

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THUNDER VALLEY ESTATES OWNERS ASSOCIATION**

Updated 8/30/2020

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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THUNDER VALLEY ESTATES OWNERS ASSOCIATION is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by 4Z Investments, LLP, a Colorado Limited Liability Partnership ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property located in the County of Weld, State of Colorado, legally described on **Exhibit "A"** attached hereto and incorporated herein by reference ("Property").

B. Declarant desires to create on the Property a single-family residential planned unit development, and desires to provide for preservation of the aesthetic and architectural amenities of the Development. For that purpose, and for the benefit of the Property and the owners thereof, Declarant desires to subject the Property to the covenants, conditions, restrictions and easements as set forth in this Declaration.

C. The name of the Development to be created on the Property shall be THUNDER VALLEY ESTATES .

D. Thunder Valley Estates Owners Association, a Colorado Nonprofit Corporation, will regulate the use of certain access, drainage, irrigation and utility easements within the Development, and such portions of the Development as may be designated for ownership by said Association, and to otherwise govern the use and enjoyment by Owners of various Common Elements.

**ARTICLE 1. SUBMISSION OF PROPERTY**

The Declarant does hereby publish and declare that the Property shall be held, sold, conveyed, transferred, leased, subleased and occupied subject to the following easements, covenants, conditions, and restrictions which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Property, or any portion thereof, their heirs, personal representatives, successors, and assigns.

**ARTICLE 2. DEFINITIONS**

2.1 Definitions. When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms not otherwise defined in the Act or in the Land Survey Plat for the Property shall have the meanings provided in the following sections of this Article:

2.1.1 "Access Easement" shall mean and refer to the access easement more particularly described in Section 6.2(a) of this Declaration.

2.1.2 "Allocated Interests" shall mean and refer to the Common Expense Liability and votes in the Association.

2.1.3 "Approval" or "Consent" shall mean and refer to the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

2.1.4 "Assessments" shall mean and refer to all Common Expense Assessments, Special Assessments, Individual Assessments and Fines levied by the Executive Board pursuant to this Declaration, the Bylaws or the Rules and Regulations.

2.1.5 "Association" shall mean and refer to Thunder Valley Estates Owners Association, a Colorado Nonprofit Corporation, its successors and assigns.

2.1.6 "Bylaws" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

2.1.7 "Common Elements" shall mean and refer to any real estate, easements or real property interests within the Development owned or leased by the Association or over which the Association has acquired easements, including access, drainage, irrigation and utility easements hereafter created pursuant to Section 6.2 and any other property rights owned, leased or otherwise acquired by the Association. "Common Elements" shall also include any storm drainage improvements, structures or other facilities, or other public improvements installed or located (or to be installed or located) within the Development, as well as related off-site improvements, structures or facilities used by or benefitting the Development and/or installed pursuant to requirement of Weld County as a condition to development of the Development or any part thereof.

2.1.8 "Common Expense Assessments" shall mean and refer to all Assessments made for Common Expenses.

2.1.9 "Common Expenses" shall mean and refer to expenditures or liabilities incurred by or on behalf of the Association, together with any allocations to reserves. These expenses for the operation of the Common Interest Community include, but are not limited to:

(a) expenses of administering, maintaining, leasing, securing, insuring or replacing the Common Elements, including, but not limited to, common roads;

(b) expenses declared to be Common Expenses by this Declaration;

(c) expenses agreed upon as Common Expenses by the Association;

(d) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

(e) possible future expenses as summarized in the Improvements Agreement According to Policy Regarding Collateral for Improvements for Thunder Valley Estates Owners Association.

2.1.10 "Declarant" shall mean and refer to 4Z Investments, LLP , a Colorado Limited Liability Partnership , or any other Person or group of Persons acting in concert who, as a part of a common promotional plan, offer to dispose of to a Purchaser such Declarant's interest in a Parcel not previously disposed of to a Purchaser.

2.1.11 "Declaration" shall mean and refer to this Declaration, including any amendments hereto and including, but not limited to, any land survey plats for the Property recorded in the office of the Clerk and Recorder of Weld County, Colorado.

2.1.12 "Design Review Committee" or "DRC" shall mean and refer to the committee established to review and approve plans for the construction of Improvements on Parcels as set forth in Article 8 of this Declaration.

2.1.13 "Development" shall mean and refer to the Property described on **Exhibit "A"** attached hereto and incorporated herein by reference.

2.1.14 "Dwelling Unit" shall mean and refer to a single-family residential dwelling constructed on a Parcel.

2.1.15 "Executive Board" shall mean and refer to the Executive Board designated in the Declaration to act on behalf of the Association.

2.1.16 "Fines" shall mean and refer to any monetary penalty imposed by the Executive Board against a Parcel Owner because of a violation of this Declaration, the Articles of Incorporation of the Association, its Bylaws or the Rules and Regulations by such Parcel Owner, a member of the Parcel Owner's family or tenant or

guest of the Parcel Owner or a member of a family of a tenant of a Parcel Owner.

2.1.17 "Improvement(s)" shall mean and refer to all Dwelling Units, buildings, outbuildings, parking areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, trails, gates, signs, changes in exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvement(s)" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances. "Improvement(s)" does include both original improvements and all later changes and improvements.

2.1.18 "Member" shall mean and refer to every person or entity who holds membership in the Association.

2.1.19 "Owner" shall mean and refer to the record owner, whether one (1) or more Persons, of a fee or undivided fee interest in any Parcel, as defined herein, which is part of the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

2.1.20 "Parcel" shall mean and refer to a physical portion of Development which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration. The sixteen (26) Parcels which are described on **Exhibit "A"** are depicted upon the site plan attached hereto as **Exhibit "B."**

2.1.21 "Period of Declarant Control" shall mean and refer to the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Weld County, Colorado, and ending on the date on which the Declarant shall have conveyed to parties (other than a Successor Declarant) all Parcels originally owned by the Declarant in the Development.

