall be considered in default hereunder during any pending arbitration proceedings relating to such default.

## SECTION XV

### **GENERAL PROVISIONS**

**Section 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 Association Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 15.2 Severability.** Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

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

**Section 15.4 Waiver.** No provision contained in this Association Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 15.5 Litigation Limitations.** So long as the Declarant or any successor in interest has an interest in the Project, the Association shall not use its financial resources to defray any costs of opposing the development activities of the Declarant so long as they remain consistent with the general activities of the Declarant so long as they remain consistent with the general intent of any development plan identified by the Declarant. Nothing in this Section shall be construed to limit the rights of members to act as individuals or in affiliation with other members or groups in an action against the Declarant.

**Section 15.6 Conflicts of Provisions.** In case of any conflict between this Association Declaration, the Articles of Incorporation or Bylaws of the Association, the Association Declaration shall control. In case of any conflict between the Articles of Incorporation and Bylaws of the Association, the Articles of Incorporation shall control.

**Section 15.7 Owners Right to Examine.** Each Lot Owner shall have a right to examine the books and records of the Association at any reasonable time.

**Section 15.8 Registration by Owner of Mailing Address.** Each Owner shall register a mailing address with the Association, and except for monthly statements and other routing 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 Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the offices of the Association of the Association at such address as is identified by the Association in writing to each owner.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the 18th day of February, 1998.

**Declarant**

F.M. PARTNERS of Longmont, a Colorado Limited Liability Partnership,

John W. Marlin  
JOHN W. MARLIN, Partner

STATE OF COLORADO )  
 ) ss.

COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this 18 day of  
February, 1998, by John Marlin.  
Witness my hand and official seal.

My commission expires:

Barbara A. Liger

9-7-01

NOTARY PUBLIC

