

SUPPLEMENTAL DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS OF  
 KENTFIELD TOWNHOMES

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**SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF KENTFIELD TOWNHOMES**

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF KENTFIELD TOWNHOMES is made and entered into by KB HOME COLORADO, INC. formerly known as KAUFMAN AND BROAD OF COLORADO, INC., a Colorado corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property situated in the County of Adams, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the Community is subject to a certain Master Declaration of Covenants, Conditions and Restrictions of Kentfield, recorded on September 20, 2000 in Book 6262 at page 430, as Reception No. C0712979, in the office of the Clerk and Recorder of Adams County, Colorado, as supplemented and amended from time to time, and the covenants, restrictions, terms and other provisions contained therein, as more fully provided below; and

WHEREAS, the Declarant desires to subject and place upon the property described on the attached Exhibit A certain additional covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions; and

WHEREAS, a common interest community may be created pursuant to CCIOA (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

NOW, THEREFORE, Declarant hereby declares that a plat which includes the property described on the attached Exhibit A has been recorded and that all of the real property described on the attached Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

**ARTICLE 1. DEFINITIONS**

**Section 1.1. Agencies.**

"Agencies" means the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development, including the Federal Housing Administration (HUD), 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 1.2.        *Allocated Interest.***

"Allocated Interest" means the assessment liability and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time

**Section 1.3.        *Annexable Area.***

"Annexable Area" means the property described on Exhibit D attached hereto and incorporated herein by this reference plus, as provided in CCIOA, such additional real estate from such locations as the Declarant may elect in its sole discretion in an amount not to exceed the maximum permitted pursuant to CCIOA.

**Section 1.4.        *Architectural Review Committee or Committee.***

"Architectural Review Committee" or "Committee" means the committee appointed by the Master Declarant or the Master Association to review and approve or disapprove plans for Improvements on property that is subject to the Master Declaration, as more fully provided in the Master Declaration.

**Section 1.5.        *Association.***

"Association" means Kentfield Townhome Subassociation, Inc., its successors and assigns, a community association as provided in CCIOA.

**Section 1.6.        *Board of Directors or Board.***

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association to act on behalf of the Association.

**Section 1.7.        *CCIOA.***

"CCIOA" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended.

**Section 1.8.        *Common Area.***

"Common Area" means any property owned or leased by the Association, including without limitation the Private Drives, other than a Lot. The Common Area at the time of recordation of this Declaration are described on Exhibit B attached hereto and incorporated herein by this reference.

**Section 1.9.        *Community.***

"Community" means the real estate and any Improvements thereon described on Exhibit A to this Declaration, as supplemented and amended from time to time. The Community is a planned community under CCIOA. The name of the Community is Kentfield Townhomes.

**Section 1.10.     *Declarant.***

"Declarant" means KB HOME COLORADO, INC. formerly known as KAUFMAN AND BROAD OF COLORADO, INC , a Colorado corporation, and any other Person(s) acting in concert, to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

1.10.1.     As part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Lot not previously disposed of to a purchaser; or

1.10.2.     Reserves or succeeds to any Special Declarant Right.

**Section 1.11.     *Declaration.***

"Declaration" means this Supplemental Declaration of Covenants, Conditions and Restrictions of Kentfield Townhomes and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, maps and plats. This Declaration is a "Supplemental Declaration" as defined in the Master Declaration.

**Section 1.12.     *Development Rights.***

"Development Rights" means the following rights or combination of rights hereby reserved by the Declarant, as such Development Rights may be further described in this Declaration, to:

1.12.1.     add real estate to this Community and create Lots or Common Area within this Community in connection with the addition of such real estate, as provided in Section 13.5 of this Declaration;

1.12.2.     subdivide or replat Lots, as provided in Section 13.7 of this Declaration;  
or

1.12.3.     withdraw real estate from this Community, as provided in Section 13.5 of this Declaration.

The Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any Development Rights. The Declarant's right to exercise Development Rights shall terminate automatically as provided in Section 1.26 of this Declaration.

**Section 1.13.     *Final Plat.***

"Final Plat" means that certain final plat of Villages North Subdivision Filing No. 3, recorded on February 14, 2001, in File No. 18 at Map No. 377, as Reception No. C0761200, in the office of the Clerk and Recorder of Adams County, Colorado, as amended.



**Section 1.14.     *Improvements.***

"Improvements" means all structures now or hereafter located on a Lot or in the Common Elements or Common Area, exterior improvements to any such structures, and any other improvements made to a Lot or the Common Elements or Common Area, and any appurtenances thereto or components thereof of every type or kind, including all landscaping features. The foregoing include, without limitation, buildings, outbuildings (including storage sheds), painting or other finish materials on any visible structure, additions and/or expansions, garages, carports, driveways, swimming pools, tennis courts, stairs, walkways, patios/decks and patio/deck covers, awnings, hot tubs, jacuzzis and/or saunas, antennas, satellite dishes, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, play yards (including swing sets and jungle gyms), exterior tanks, solar collectors, fences (including dog runs), screening walls, retaining walls, sprinkler systems, fountains, ponds, hedges, windbreaks, gardens, trees, shrubs, flowers, vegetables, sod, and other plantings, rock, gravel, bark, mulch and any other landscaping components, signs, exterior decorations, mailboxes, and exterior air conditioning, cooling, heating and water softening equipment, if any.

**Section 1.15.     *Lot.***

"Lot" means each platted lot shown upon any recorded subdivision map of the real property described on the attached Exhibit A, as the same may be subdivided or replatted from time to time (and "Lot" shall include all lots created as a result of such subdivision or replatting), or any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Area and any publicly dedicated property. Each Lot shall constitute a "unit" under CCIOA, and it shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Lot.