2.1.22 "Person" shall mean and refer to an individual, corporation, business trust, estate, Limited Liability Company, limited partnership, general partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

2.1.23 "Property" shall mean and refer to that certain real property described on **Exhibit "A"** attached hereto and incorporated herein by reference.

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

2.2 Other Terms in Declaration. Other terms in this Declaration may be defined in specific provisions contained herein and shall have the meaning assigned by such definition.

### **ARTICLE 3. THE DEVELOPMENT**

3.1 Name. The name of the Development is THUNDER VALLEY PUD.

3.2 Planned Community. The Development is a Planned Community or Development under the Colorado Common Interest Ownership Act, C.R.S., Section 38-33.3-101, et seq.

3.3 Maximum Number of Parcels. The number of Parcels created, and the maximum number of Parcels that the Declarant reserves the right to create, within the Development is thirteen (13).

3.4 Boundaries of Parcels. The legal description of each Parcel subject to this Declaration are set forth on the attached **Exhibit "A"** and depicted on the attached **"Exhibit B."**

### **ARTICLE 4. ASSOCIATION**

4.1 Authority and Power. The business and affairs of the Development shall be managed by the Association. The administration of the Development shall be governed by this Declaration, the Articles of Incorporation, the Bylaws and published Rules and Regulations of the Association. The Association shall have all the powers, authority and duties permitted pursuant to the foregoing documents which are necessary and proper to manage the business and affairs of the Association.

4.2 Declarant Control. Declarant or Persons designated by it, may appoint and remove the officers of the Association and members of the Executive Board during the Period of Declarant Control, but not to exceed a period of seven (7) years after this Declaration is recorded in the office of the Clerk and Recorder of Weld County, Colorado.

4.3 Executive Board Powers and Duties. The Executive Board may act in all

instances on behalf of the Association, except as provided in this Declaration or the Bylaws. The Executive Board shall have, subject to the limitations contained in this Declaration, the powers and duties necessary for the administration of the affairs of the Association and of the Development, which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws.
- (b) Adopt and amend Rules and Regulations regarding the use and enjoyment of the Common Elements, and the activities of occupants thereon.
- (c) Adopt and amend budgets for revenues, expenditures and reserves.
- (d) Collect Assessments from Parcel Owners.
- (e) Hire and discharge managers.
- (f) Hire and discharge independent contractors, employees and agents, other than managers.
- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration in the Association's name, on behalf of the Association, or two (2) or more Parcel Owners on any matters affecting the Development.
- (h) Make contracts and incur liabilities.
- (i) Enter into agreements for the acquisition of real property interests and recreational opportunities, including, without limitation, access easements to public and private lands.
- (j) Regulate the use, maintenance, repair, replacement and modification of the Common Elements.
- (k) Acquire, hold, encumber and convey in the Association's name, any right, title or interest to real estate or personal property, but the Common Elements may be conveyed or subjected to a Security Interest only pursuant to this Declaration and applicable law.
- (l) Grant easements for any period of time, including permanent easements, leases, licenses and concessions through or over the Common Elements, and to provide for the sharing of costs of maintaining same, as appropriate, and on terms deemed reasonable by the Executive Board.
- (m) Accept exclusive or non-exclusive easements for any period of time, including permanent easements, through or over lands lying outside the Common Interest

Community for the benefit of Owners of Parcels, and to provide for the sharing of costs of maintaining same, as appropriate, and on terms deemed reasonable by the Executive Board.

(n) Impose a reasonable charge for late payment of Assessments and levy a Fine for violation of this Declaration, the Bylaws and the Rules and Regulations of the Association.

(o) Impose a reasonable charge for statements of unpaid Assessments.

(p) Provide for the indemnification of the Association's officers, agents and the Executive Board and maintain Directors' and officers' liability insurance.

(q) Assign the Association's right to future income, including the right to receive Common Expense Assessments, only upon the affirmative vote of the Owners of Parcels to which at least seventy-five percent (75%) of the votes in the Association are allocated, at a meeting called for that purpose.

(r) Act as an arbitrator or mediator with respect to any dispute between Parcel Owners if the Parcel Owners involved shall consent in writing to the submission of such dispute to the Association for resolution.

(s) Exercise any other power that may be exercised in the State of Colorado by a legal entity of the same type as the Association.

(t) Exercise any other power necessary and proper for the governance and operation of the Association.

4.4 Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend or terminate this Declaration, or to elect members of the Executive Board or determine their qualifications, powers and duties or the terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

4.5 Owner's Negligence and Individual Assessments. Notwithstanding anything to the contrary contained in this Declaration, or in the event that the need for maintenance or repair of the Common Elements or any Improvements located thereon is caused by the willful or negligent act, omission or misconduct of any Parcel Owner, or by the willful or negligent act, omission or misconduct of any member of such Parcel Owner's family, or by a guest or invitee of such Parcel Owner, or any tenant of such Parcel Owner or any contractor, subcontractor, agent or subagent of such Parcel Owner, or the tenant's family, the costs of such repair and maintenance shall be the personal obligation of such Parcel Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall constitute an "Individual Assessment" and shall be added to and become part of the Assessment to which such Owner's Parcel is subject and shall be a lien against such Owner's Parcel as provided in this Declaration.



In addition, the Executive Board may levy an Individual Assessment against any Owner or his or her Parcel if the Owner, his or her family members, tenants, guests or invitees willfully or negligently fail to comply with the terms and provisions of this Declaration, resulting in the expenditure of funds by the Association to cause compliance by such Person with such terms and provisions. An Individual Assessment shall be levied, and the amount of the Individual Assessment shall be established only after notice to the Parcel Owner and the right to be heard before the Executive Board in connection therewith.

## **ARTICLE 5. MEMBERSHIP, VOTING RIGHTS AND ALLOCATIONS**

5.1 Membership. Every Owner of a Parcel which is subject to Common Expense Assessments shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Parcel which is subject to Common Expense Assessments by the Association. Ownership of such Parcel shall be the sole qualification for membership. When more than one (1) Person holds a membership interest in any Parcel, all such Persons shall be Members. The vote for such Parcel shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Parcel.

5.2 Voting Rights and Assignment of Votes. The effective date for assigning votes to Parcels created pursuant to this Declaration shall be the date on which this Declaration is recorded in the records of the Clerk and Recorder of Weld County, Colorado.

5.3 Allocated Interests. Except as otherwise provided in this Declaration, the Common Expense Liability and votes in the Association allocated to each Parcel are set forth as follows:

(a) The percentage of liability for Common Expenses shall be allocated based on equal liability for each Parcel regardless of the actual number of acres contained therein; and

(b) The number of votes in the Association shall be allocated based on one (1) vote for each Parcel regardless of the actual number of acres contained therein.

## **ARTICLE 6. COMMON ELEMENTS**

6.1 Dedication of Common Elements. The Declarant hereby dedicates the Common Elements to the common use and enjoyment of Parcel Owners as hereinafter provided.

6.2 Dedication of Easements. Subject to the limitations and restrictions set forth in this Article 6 and all existing easements, reservations, restrictions, covenants and agreements of record, the Declarant does hereby establish, remise, release, sell, convey,

quitclaim and dedicate unto the Association, its successors and assigns, for the use of the Owners of Parcels within the Development, their family members, tenants, guests and invitees, the following perpetual non-exclusive easements in, over, across and upon real property located within the Property at the locations described below and/or depicted or described upon the Plat for the Property:

(a) Drainage, irrigation and Utility Easement. A perpetual non-exclusive Drainage, irrigation and Utility Easement as more fully described on the recorded Plat of the Property, which Plat is incorporated herein by this reference for stormwater drainage, storage and delivery of irrigation water and for the installation, construction, maintenance, inspection, operation, replacement or removal of all utilities, including, but not limited to, water, telephone, natural gas, electricity and cable television, to the Parcels within the Development. Owner's allowed uses within a drainage easement must not adversely affect stormwater drainage within Thunder Valley Estates and must meet governmental regulations.

(b) Utility Easements. There is hereby created a general easement upon, across, over, in and under such portion of the Property as shall be located outside of the actual final building sites on each Parcel for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, telephone, electrical, television and communications systems if, and to the extent that in the reasonable discretion of the utility provider, such utilities cannot be located within existing easements. By virtue of this easement and upon a determination by the utility provider that the utilities cannot reasonably be so located, it shall be expressly permissible and proper for utility providers providing electrical, television, telephone and other communications services to install and maintain necessary equipment on all portions of the Property and to affix and maintain electrical, television, telephone and other communications wires, circuits and conduits on or under the Property. Any utility company using this general easement will use its best efforts to install and maintain the utilities provided without disturbing the uses of the Owners and will execute its installation and maintenance activities as promptly and as expeditiously as reasonably possible. Should any utility company furnishing service covered by this general easement request a specific easement by separate recordable document, the Declarant (during the Period of Declarant Control) and the Association (after the Period of Declarant Control) will have, and are hereby given, the right and authority to grant such easement upon, across, over or under any part of the Property without conflicting with the terms of this Declaration. This general easement will in no way affect, void, extinguish or modify any other recorded easement on the Property.

6.3 Maintenance and Regulation of Common Elements. The Access Easement, and any electrical services and any other improvements contemplated by this Declaration, not owned by specific utility providers, shall be deemed Common Elements, and such improvements, together with any other Common Elements, shall be maintained, repaired and replaced as necessary by the Association so that the Common Elements

present an aesthetically attractive appearance to serve the purpose for which they were installed; provided, however, the Association shall have no responsibility to maintain electrical lines, telephone lines or other utility facilities to the extent operated, maintained, repaired and serviced by utility providers. The Association shall have no obligation to maintain, repair, renovate, manage or control private driveways.

Notwithstanding anything to the contrary contained herein, in the event the need for the Association to maintain, repair or replace a Common Element is caused by the willful act or gross negligence or misconduct of an Owner or a member of such Owner's family, or a guest, invitee or tenant of an Owner or a member of such tenant's family, the costs of such repair, replacement or maintenance, to the extent not covered by the Association insurance, shall be a personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for same shall be assessed to such Owner and added to Owner's Common Expense Assessment. The Association shall have a lien for the payment of such Assessment as provided in this Declaration.

The Association may adopt such Rules and Regulations with respect to its Members, their family members, tenants, guests, invitees, contract users, contractors, subcontractors and agents as shall be necessary for the proper regulation of the use of the Common Elements, including the Access Easement, in order to allow the Owner of each Parcel the full use and enjoyment of the Common Elements provided herein in a manner which shall not unreasonably disturb or interfere with the use of the Property by Persons who own a Parcel within the Development.

6.4 Owners' Easements of Common Elements. Each Owner of a Parcel shall have a right and easement to the Common Elements for maintenance, delivery of utilities and services and ingress and egress along Thunder Valley Lane and such easement shall be appurtenant to and shall pass with title to every Parcel, subject to the following provisions:

(a) The right of the Association to promulgate and publish reasonable Rules and Regulations as provided in this Declaration.