**Section 1.16.     *Lots that May Be Included.***

"Lots that May Be Included" means One Hundred (100) Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including those Lots which may be included if all of the Annexable Area is annexed to this Declaration. However, the aforesaid number of Lots that May Be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in the Community.

**Section 1.17.     *Master Association.***

"Master Association" means Kentfield Master Association, Inc., a community association, organized pursuant to CCIOA as designated in the Master Declaration.

**Section 1.18.     *Master Declaration.***

"Master Declaration" means that certain Master Declaration of Covenants, Conditions and Restrictions for Kentfield, recorded on September 20, 2000, in Book 6262, at Page 430, as Reception No. C0712979, in the office of the Clerk and Recorder of Adams County, Colorado, as supplemented and amended from time to time. Any capitalized terms that are used in this Declaration, the Articles of Incorporation or the Bylaws of the Association, but not defined in this Declaration, shall have the definitions given to them in the Master Declaration if they are defined therein.

**Section 1.19. Member.**

"Member" means all Owners of a Lot collectively or, following termination of the Community, all former Owners entitled to distributions of proceeds under CCIOA, or their heirs, personal representatives, successors or assigns. The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership and there is only one (1) Member per Lot, even if multiple Owners own the Lot.

**Section 1.20. Owner.**

"Owner" means each fee simple title holder of a Lot, including without limitation, the Declarant or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one Owner of a Lot.

**Section 1.21. Person.**

"Person" means a natural person, a corporation, a limited liability company, a partnership, an association, a trust, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.

**Section 1.22. Private Drive.**

"Private Drive" means a concreted or paved access way from a street, road, or cul-de-sac in the Community to one or more Lots to provide access to such Lots, and which have been designated on the Final Plat as tracts that are to be owned and maintained by the Association. The Private Drives constitute Common Area.

**Section 1.23. Security Interest.**

"Security Interest" means an interest in real estate or personal property created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.11 of this Declaration, and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.4 of this Declaration, "Security Interest" 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 seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the County in which the property described on the attached Exhibit A (as amended and supplemented from time to time) is located show the Administrator as having the record title to the Lot.

**Section 1.24. Security Interest Holder.**

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.11 of this Declaration, and, with respect to notice of cancellation or substantial modification of certain

insurance policies, to Section 6.4 of this Declaration, the Administrator of Veteran's Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records in the County in which the property described on the attached Exhibit A (as amended and supplemented from time to time) is located show the said Administrator as having the record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

**Section 1.25.      *75% Control Period.***

"75% Control Period" means a length of time expiring ten (10) years after initial recording of this Declaration in the County in which the property described on the attached Exhibit A is located. However, the 75% Control Period shall terminate earlier, upon the first to occur of the following events if any of the following occur within the time period that is specified in the first sentence of this Section: sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant; two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or two (2) years after any right to add new Lots to the Declaration was last exercised.

**Section 1.26.      *Special Declarant Rights.***

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, and signs advertising the Community and sale of Lots; to use easements through the Common Area for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate with a Community of the same form of ownership; or to appoint or remove any director or officer of the Association during the 75% Control Period. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically at such time as the Declarant no longer owns any portion of the property described on the attached Exhibits A and D.

**Section 1.27.      *Unfinished Lot.***

"Unfinished Lot" means those Lots on which a certificate of occupancy has not been issued for the dwelling unit now or hereafter located on such Lot.

**ARTICLE 2.      MEMBERSHIP AND VOTING RIGHTS**

**Section 2.1.      *Association.***

The Association has been or will be formed as a Colorado non-profit corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its

affairs. Subject to Article 3 of this Master Declaration, the Board of Directors shall be elected by the Members.

**Section 2.2.        *Board of Directors.***

The number, term and qualifications of the Board of Directors shall be fixed in the Association's Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

**Section 2.3.        *Voting Rights.***

Each Member shall be entitled to one (1) vote for each Lot owned, except that no votes allocated to a Lot owned by the Association may be cast. The total number of votes that may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

**ARTICLE 3.        ASSOCIATION**

**Section 3.1.        *Authority of Board of Directors.***

Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association.

**Section 3.2.        *Election of Part of the Board of Directors During the 75% Control Period.***

Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than the Declarant, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by Members other than the Declarant.

**Section 3.3.        *Authority of Declarant During 75% Control Period.***

Except as otherwise provided in this Article, during the 75% Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and members of the Board of Directors and remove all officers and members of the Board of Directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the 75% Control Period; but, in that event, the Declarant may require, for the duration of the 75% Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

**Section 3.4.        *Termination of 75% Control Period.***

Not later than the termination of the 75% Control Period, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers. Such directors and officers shall take office upon election

**Section 3.5.        *Delivery of Property by Declarant.***

After the Members other than the Declarant elect a majority of the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, if and to the extent required by CCIOA.

**Section 3.6.        *Budget.***

Within thirty (30) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the budget is rejected by the vote or agreement of Members to which at least ninety percent (90%) of the votes in the Association are allocated, then the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Members must be continued until such time as the Members ratify a subsequent budget proposed by the Board of Directors.

**Section 3.7.        *Rules and Regulations.***

Rules and regulations concerning and governing the Lots, Common Area, this Community and/or rights of way, may be adopted, amended, repealed and enforced from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations. The rules and regulations may state procedural requirements, interpretations and applications of the provisions of this Declaration, including without limitation, blanket requirements, blanket interpretations, and blanket applications. By way of example, and not by way of limitation, the rules and regulations may state that "reasonable" as used in Section 10.4 of this Declaration, means a specified number of pets. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration and all provisions hereof.

**Section 3.8.        *Association Books and Records.***

The Association shall make available to Owners, prospective purchasers, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

**Section 3.9. *Information Regarding Security Interests on Lots.***

Each Member shall, within twenty (20) days of encumbering such Member's Lot with a Security Interest, and at other times upon request of the Association, provide the Association with the name and address of such Security Interest Holder, a copy of the instrument(s) creating the Security Interest(s), and the loan number(s) (or other identifying number of such Security Interest(s)). Within twenty (20) days after any change in the name or address of the Security Interest Holder on a Member's Lot, and at other times upon request of the Association, such Member shall provide the aforesaid information to the Association with respect to each Security Interest held by such Security Interest Holder.

**Section 3.10. *Management Agreements and Other Contracts.***

Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the 75% Control Period shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more Security Interests (and HUD or VA requires such approval), and shall terminate absolutely, in any event, no later than thirty (30) days after termination of the 75% Control Period.

**Section 3.11. *Cooperation with the Master Association, any Other Community Associations, and/or any Districts.***

The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with the Master Association, any other community association(s), and/or any district(s), to share the costs and/or responsibility for any maintenance, repair, replacement, or other matters, to perform maintenance, repair or replacement for any Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association and/or the Master Association and/or any other community association(s) and/or any district(s), or to otherwise cooperate with the Master Association, any other community association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or the Master Association and/or any other community association(s) and/or any district(s), as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with the Master Association, any other community association(s), and/or any district(s) to collect assessments, other charges, or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

**Section 3.12.      *Merger.***

The Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Member or any other Person. This right shall terminate automatically as provided in Section 1 26 hereof

**ARTICLE 4.      ASSESSMENTS**

**Section 4.1.      *Personal Obligation for Assessments.***

Each Owner of a Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Lot. Each amount, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person(s) who was the Owner of such Lot at the time when the amount became due. The personal obligation for delinquent amounts (including assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

**Section 4.2.      *Purpose of Assessments.***

The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law; provided, however, that such assessments levied during the 75% Control Period may not be used for the purpose of constructing capital Improvements.

**Section 4.3.      *Initial Annual Assessment.***

Until the effective date of an Association budget ratified by the Members with a different amount for the annual assessments, as provided above, the amount of the annual assessment against each Lot shall not exceed Eighty and No/100 Dollars (\$80.00) per Lot per month, exclusive of any amounts due to the Master Association, any district and/or any other Person or entity. However, the rate of assessments paid with respect to the Unfinished Lots may be less than that paid with respect to the other Lots, as provided in the next Section.

**Section 4.4.      *Rate of Annual and Special Assessment.***

4.4.1.      Annual and special assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual assessment against the Unfinished Lots may be set at a lower rate than the rate of annual assessments against those Lots on which a certificate of occupancy has been issued, as

in part the cost of any construction, repair or replacement of a capital Improvement upon any portion of real property for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or replacement of any damaged or destroyed Improvements located on said real property, or for the funding of any deficit incurred by the Association. Any such special assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 4.7 hereof. Notwithstanding the foregoing, special assessments levied during the 75% Control Period may not be used for the purpose of constructing capital Improvements.

**Section 4.7.        *Notice and Quorum for Any Special Assessments.***

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 hereof shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 4.8.        *Assessments/Charges for Services to Less Than All Lots.***

The Association may, at any time from time to time, provide services to less than all of the Lot(s) in the Community. If such services are not funded by the Association's annual or special assessments, then such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Lots for which such service is to be provided, with such agreement to include a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services, and which amounts shall include overhead expenses of the Association. Services which may be provided by the Association pursuant to this Section may include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions to such Lot(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

**Section 4.9.        *Lien for Assessments.***

4.9.1.        The Association has a statutory lien on a Lot for any amount levied against that Lot or the Owner(s) thereof, including for fines imposed against the Lot's Owner(s). Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.



provided in the following sentence. Specifically, the rate of annual assessments against the Unfinished Lots may be less than the rate of annual assessments against the other Lots, pursuant to C.R.S. §38-33.3-315(3)(b), as amended, since the Unfinished Lots do not receive certain benefits, including without limitation the following: the Unfinished Lots do not receive the same services as the other Lots; and the Unfinished Lots do not receive benefit from the items for which reserves are collected. The annual assessments, except as to the Unfinished Lots (as provided in this Section), shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles. The rate of assessment against the Unfinished Lots, if it is to be lower than the assessments against other Lots, shall be determined by the Board of Directors, from time to time, based on the costs and expenses of the services actually provided to the Unfinished Lots.

4.4.2. During the 75% Control Period, the Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute an advance against future assessments due from the Declarant; provided, however, that any such advances which have not been credited against assessments due from the Declarant as of termination of the 75% Control Period shall then be repaid by the Association to the Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the 75% Control Period terminates; and provided further, however, that any of such advances which are not repaid to the Declarant shall continue to constitute advances against future assessments due from the Declarant until conveyance by the Declarant of all of the property described on the attached Exhibit D. If the Declarant elects in its discretion to pay any amounts as provided in this subparagraph, Declarant shall not, under any circumstances, be obligated to continue payment or funding of any such amount(s) in future years.

**Section 4.5. *Date of Commencement of Annual Assessments.***

The annual assessments shall commence at such time as the Board of Directors may determine in its discretion. The initial annual assessments shall initially not be greater than the amount set forth in Section 4.3 hereof, and all subsequent annual assessments shall be based on a budget adopted by the Association as provided in this Declaration. A budget shall be so adopted by the Association no less frequently than annually. The annual assessments shall be due and payable in monthly installments, in advance, on the first day of each month, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

**Section 4.6. *Special Assessments.***

In addition to the annual assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of the votes of two-thirds (2/3) of a quorum of Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, a special assessment applicable to that year only, for the purpose of defraying in whole or

4.9.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the assessments for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

4.9.3. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments becomes due.