(b) The right of the Association to suspend voting rights and the right to use Common Elements by a Parcel Owner for any period during which any Assessment against his or her Parcel remains unpaid; and for a period not to exceed sixty (60) days from any infraction of it published Rules and Regulations.

(c) The right of the Association to dedicate or transfer any part of the Common Elements, to any public agency, authority, utility or other entity for such purposes and subject to such conditions as may be agreed upon by the Members, provided that no such dedication or transfer shall be effective unless the Parcel Owners entitled to cast at least sixty-seven percent (67%) of the votes of the Association, including sixty-seven percent (67%) of the votes allocated to Parcels not owned by the Declarant, agree to such dedication, transfer, purpose or condition. Written notice of the proposed agreement and action thereof shall be sent to every Parcel Owner at least thirty

(30) days in advance of any action taken. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause. An agreement to dedicate, transfer or convey all or any part of the Common Elements must be evidenced by execution and recordation of an agreement or ratification thereof, in the same manner as a deed by the requisite number of Parcel Owners. Such agreement must specify a date after which the agreement will be void unless recorded before that date.

(d) The right of the Association to close or limit use of the Common Elements while maintaining, repairing and making replacements in the Common Elements, provided that the Association shall attempt to minimize any interference with access to Parcels within the Property.

6.5 Easements for Encroachment. To the extent that any Common Roads or utilities, now or hereafter, encroach upon any area outside of its designated easement area, a valid easement shall be deemed to exist for the encroachment and for the maintenance of the same so long as such Improvement shall exist.

6.6 Emergency Easement. An easement for ingress, egress and access is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the performance of their duties.

6.7 Delegation of Use. Subject to such reasonable Rules and Regulations as shall be promulgated by the Association, a Parcel Owner may delegate his or her right of use in the Common Elements to the members of his or her family, tenants, and a reasonable number of guests or invitees of such Parcel Owner.

6.8 Title to Common Elements. The Common Elements shall be transferred to the Association free and clear of all liens and encumbrances prior to the conveyance of the first Parcel within the Development; subject, however, to the provisions of Article 6 of this Declaration. Upon transfer by Declarant to the Association of any Common Elements or any improvements or facilities installed in, on or under any of the Common Elements, as contemplated by this Declaration, the Association shall be deemed to have fully accepted same, in its then present condition, and the Association shall thereafter be fully responsible for due and proper operation, repair and maintenance of same.

6.9 Failure to maintain common areas. If the organization established to own and maintain common open space, or any successor organization fails to maintain the common open space in reasonable order and condition in accordance with the approved PUD final plan, the following action may be taken: (i) The cost of such maintenance by the City of Fort Lupton shall be paid by the owners of the properties within the PUD that have a right of enjoyment of the common open space, and any unpaid assessments shall become a tax lien on said properties, pursuant to Section 24-67-105, C.R.S.; (ii) If the deficiencies set forth in the original notice or in the modifications thereof are not rectified within thirty (30) days or any extension thereof,

the City of Fort Lupton, in order to preserve the values of the properties within the PUD and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any rights to use the common open space except when the same is voluntarily dedicated to the public by the owners and accepted by the City of Fort Lupton. Before the expiration of said one-year period, the City of Fort Lupton shall hold a public hearing to consider the necessity of continuing such maintenance for a succeeding year. Notice of the hearing shall be given, in writing, not less than thirty (30) days and not more than sixty (60) days prior to this hearing to the organization normally responsible for the maintenance of the common open space and to the owners or residents of the PUD. If the City of Fort Lupton determines that such organization is not ready and able to maintain said common open space in reasonable condition, the City of Fort Lupton may continue to maintain said common open space during the next succeeding year, and shall be subject to a similar hearing and determination in each year thereafter.

## **ARTICLE 7. COVENANT FOR ASSESSMENTS**

7.1 Creation of Lien and Personal Obligation of Assessments and Special Assessments. The Declarant, for each Parcel owned within the Property, shall be deemed to covenant and agree, and each Owner of any Parcel, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association all Assessments and Fines, together with such interest thereon and costs of collection thereof as herein provided. Said Assessments, Fines, interest and costs of collection, including reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Parcel against which each such Assessment or Fine is made. Such Assessments and Fines, including reasonable attorneys' fees, shall be the personal obligation of the Person who was the Owner of such Parcel at the time when the Assessment or Fine fell due. The personal obligation for any delinquent Assessment or Fine shall not pass to his or her successors in title unless expressly assumed by them. No Owner may become exempt from liability for payment of Assessments or Fines by waiver of the use or enjoyment of the Common Elements or by abandonment of the Parcel against which Assessments are made.

7.2 Purpose of Assessments. The Assessments levied by the Association through its Executive Board shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Development; for the maintenance, repair and upkeep of the Common Elements and for any other maintenance obligations or common services which may be deemed necessary by the Association for the common benefit of the Owners, or the maintenance of property values, or for the payment of expenses which may be incurred by virtue of an agreement with or requirement of any city, county or other local government authority, and to provide for all other expenses incurred by the Association in performing its duties under this Declaration. The Assessments shall further be used to provide adequate insurance of various types, and in such amounts deemed necessary by the Executive Board, with respect to the Common

Elements. Further, the Assessments shall provide a reserve fund for replacements on a periodic basis as the Executive Board determines necessary to adequately provide for such replacements as may be required by this Declaration.

7.3 Annual Common Expense Assessment. The total annual Common Expense Assessment against all Parcels shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Common Expense Assessment year, which estimates may include, among other things:

(a) Expenses of maintaining the Association and providing management for the Development; (b) premiums for all insurance which the Association is required or permitted to maintain; (c) repairs and maintenance to or replacement of the Common Elements; (d) regular maintenance and snow removal on Thunder Valley Lane (e) wages for Association employees, if any; (f) legal, accounting and property management fees; (i) any deficit remaining from a previous Assessment year; (j) the creation of reasonable, replacement or contingency reserves, working capital and/or sinking funds; and (k) any other costs, expenses and fees, which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Parcel Owners under or by reason of this Declaration.