**Section 4.10. *Priority of Association Lien.***

4.10.1. A lien under this Article is prior to all other liens and encumbrances on a Lot except:

4.10.1.1 Liens and encumbrances recorded before the recordation of the Declaration;

4.10.1.2 A Security Interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the assessment sought to be enforced became delinquent; and

4.10.1.3 Liens for real estate taxes and other governmental assessments or charges against the Lot.

4.10.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.10.1.2 to the extent, if any, provided in CCIOA.

4.10.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association.

4.10.4. The Association's lien on a Lot for assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Association lien.

**Section 4.11. *Certificate of Status of Assessments.***

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner. If no statement is furnished

to the Owner or Security Interest Holder or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

**Section 4.12.      *Effect of Non-Payment of Assessments; Remedies of the Association.***

Any assessment not paid within ten (10) days after the due date thereof may bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may charge a monthly late charge thereon. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including, without limitation in a foreclosure action, such judgment or decree shall include reasonable attorney's fees to be fixed by the court, together with the costs of the action, and may include interest and late charges, as above provided. No Owner may be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Area or by abandonment of the Lot against which the assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

**Section 4.13.      *Surplus Funds.***

Any surplus funds of the Association remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be retained for use by the Association and need not be paid to the Owners or credited to them to reduce their future assessments.

**Section 4.14.      *Working Capital Fund.***

The Association shall require the first Owner (other than Declarant) of any Lot who purchases that Lot from Declarant to make a non-refundable contribution to the Association in an amount equal to three (3) times the then current monthly installment of the annual assessment (regardless of whether or not annual assessments have commenced as provided in Section 4.5 hereof). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot and shall be for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of his Lot, an Owner shall be entitled to a credit from his transferee (but not from the Association) for the aforesaid contribution to working capital fund.

**Section 4.15.      *Other Charges.***

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amounts(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents;

return checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments

**Section 4.16.      *Assessments for Misconduct.***

If any Association expense is caused by the misconduct of any Owner, as determined by the Board of Directors, the Association may assess that Association expense exclusively against such Owner and his Lot.

**ARTICLE 5.      ARCHITECTURAL APPROVALS**

**Section 5.1.      *Architectural Review Committee Approval.***

As more fully provided in the Master Declaration, no Improvement shall be constructed, erected, placed, planted, applied or installed on any Lot, until the same has been submitted to and approved by the Architectural Review Committee in accordance with all guidelines, regulations, rules and requirements for submission and processing of requests for approval promulgated, enacted, adopted, amended, interpreted, repealed and reenacted by the Master Association or the Architectural Review Committee from time to time.

**Section 5.2.      *Requirement for Approval by Governmental Entities.***

In addition to the foregoing, the construction, erection, addition, deletion, change or installation of any Improvements shall require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the City of Thornton, Colorado, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

**ARTICLE 6.      INSURANCE**

**Section 6.1.      *Insurance.***

The Association shall maintain insurance in connection with the Common Area. The Association shall maintain insurance as required by applicable law or applicable regulation, including CCIOA, which insurance shall include, without limitation, property insurance, commercial general liability insurance and fidelity coverage. In addition, the Association may maintain insurance against such other risks as the Board of Directors may elect from time to time, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association, and may maintain insurance on such other property and/or against such other risks as the Board of Directors may elect, in its discretion from time to time.

**Section 6.2.      *Worker's Compensation Insurance.***

Subject to the following sentence, if the Association performs any work to or on a Lot or the structure(s) thereon, including without limitation any maintenance, repair or replacement, the Association shall obtain and maintain worker's compensation insurance. The Association need not carry worker's compensation insurance if the work performed by or on behalf of the Association is performed by a Person who carries worker's compensation insurance and the Association has obtained proof of such insurance. All policies of worker's compensation insurance shall be in conformance with state law.

**Section 6.3.      *Insurance on the Structures on Lots.***

The Board or its agent may obtain and maintain, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, a policy of property insurance covering the structure(s) located on each Lot, except for land, excavations, foundations and other matters normally excluded from property policies, in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the insurance policy. Said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement," an "Agreed Amount Endorsement," and may include other endorsement(s) as deemed appropriate by the Board from time to time. Such insurance shall afford protection against at least the following:

6.3.1.      loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

6.3.2.      such other risks as shall customarily be covered with respect to designs similar in construction, location and use, including all perils normally covered by the standard "All Risk" endorsement, where such is available.

**Section 6.4.      *General Provisions of Insurance Policies.***

Except for worker's compensation insurance which shall comply with Section 6.2 hereof, all policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. Additionally, each Owner and Security Interest Holder shall be beneficiaries of the policy in a percentage equal to the Owner's Allocated Interest. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation. Further, all policies of insurance carried by

the Association shall also contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association

**Section 6.5.        *Deductibles.***

The Association may adopt and establish written non-discriminatory policies and procedures relating to the responsibility for deductibles. Any loss or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, shall be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, and/or may be partly or wholly borne by the Association, and/or may be shared by any such Person(s) and the Association at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question and the Association may collect the amounts from said Owner(s) in the same manner as any assessment.

**Section 6.6.        *Payment of Insurance Proceeds.***

Any loss covered by an insurance policy described in Sections 6.1 and 6.3 hereof must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders, as their interests may appear. Subject to the provisions of Section 8.1 of this Declaration, the proceeds must be disbursed first for the repair or replacement of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or replaced or the Community is terminated.

**Section 6.7.        *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 of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

**Section 6.8.        *Acceptable Insurance Companies.***

Each insurance policy purchased by the Association must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action

by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

**Section 6.9.        *Insurance to be Maintained by Owners.***

An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Lot and the Improvements thereon (if not carried by the Association at its election), as well as on personal property belonging to an Owner and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot.

**ARTICLE 7.        PARTY WALLS**

**Section 7.1.        *Definition.***

"Party Wall" shall mean and refer to any wall which is part of the original construction of the structures located on Lots as such wall(s) may be repaired or replaced from time to time, is placed on or immediately adjacent to a Lot line, and separates two (2) or more structures, or any portion(s) thereof, as a common wall.

**Section 7.2.        *General Rules of Law to Apply.***

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

**Section 7.3.        *Sharing of Repair and Maintenance.***

The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in proportion to such use.

**Section 7.4.        *Destruction by Fire or Other Casualty.***

If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 7.5.        *Weatherproofing.***

Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 7.6.        *Right to Contribution Runs with Land.***

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

**Section 7.7.        *Arbitration.***

In the event of any dispute arising concerning a Party Wall, under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party fail or refuse to appoint an arbitrator within ten (10) days after written request therefor by the Owner with whom such party shares a Party Wall, the Board shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

**ARTICLE 8.        *DAMAGE OR DESTRUCTION***

**Section 8.1.        *Damage or Destruction.***

8.1.1.        Any portion of the Community for which casualty insurance is required to be carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

8.1.1.1.        The Community is terminated;

8.1.1.2.        Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

8.1.1.3.        Sixty-seven percent (67%) of the Members, including every Member whose dwelling unit will not be rebuilt, vote not to rebuild; or

8.1.1.4.        Prior to conveyance of any Lot to a Person other than the Declarant, a Security Interest Holder rightfully demands all or a substantial part of the insurance proceeds.

8.1.2.        The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the assessment liability of all the Lots. If the Members vote not to rebuild any Lot, that Lot's Allocated Interests are automatically reallocated upon the vote as if the Lot had been condemned as provided in Section 13.14 hereof and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

**Section 8.2.        *Lots.***

Except as provided in Section 8.1 hereof, any damage to or destruction of any structure located on a Lot shall be promptly repaired and replaced by the Owner(s) thereof. "Repaired and replaced," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner(s) of a Lot do not commence repair and/or replacement



activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Architectural Review Committee, then the Association may, in its reasonable discretion, after providing the notice required in Section 9.3 of this Declaration, enter upon the Lot for the purpose of completing such repair and replacement. All costs and expenses incurred by the Association related to such repair and replacement shall be the personal obligation of the Owner(s) of the Lot on which such work is performed and shall be subject to all the terms and provisions applicable to assessments as provided in Article 4 of this Declaration, including without limitation, interest, late charges, attorneys' fees and lien rights.

## **ARTICLE 9. EXTERIOR MAINTENANCE**

### **Section 9.1. *Worker's Compensation Insurance.***

The Association shall carry, or shall ensure that its contractors carry, worker's compensation insurance as provided in Article 6 at any time that the Association performs, or causes to be performed, maintenance, repair or replacement on a Lot or any Improvements thereon pursuant to this the provisions of this Declaration.

### **Section 9.2. *General.***

9.2.1. Maintenance, repair and replacement of all Common Area, Improvements located thereon, including, but not limited to the Private Drives, and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors deems appropriate from time to time including without limitation, publicly-dedicated property and Improvements located thereon. The costs, expenses, fees, and other amounts to be expended for the maintenance and repair provided for in this subsection shall, subject to Section 9.5 hereof, be collected by the Association as assessments and paid as Association expenses.

★ 9.2.2. The Association shall also maintain, repair and/or replace the retaining walls on the rear yard property lines of lots abutting the Union Pacific Railroad right-of-way perimeter Community fences and the exteriors of the dwelling unit located on each Lot, as hereafter provided. Maintenance, repair and replacement of the exteriors of the dwelling unit located on each Lot shall be as follows (to the extent that such are applicable): paint or stain, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces; provided, however, that such exterior maintenance, repair and replacement shall not include exterior doors or garage doors, except painting or staining, and shall also not include air conditioning compressors, driveways, patios, walks, foundations, exterior light fixtures attached to a structure, windows or window screens, or glass surfaces. The costs to be expended for the maintenance, repair and replacement performed by the Association shall, subject to Section 9.5 hereof, be collected by the Association as assessments and paid as Association expenses.

9.2.3. Except as provided in subsections 9.2.1 and 9.2.2 above, the Owner of each Lot shall provide all maintenance, repair and replacement thereof and of the Improvements thereon.

**Section 9.3. *Association's Right to Repair, Maintain and Replace.***

In the event any Owner(s) shall fail to perform his maintenance, repair and/or replacement obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owner(s) by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or replacement. The cost of such maintenance, repair and/or replacement shall be the personal obligation of the Owner(s) of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to assessments as provided in Article 4 hereof, including, without limitation, interest, late charges and lien rights.

**Section 9.4. *Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs.***

9.4.1. Each Owner shall maintain the grading on his Lot (including grading around the building foundation), and the Association shall maintain the grading on the Common Area, at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner and the Association agree, for themselves and their successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property which they have a duty to maintain, from adjoining or other real property. In the event that it is necessary or desirable to change the established drainage over any Lot or the Common Area, then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Review Committee for its review and approval in accordance with Article 5 of the Master Declaration, and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Declarant is completed.

9.4.2. The Owner of a Lot should not plant flower beds (especially annuals), vegetable gardens and other landscaping which requires regular watering, within five (5) feet of the foundation of the dwelling unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot should water such shrubbery by "controlled hand-watering," and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls and slabs.

**Section 9.5. *Owner's Acts or Omissions.***

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of or within any property for which the Association has an obligation to maintain, repair or replace, any Lot, or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any member of such Owner's family or by a tenant, guest or invitee of such Owner, the cost of such repair, maintenance,

replacement or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or replacement shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration. A determination of the act or omission of any Owner, or any member of an Owner's family or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

## **ARTICLE 10. EASEMENTS**

### **Section 10.1. *Other Easements.***

In addition to any other easements which may be granted or reserved elsewhere in this Declaration, the following Sections describe easements to which the Community is or may be subject.