Such Common Expense Assessments shall be collected at such intervals as is determined by the Executive Board but not less frequently than on an annual basis.

7.4 Special Assessments.

(a) In addition to the Common Expense Assessments authorized above, the Association may at any time, from time to time, determine, levy and assess a Special Assessment for the purpose of defraying in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of the Common Elements or for "Capital Improvements" or "Capital Acquisitions." Any such Special Assessment made by the Executive Board must be approved by not less than sixty-seven percent (67%) of the Members who are voting in person or by proxy at a meeting duly called for that purpose. No Special Assessment for legal action pursued by the Association shall be required of the Declarant without the written Approval of the Declarant. The amounts determined, levied and assessed pursuant hereto shall be assessed equally against each Parcel.

(b) "Capital Improvements," as used herein, shall mean the construction, erection or installation of substantial structure(s) or other improvement(s) to the Common Elements in the Common Interest Community, but shall not include Common Elements which may hereafter be constructed, erected or installed on the Property by the Declarant.

(c) "Capital Acquisitions" as used herein, shall mean the purchase, lease or other acquisition of real property interests in and about the Development,

including, but not limited to, access to private and/or public lands in the vicinity of the Development or other property interests which will benefit and enhance the use and enjoyment of the Development by the Parcel Owners thereof but shall not include any capital acquisitions hereafter made by the Declarant.

(d) Notice in writing setting forth the amount of such Special Assessment per Parcel and the due date for payment thereof shall be given to the Parcel Owners not less than sixty (60) days prior to such due date.

(e) Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all Members not less than ten (10) nor more than fifty-nine (59) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies, if permitted, entitled to cast fifty percent (50%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, the meeting shall be continued to another date to be decided by the voting Members at the first meeting, and it will be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of all votes of the membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.5 Rate of Assessment. Except as otherwise provided in this Section 7.5 and in Section 7.13, each Owner shall be responsible for a fraction, the numerator of which shall be 1 and the denominator of which shall be equal to the number of Parcels in the Development, of all Common Expense Assessments, plus any Special Assessments which shall be allocated to each Parcel. Notwithstanding the foregoing, any Common Expense Assessments or Special Assessments which benefit fewer than all Owners shall be assessed exclusively against the Parcels benefited.

7.6 Date of Commencement of Annual Common Expense Assessments and Budget. Common Expense Assessments shall commence upon the sale of the first Parcel to an Owner. The first Common Expense Assessment shall be prorated according to the number of days remaining in the Assessment period established by the Executive Board. The Executive Board shall fix the amount of the annual Common Expense Assessment against each Parcel at least yearly. Written notice of the Common Expense Assessment shall be sent to every Parcel Owner subject thereto. Common Expense Assessments shall be collected at such intervals and in such installments as the Executive Board shall determine. The due dates shall be established by the Executive Board. After the first budget year of the Association, within thirty (30) days after adoption of a proposed budget for the Development, the Executive Board shall provide a summary of the budget to each Owner and shall set a date for a meeting of the Parcel Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) nor more than fifty (50) days after the mailing of the summary. Unless at that meeting a majority of all Parcel Owners reject the budget, the budget shall be ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Parcel Owners shall continue until the Parcel Owners ratify a new budget proposed by the Executive Board.

7.7 Association Lien and Effect of Non-Payment of Assessments. The Assessments, charges, fees, Fines, impositions, interest, costs, late charges, expenses and reasonable attorneys' fees which may arise under the provisions of this Declaration, shall be burdens running with, and perpetual liens in favor of the Association upon the specific Parcel to which such Assessments apply. Recording of the Declaration constitutes record notice and perfection of the Association's lien. Further recording of a claim of lien for an Assessment under this section is not required. Any Assessment, charge or fee provided for in this Declaration, or any installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the Default Rate from the due date, and the Association may assess a late charge thereon. In the event of default in which any Parcel Owner does not make payment of any Assessment levied against his or her Parcel within ten (10) days of the due date, the Executive Board shall have the right to declare all unpaid Assessments for the pertinent fiscal year immediately due and payable. Further, the Association may bring an action at law or in equity, or both, against any Parcel Owner personally obligated to pay such overdue Assessments, charges or fees, or installments thereof, and may also proceed to foreclose its lien against such Owner's Parcel.

An action at law or in equity by the Association against a Parcel Owner to recover a money judgment for unpaid Assessments, charges or fees, or installments thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving, the Association's lien therefor. In the event that any such Assessment, charge or fee, or installment thereof, is not fully paid when due and the Association shall commence such action (or shall counterclaim or crossclaim for such relief in any action) against any Parcel Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Parcel, then all unpaid Assessments, charges and fees, and all unpaid installments thereof, and any and all late charges and accrued interest under this section, the Association's costs, expenses and reasonable attorneys' fees incurred in preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings shall be taxed by the court as a part of the cost of any such action or foreclosure proceeding and shall be recoverable by the Association from any Parcel Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Parcel. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charge or fee, or installment thereof, which is not fully paid when due.

The Association shall have the power and right to bid on or purchase any Parcel at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of Assessments becomes due, except that if an Owner of a Parcel subject to a lien under this section filed a petition for relief under the United States Bankruptcy Code, the time period for instituting



proceedings to enforce the Association's lien shall be tolled until ninety (90) days after the automatic stay of proceedings under § 362 of the Bankruptcy Code is lifted. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Parcel to collect all sums alleged to be due from the Parcel Owner or a tenant of the Parcel Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments, based on a periodic budget adopted by the Association.

7.8 Subordination of Lien to Security Interests. A lien under this section is prior to all other liens and encumbrances on a Parcel except:

(a) Liens and encumbrances recorded before the recordation of this Declaration;

(b) A First Security Interest on the Parcel recorded before the date on which the Assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the Parcel.

A lien under this section is also prior to all Security Interests to the extent that the Assessments are based on the periodic budget adopted by the Association and which would have become due, in the absence of acceleration, during the six (6) months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest, and statutory liens recognized under Colorado law. If a holder of a First Security Interest in a Parcel forecloses that Security Interest, the Purchaser at the foreclosure sale is not liable for any unpaid Assessments against the Parcel which became due before the sale, other than the Assessments which are prior to the Security Interest under this section of the Declaration. Any unpaid Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all Parcel Owners, including the Purchaser. Sale or transfer of any Parcel shall not affect the lien for said Assessment charges except that a sale or transfer of any Parcel pursuant to foreclosure of any First Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contracts shall only extinguish the lien of Assessment charges which become due more than six (6) months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest, and statutory liens recognized under Colorado law. No such sale, transfer, foreclosure or other proceeding in lieu thereof, including deed in lieu of foreclosure, shall relieve any Parcel from liability for any Assessment charges thereafter becoming due, nor from the lien thereof. This section does not affect the priority of mechanics' or materialmen's liens.

7.9 Record of Receipts and Expenditures. The Association shall keep detailed and accurate records in chronological order of all its receipts and expenditures, specifying and itemizing the maintenance and repair of expenses of the Common Elements and any

other expenses incurred. Such records and the vouchers authorizing the payments shall be available on request for examination by the Parcel Owners and others with an interest, such as prospective lenders.

7.10 Notice to Security Interest. Upon the request of a holder of a First Security Interest on a Parcel, and upon payment of reasonable compensation therefor, the Association shall report to such party any unpaid Assessment or other defaults under the terms of this Declaration which are not cured by the Parcel Owner within thirty (30) days.

7.11 Certificate of Status of Assessments. The Association, upon written request to the Association's registered agent, personally delivered or delivered by certified mail, first class postage prepaid, return receipt requested, and upon payment of a reasonable fee, but in no event less than Ten Dollars (\$10.00), shall furnish to a Parcel Owner or such Parcel Owner's designee or to a holder of a Security Interest or its designee, a statement, in recordable form, setting out the amount of the unpaid Assessments against the Parcel. The statement must be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Executive Board and each Parcel Owner. A properly executed certificate of the Association as to the status of Assessments on a Parcel is binding upon the Association as of the date of its issuance. Omission or failure to fix an Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of a Parcel Owner from his or her obligation to pay the same.

7.12 Homestead. The lien of the Association Assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said lien.

7.13 Common Expenses Attributable to Fewer than All Parcels.

7.13.1 If a Common Expense is caused by the misconduct of a Parcel Owner, the Association may assess that expense exclusively against that Parcel Owner's Parcel as more fully provided in Section 4.5, above.

7.13.2 Fees, charges, taxes, impositions, late charges, Fines, collection costs and interest charged against a Parcel Owner pursuant to this Declaration are enforceable as Common Expense Assessments.

7.13.3 Any Common Expense or portion thereof benefitting fewer than all of the Parcels must be assessed exclusively against all the Parcels benefitted in the proportions determined by the Executive Board after considering the relative size and value that the Parcels being benefitted bear to all Parcels benefitted.

## **ARTICLE 8. DESIGN REVIEW COMMITTEE**

8.1 Committee and Guidelines. There is hereby established a Design Review

Committee (DRC), which shall be responsible for administration of the Property use and design restrictions established in this Declaration, and for the establishment and administration of Design Guidelines to facilitate the purposes and intent of this Declaration if and when the DRC deems any such Design Guidelines to be necessary or appropriate. The DRC may amend, vary, repeal and augment, and grant variances from, the Design Guidelines from time to time, in the DRC's sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of the Development or other factors as necessary or desirable to fulfill the intent of the Design Guidelines. The Design Guidelines shall be binding on all Owners and other persons governed by this Declaration.

The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

8.1.1 Standards establishing and dictating an architectural theme and requirements pertaining to building style and design, construction materials and site planning.

8.1.2 Procedures and fees for making application to the DRC for design review approval, including the documents to be submitted and the time limits in which the DRC must act to approve or disapprove any submission.

8.1.3 Time limitations for the completion, within specified periods after Approval, of the Improvements for which Approval is required under the Design Guidelines.

8.1.4 Establishing the maximum developable area of a Parcel or set-back or view corridor requirements.

8.1.5 Specifications for the location, dimensions and appearance or screening of any fences, accessory structures, antennae or other Improvements.

8.1.6 Landscaping regulations, including limitations and restrictions prohibiting the removal or requiring the replacement of existing trees; guidelines encouraging the use of plants indigenous to the locale and compatible with the design theme for the Development; and other practices benefitting the protection of the environment, aesthetics and architectural harmony of the Development.

8.1.7 General instructions for the construction, reconstruction, refinishing or alteration of any Improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits upon a Parcel, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformers and meters.