### **Section 10.2. *Access Easement.***

Each Lot shall be subject to an easement in favor of the Association and the Owners, including the agents, employees and contractors thereof, for performing maintenance, repair and/or replacement or other services as provided in this Declaration, including without limitation, maintenance, repair and/or replacement pursuant to Section 9.3 of this Declaration. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Area, any other property, or any Lot, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner(s) or occupant(s) of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible. The interior of any dwelling unit located on a Lot shall not be subject to the easements provided for in this Section.

### **Section 10.3. *Utilities Easement.***

The Declarant hereby reserves a blanket easement upon, across, over and under the Common Area for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Area and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any

part or all of the Common Area without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.26 hereof, at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Area.

**Section 10.4.      *Easement for Encroachments.***

To the extent that any Improvement on a Lot, or on the Common Area encroaches on any other Lot or Common Area, a valid easement for the encroachment exists.

**Section 10.5.      *Drainage Easement.***

Declarant hereby reserves, to itself and to the Association, easements for drainage and drainage facilities across the five (5) rear and five (5) side feet of each Lot; provided, however, that if a dwelling unit is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest Lot line to the exterior wall of the dwelling unit on such Lot that is nearest to such Lot line. Except for dwelling units as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot, nor shall any change in grading be permitted to exist, which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each five foot rear and side yard drainage easements, at any time, to construct, repair, replace or change drainage structures or drainageways, or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.26 hereof, at which time said reserved right shall vest solely in the Association.

**Section 10.6.      *Easement for Unannexed Property.***

The Declarant hereby reserves, for the use and benefit of the Annexable Area, a non-exclusive, perpetual easement and right of way for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, sidewalks, accessways and similar Common Area, now or hereafter constructed, erected, installed or located in or on the Community; and on, over, across and under the Common Area for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein collectively the "Annexable Area Easement"). By virtue of this Annexable Area Easement, the Declarant generally intends to provide for pedestrian and vehicular access and for utilities services to those portion(s) of the Annexable Area which have not been included, from time to time, in the Community pursuant to Section 13.5 hereof. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration pursuant to the aforesaid Section; and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

## **ARTICLE 11. RESTRICTIONS**

### **Section 11.1. *General Plan; Restrictions Imposed.***

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lots. This Community is subject to the recorded easements, licenses, and other matters listed on Exhibit C attached hereto and incorporated herein by this reference, as well as all provisions of the Final Plat. In addition, the Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

### **Section 11.2. *Compliance with Master Declaration and Other Master Association Governing Documents.***

All Owners, and all other Persons, who reside upon or use any portion of the Community shall comply with all terms and provisions of the Master Declaration, the Articles of Incorporation and Bylaws of the Master Association, and all guidelines, regulations, requirements and rules promulgated, enacted, adopted, amended, interpreted, repealed and reenacted by the Master Association from time to time.

## **ARTICLE 12. PROPERTY RIGHTS IN THE COMMON AREA**

### **Section 12.1. *Owners' Easements of Enjoyment.***

Subject to this Article, every Owner shall have a non-exclusive right and easement for the purpose of access to such Owner's Lot and for use for all other purposes, in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot.

### **Section 12.2. *Extent of Owners' Easements.***

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Area may not be used in any manner which violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Area; and no Owner may place any structure on the Common Area. In addition, such rights and easements are subject to the following rights of the Association:

12.2.1. The right of the Association to borrow money for the purpose of improving the Common Area and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Area to a Security Interest except in accordance with CCIOA; and

12.2.2. The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

12.2.3. The right of the Association to promulgate and publish rules and regulations, with which each Member shall strictly comply; and

12.2.4. The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Declaration or the Association's Bylaws or rules and regulations; and

12.2.5. The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless the same is done in accordance with CCIOA. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection; and

12.2.6. The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

12.2.7. The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

**Section 12.3. *Use of Common Area by Declarant.***

An easement is hereby granted to the Declarant on, over and through the Common Area as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant's easements through the Common Area

**Section 12.4. *Delegation of Use.***

Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

**Section 12.5. *Use of Private Drives.***

Each Private Drive provides vehicular access, ingress, and egress to more than one but fewer than all, of the Lots. No Private Drive shall be used in such a way as to unreasonably interfere with, hinder, or deny vehicular access, ingress, and egress to a garage or a Lot that is accessible from such Private Drive

**Section 12.6. *Payment of Taxes or Insurance by Security Interest Holders.***

Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

**Section 12.7.      *Conveyance or Encumbrance of Common Area.***

Portions of the Common Area may be conveyed or subjected to a Security Interest by the Association only in accordance with CCIOA and this Declaration.

**Section 12.8.      *Designation of Common Area.***

Declarant in recording this Declaration has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Area owned by the Association is not dedicated hereby for use by the general public.

**Section 12.9.      *Duty to Accept Property and Facilities Transferred by Declarant.***

The Association shall accept title to any Common Area, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association; as long as such transfer(s) do not require the Association to perform in a manner which is inconsistent with the duties and functions of the Association as set forth in this Declaration. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of fee simple title to Common Area to be located in the property described on the attached Exhibit A and/or the Annexable Area, and/or easements.