8.2 DRC Membership and Organization. The DRC shall be composed of three

(3) individuals and need not include any Parcel Owners. During Declarant control, the DRC shall consist of 3 members as appointed by Declarant to serve as the initial DRC. In the event there is not at least one (1) design professional on the DRC, the DRC may, as needed from time to time, retain the services of a design professional for assistance in the discharge of its duties. Declarant shall maintain control of the DRC until such time as the community is 67% owner occupied. At the time the Association control is transferred to homeowners, they shall also accept control of the DRC. All members of the DRC shall be appointed, removed and replaced by the Declarant, in its sole discretion, until the Declarant waives this right by notice to the Owners recorded in the office of the Clerk and Recorder of Weld County, Colorado. At that time, unless the Declarant has appointed its successors by designating same in the written notice, the Association, acting through its Executive Board, shall thereafter, from time to time have the right to appoint, remove and/or replace members of the DRC by duly recorded written instrument specifying the members of the DRC.

8.3 Purpose and General Authority. The DRC shall review, study and either approve or reject proposed Improvements on the Property, all in compliance with this Declaration and as further set forth in any Design Guidelines as the DRC may establish from time to time to govern its proceedings. No Improvement shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the DRC; provided, however, that Improvements that are completely within a building may be undertaken without such Approval. All Improvements shall be constructed only in accordance with approved plans.

The Design Review Committee shall approve plans and specifications submitted to it only if it determines that the construction, alteration, and additions contemplated thereby, and in the location as indicated, will comply with this Declaration; will serve to preserve and enhance the value of the Parcels within the Development; will be consistent with the spirit and intent of this Declaration; and will maintain a harmonious relationship among structures and topography within the Development. The Design Review Committee shall consider the quality of workmanship, type of materials, and harmony of exterior design with other Dwelling Units located within the Development. Should the Design Review Committee fail to approve or disapprove the plans and specifications submitted to it by an Owner of a Parcel within thirty (30) days after complete submission of all required documents, the plans shall be resubmitted to the Design Review Committee by certified mail, return receipt requested, with a copy to the Declarant, by certified mail, return receipt requested, and, in the event that the Design Review Committee fails to approve or disapprove any plans and specifications as herein provided within fifteen (15) days after such resubmission to the Design Review Committee and the Declarant by certified mail, the same shall be deemed to have been approved, as submitted, and no further action shall be required, provided, however, that no building or other structure shall be erected or allowed to remain on any Parcel which violates or is inconsistent with any of the covenants or restrictions contained in this Declaration. The issuance of a building permit or license for the construction of improvements inconsistent with this Declaration shall not prevent the Association or any Owner from enforcing the provisions of this Declaration.

8.3.1 DRC Discretion. The DRC shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Parcel, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in this Declaration and any Design Guidelines. The DRC, in its sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental interests of the Development, or other factors as necessary or desirable to fulfill the intent of this Declaration or any Design Guidelines, may excuse compliance with such requirements in specific situations and may permit compliance with different or alternative requirements.

8.3.2 Binding Effect. The actions of the DRC in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

#### 8.4 Organization and Operation of DRC.

8.4.1 Chairman. So long as the Declarant appoints the DRC, the Declarant shall appoint the chairman. At such time as the DRC is appointed by the Executive Board, the chairman shall be elected annually from among the members of the DRC by a majority vote of such members. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, an interim chairman.

8.4.2 Operations. The DRC chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the DRC prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member.

8.4.3 Voting. The affirmative vote of two (2) or more members of the DRC shall govern its actions and be the act of the DRC.

8.4.4 Expert Consultation. The DRC may avail itself of other technical and professional advice and consultants as it deems appropriate, and the DRC may delegate its plan review responsibilities, except final review and approval, to one (1) or more of its members or to consultants retained by the DRC. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant shall be equivalent to approval or disapproval by the entire DRC.

8.5 Expenses. The DRC shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the DRC from time to time, and such fees shall be collected by the DRC to defray and reimburse all expenses of the DRC's operation (including, without limitation, the cost of retaining any technical or professional advice or consultation deemed necessary or appropriate by the

DRC).

8.6 Submission. Each application for Approval shall include such documentation as may be required by the DRC or as set forth in any Design Guidelines.

8.7 Other Requirements. Compliance with the design review process of the Development is not a substitute for compliance with the applicable building, zoning and subdivision regulations, and each Owner is responsible for obtaining all Approvals, licenses, and permits as may be required prior to commencing construction of Improvements.

Further, the establishment of the DRC and procedures for architectural review shall not be construed as changing any rights or restrictions upon Owners to maintain and repair their Parcels and Improvements as otherwise required under the Documents.

8.8 Limitation of Liability. The DRC shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the DRC nor any individual DRC member shall be liable to any person for any official act of the DRC in connection with submitted plans and specifications, except to the extent the DRC or any individual DRC member acted with malice or wrongful intent. Approval by the DRC does not necessarily assure approval by the appropriate governmental board or City of Fort Lupton. Notwithstanding that the DRC has approved plans and specifications, neither the DRC nor any of its members shall be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such Approval of the construction of the Improvements. Neither the DRC, nor any agent thereof, nor the Declarant, nor any of his employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In all events the DRC shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the DRC's decision. The Association, however, shall not be obligated to indemnify a member of the DRC to the extent any such member of the DRC is adjudged to be liable for negligence or misconduct in the performance of his or her duty as a member of the DRC, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

8.9 Enforcement.

8.9.1 Inspection. Any member or authorized consultant of the DRC may enter upon any Parcel at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Parcel to determine whether the Improvements have been or are being built in compliance with this Declaration and the plans and specifications approved

by the Design Review Committee.

8.9.2 Certificate of Compliance. Upon payment of a reasonable fee established from time to time by the DRC, and upon written request of any Owner or his or her agent, an existing or prospective lender, or a prospective grantee, the DRC shall issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the DRC's knowledge, the Improvements on a particular Parcel are in compliance with the terms and conditions of this Declaration.

8.9.3 Deemed Nuisances. Every violation of this Declaration is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Parcel Owner shall be applicable. Without limiting the generality of the foregoing, this Declaration may be enforced as provided below.