**ARTICLE 13.      GENERAL PROVISIONS**

**Section 13.1.      *Enforcement.***

Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws, rules, regulations, standards and/or guidelines of the Association, as supplemented and amended, may be by any proceeding at law or in equity against any Person(s) (including, without limitation, the Association) violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. Remedies for violation(s) of this Declaration, the Articles of Incorporation, Bylaws, rules, regulations, standards and/or guidelines of the Association shall be cumulative and no remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

**Section 13.2.      *Severability.***

All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

**Section 13.3.      *Conflict of Provisions.***

In case of any conflict between this Declaration and the Master Declaration, the Master Declaration shall control. In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

**Section 13.4.      *Conflict with CCIOA.***

In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with CCIOA, the terms or provisions of CCIOA shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with CCIOA, and any conflict with or violation of CCIOA by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

**Section 13.5.      *Annexation; Withdrawal.***

13.5.1. Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

13.5.2. Notwithstanding the foregoing, the Declarant may annex to this Declaration the Annexable Area or any portion(s) thereof, until termination of this right as provided below, without consent of any other Owners, Security Interest Holders, or any other Person; however, such annexation is subject to a determination by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed and if HUD or VA require such approval) that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements. Each annexation shall be effected, if at all, by recording an Annexation of Additional Land in the Office of the Clerk and Recorder of the County in which the property being annexed is located, which document shall:

13.5.2.1. provide for annexation to this Declaration of the property described in such Annexation of Additional Land;

13.5.2.2. shall identify the owner(s) of the Lots thereby created;

13.5.2.3. shall assign an identifying number to each new Lot;

13.5.2.4. shall describe any Common Area within the property being annexed;

13.5.2.5. shall reallocate the Allocated Interests; and



13.5.2.6. may include such other provisions as the Declarant deems appropriate. Other provisions that may be included in an Annexation of Additional Land include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions, in addition to or different from those contained elsewhere in this Declaration, that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in the preceding sentence may be amended by the consent of the Owners of sixty-seven percent (67%) of the Lots in the area to which such other provisions apply.

13.5.3 The Declarant's right to annex the Annexable Area without approval, as provided in subsection 13.5.2 above, shall terminate automatically as provided in Section 1.26 of this Declaration.

13.5.4. Except as otherwise specifically stated in an Annexation of Additional Land, as provided in subsection 13.5.2.6 above, all provisions of this Declaration, including without limitation (as to Lots) those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the effective date of the Annexation of Additional Land or other document of annexation (which shall constitute the date of recording of the Annexation of Additional Land or other annexation document, unless otherwise stated therein), unless and to the extent any provisions of this Declaration are changed or deleted by such Annexation of Additional Land.

13.5.5. Each Person who acquires any property within the Annexable Area after the date of recording hereof will have agreed, pursuant to applicable documents, that such property will be governed by this Declaration. The Declarant, therefore, reserves the right (but not the obligation), during the time period set forth in subsection 13.5.3 hereof, to annex such property to the Declaration without further authorization from the Person who has purchased such property, even if such annexation occurs subsequent to conveyance of such property by Declarant.

13.5.6. The property which is described on the attached Exhibit A and each portion of the Community which is annexed to this Declaration as provided in the preceding subsections, shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with CCIOA. However, the Declarant's right to withdraw such property and each such portion of the Community, shall expire and terminate as to such property and each portion of the Community, upon the first conveyance of any Lot in such property and in each such portion, to any Person other than the Declarant but in any event, no later than the automatic termination of the Special Declarant Rights provided in Section 1.26 of this Declaration.

**Section 13.6. *Minor Violations of Setback Restrictions.***

If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this

Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines or Lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

**Section 13.7.      *Subdivision or Replatting of Lots.***

The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant. Without limiting the generality of the foregoing, the Declarant reserves the right to move any Lot lines(s) on Lot(s) owned by the Declarant, for the purpose of accommodating Improvements which are constructed or are to be constructed. The rights provided for in this Section shall terminate automatically as provided in Section 1.26 of this Declaration.

**Section 13.8.      *Declarant's Use.***

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for the Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Area such facilities as the Declarant deems appropriate, specifically including, without limiting the generality of the foregoing, maintaining signs, sales offices, management offices, model units and construction offices in such numbers, of such sizes, and at such locations as the Declarant determines in its reasonable discretion from time to time. Nothing contained in this Declaration shall limit the rights of the Declarant to conduct all construction, sales, and marketing activities as the Declarant deems necessary or desirable and to use the easements provided in this Declaration for those and other purposes. Further, nothing contained in this Declaration shall limit the rights of the Declarant or require the Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property or to construct, alter, demolish or replace any Improvements; (b) to use any Improvements on any property as sales offices, management offices, model units and/or construction offices in connection with the development, construction or sale of any property; and/or (c) to require the Declarant to seek or obtain the approval of the Architectural Review Committee, the Board of Directors, or the Association for any such activity. Any real estate used as a sales office, management office, model unit, or for the location of a trailer used as a construction or sales office, shall be a Lot or Common Area, as such property is designated in the document(s) annexing such property to this Declaration. As permitted by Section 216(1) of CCIOA, the Declarant hereby reserves for itself and its guests an easement through the Common Area for access to, from, and incidental to the use of, any property now or hereafter used as sales offices, management offices, model units, or for the location of trailers used as construction or sales offices.

**Section 13.9.      *Duration, Revocation, and Amendment.***

13.9.1.      Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as otherwise provided in this Declaration, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by the affirmative vote or agreement of Members holding more than fifty percent (50%) of the Allocated Interests; provided, however, while Declarant owns any portion of the

property described on the attached Exhibits A and D, no amendment may be made to this Declaration except with the affirmative vote or agreement of Members holding ninety percent (90%) of the Allocated Interests.

13.9.2. Every amendment, if any, to the Declaration must be done in compliance with CCIOA.

13.9.3. Notwithstanding anything to the contrary contained in this Declaration, the Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically as provided in Section 1.26 of this Declaration.

13.9.4. Notwithstanding anything to the contrary contained in this Declaration, this Declaration, or any map or plat, may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.26 of this Declaration.

13.9.5. Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration or as permitted by CCIOA, may be signed by the Declarant and shall require no other signatory

**Section 13.10. *Registration of Mailing Address.***

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the 75% Control Period shall be sent by registered or certified mail, postage prepaid, c/o KB HOME COLORADO, INC. formerly known as KAUFMAN AND BROAD OF COLORADO, INC., a Colorado corporation, 8401 East Belleview Avenue, Suite 200, Denver, Colorado 80237, unless such address is changed by the Association during the 75% Control Period; subsequent to expiration of the 75% Control Period, the Association shall notify the Owners of a different address for notices.

**Section 13.11. HUD or VA Approval.**

During the 75% Control Period, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more first Security Interests and HUD or VA require such approval: annexation of additional real property (if the Declarant desires to obtain VA or HUD approval of the property that is being annexed and HUD or VA requires such approval); amendment of this Declaration, except as provided in Sections 13.9.3 and 13.9.4 hereof; termination of this Community; or merger or consolidation of the Association, except as provided in Section 3.12 of this Declaration.

**Section 13.12. Termination of Community.**

The Community may be terminated only in accordance with CCIOA.

**Section 13.13. Transfer of Special Declarant Rights.**

A Special Declarant Right created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Community is located, and in accordance with CCIOA.

**Section 13.14. Eminent Domain.**

The taking by eminent domain of a Lot(s) or Common Area, or any portion thereof, shall be done in accordance with applicable law, including without limitation CCIOA.

**Section 13.15. Limitation on Liability.**

The Association, the Board of Directors, the Declarant, and the officers, directors, members, partners, employees and agents of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice.

**Section 13.16. No Representations, Guaranties or Warranties.**

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, or by any of their officers, directors, members, partners, employees or agents in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

**Section 13.17. Disclaimer Regarding Safety.**

DECLARANT, THE ASSOCIATION, AND THE BOARD OF DIRECTORS AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES AND AGENTS, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THE BOARD OF DIRECTORS AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES AND AGENTS ARE

ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

**Section 13.18. *Headings.***

The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

**Section 13.19. *Gender.***

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

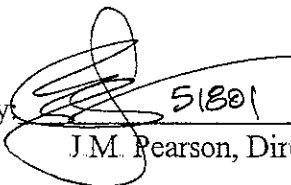
**Section 13.20. *Run with Land; Binding Upon Successors.***

The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon this Community and all real property and Improvements which are now or hereafter become a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this 21st day of May, 2001.

DECLARANT:

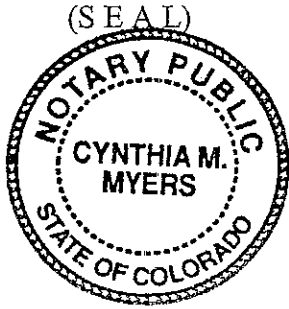
KB HOME COLORADO, INC. formerly known as  
KAUFMAN AND BROAD OF COLORADO, INC.,  
a Colorado corporation

By  51801  
\_\_\_\_\_  
J.M. Pearson, Director of Forward Planning

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of May, 2001, by J.M. Pearson, Director of Forward Planning for KB HOME COLORADO, INC. formerly known as KAUFMAN AND BROAD OF COLORADO, INC., a Colorado corporation.

Witness my hand and official seal.



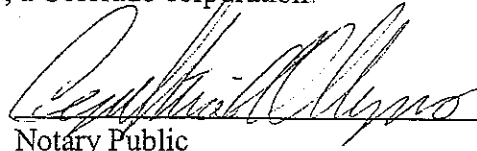
  
\_\_\_\_\_  
Notary Public  
My commission expires: 10-7-2001

EXHIBIT A  
TO  
SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF KENTFIELD TOWNHOMES

(The Community)

Lots 1 through 8, inclusive, Block 2, all as shown on the final plat of Villages North Subdivision Filing No. 3, recorded on February 14, 2001, in File No. 18 at Map No. 377, as Reception No. C0761200, in the office of the Clerk and Recorder of Adams County, Colorado, as amended.

EXHIBIT B  
TO  
SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF KENTFIELD TOWNHOMES

(Common Area)

None at the time of recording of this Declaration.



EXHIBIT C  
TO  
SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF KENTFIELD TOWNHOMES

(Certain Title Exceptions)

The following items which are recorded, are recorded in the office of the Clerk and Recorder of Adams County, Colorado:

1. TAXES AND ASSESSMENTS FOR THE YEAR OF RECORDING OF THIS DECLARATION, AND FOR SUBSEQUENT YEARS, NOT YET DUE AND PAYABLE.
2. ANY WATER RIGHTS OR CLAIMS OR TITLE TO WATER, IN, ON OR UNDER THE LAND.
3. RIGHT, INTEREST AND CLAIMS OF INTEREST FOR DITCHES AND LATERALS INCLUDING BUT NOT LIMITED TO THE COLORADO AGRICULTURAL DITCH COMPANY AND THE LOWER CLEAR CREEK DITCH COMPANY.
4. EASEMENTS GRANTED TO THE CITY OF THORNTON UNDER DEEDS RECORDED APRIL 1, 1993 IN BOOK 4046 AT PAGE 729; IN BOOK 5715 AT PAGES 660 AND 665; BOOK 4072 AT PAGE 785 AND RECORDED IN BOOK 5515 AT PAGE 380.
5. RIGHT OF WAY FOR SANITARY SEWER AND PIPELINE PURPOSES TO NORTHWEST UTILITIES COMPANY AS DISCLOSED IN INSTRUMENT RECORDED AUGUST 6, 1958 IN BOOK 793 AT PAGE 586

EXHIBIT D  
TO  
SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF KENTFIELD TOWNHOMES

(Annexable Property)

All of the property shown on the final plat of Villages North Subdivision Filing No. 3, recorded on February 14, 2001, in File No. 18 at Map No. 377, as Reception No. C0761200, in the office of the Clerk and Recorder of Adams County, Colorado, as amended;

EXCEPTING AND EXCLUDING the property described on Exhibit A to this Declaration.