(i) Fines for Violations. The Association or the DRC may adopt a schedule of fines for failure to abide by this Declaration and any Design Guidelines, including fines for failure to obtain any required approval from the DRC.

(ii) Removal of Nonconforming Improvements with Court Order. The DRC, the Association, or any Parcel Owner, and after first obtaining a court order from a Colorado court having jurisdiction thereof, may enter upon any Parcel and remove any Improvement constructed, reconstructed, refinished, altered or maintained in violation of this Declaration. The Owner of the Improvement shall immediately reimburse the appropriate parties for all expenses incurred in connection with such removal. If the Owner fails to reimburse the appropriate parties within thirty (30) days after receipt of notice of the expenses, the sum so owed shall bear interest at the rate of eighteen percent (18%) per annum from the date of the advance through the date of reimbursement in full, and all such sums and interest shall be a lien on the defaulting Owner's Parcel, and shall also be enforceable as provided in this Declaration.

8.10 Continuity of Construction. All Improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within twelve (12) months after commencement, unless an exception is granted in writing by the DRC.

## **ARTICLE 9. PROPERTY USE RESTRICTIONS**

9.1 General Restriction. The Property shall be used only for the purposes set forth in this Declaration, as permitted by the applicable ordinances of the City of Fort Lupton and the laws of the State of Colorado and the United States, and as set forth in this Declaration or other specific recorded covenants affecting all or any part of the Property.

9.2 Building Type and Use Restrictions. Each Parcel will conform to the uses allowed by right, accessory uses, uses by special review and bulk requirements of the Estate Zone District as described by Chapter 16 in the City of Fort Lupton Code with the

exception of any variances described within these covenants.

9.3 Manufactured Housing/Mobile Homes. No mobile homes, modular homes or factory manufactured stick built homes shall be permitted on any Parcel within the Development.

9.4 Architectural Requirements.

(a) Materials. All Dwelling Units constructed within the Development shall be of materials consistent with the rural, high plains nature of the Development, such as natural, stained or earth tone plank/wood siding, masonite siding, stucco, brick or stone. High quality vinyl may be allowed in the discretion of the DRC. All materials used on the front elevation shall also be incorporated on all four-sides of any Building or other Improvement. Reflective roof materials and similar materials inconsistent with the character of the Development are prohibited.

(b) Color. All Dwelling Units and other structures constructed on any Parcel shall be stained or painted such natural colors as shall be authorized and approved in writing by the DRC. Bright colors shall not be permitted as the primary color of any Dwelling Unit and outbuildings. It is the intent of these restrictions that colors of Dwelling Units and other structures within the Development shall be such as to minimize the visual impacts and to otherwise be compatible with the rural, high plains nature of the Development.

(c) Minimum Size of Dwelling Unit. All dwelling units shall have a minimum 2,000 square foot finished living space if a ranch style home or 2,800 square feet if a two-story home.

(d) Additional Requirements for On-site Wastewater Treatment. Activities such as landscaping (i.e. planting of trees and shrubs) and construction (i.e. auxiliary structures, dirt mounds, etc.) are expressly prohibited in the designated absorption field site. Livestock should not be allowed on the leach field areas at any time.

9.5 Outbuildings. Any outbuildings (including, without limitation, barns or other structures as contemplated by Sections 9.2 and 9.19) shall be similar in design, appearance and color to the Dwelling Unit located on such Parcel and shall occupy more than 5% of the total lot square footage (in addition to the Dwelling Unit).

9.6 Basements. Basements are allowed with the understanding that groundwater conditions may exist which might allow water to seep into basements. Nearby agricultural ditches leak water which filters through the ground and in some areas create high water tables at different times of the year. It is strongly recommended that preventive construction measures be taken if a basement is planned. Such preventive measure might include sump pumps, exterior French drains, or other methods suggested



by the homeowner's engineer.

9.6 Temporary Structures. No structures of a temporary character, including, by example and not limitation, trailers, mobile homes, converted trailers, recreational vehicles, campers or tents shall be used on any Parcel for residential purposes. No temporary structures shall be permitted except as may be determined to be necessary during construction and as specifically authorized by the Design Review Committee. Notwithstanding the foregoing, pickup camper, camper trailer, motor home, recreational vehicle or tent may be placed on a Parcel for a period not to exceed thirty (30) days per calendar year, for recreational purposes.

9.7 Fences. While fencing of any Parcel shall not be required (other than in connection with the placement of animals on Owner's Parcel as addressed in Section 9.19) any fences installed on the exterior boundary of a Parcel shall be installed in a workmanlike manner and shall consist of new materials. Fencing should be in an open rail style with no stockade style fencing permitted. Any fences constructed within the interior of a Parcel shall also be installed in a workmanlike manner and shall consist of new materials and colors compatible with the other Improvements located on the Parcel. No fencing shall interfere with the Access Easement. Any such fencing shall, in any event, be subject to approval by the DRC.

9.8 Motorized Vehicles and Trailers. No more than three (3) trucks, trail bikes, golf carts, recreational vehicles, motor homes, motor coaches, farm tractors, snowmobiles, campers, trailers, boats and boat trailers or similar vehicles in aggregate (other than passenger automobiles or pickup or utility trucks with a capacity of one [1] ton or less) or any other motorized vehicles shall be parked, stored or in any manner kept or placed on any portion of the Property except within an enclosed garage or unless appropriately screened. In addition, any such trailers or vehicles which are parked outside of an enclosed garage must be appropriately screened, as approved by the DRC, with fencing or shrubbery, or by positioning so as not to be visible from other Parcels, and must be either parked on firm weed-free surface (or if parked on vegetated surface, vegetation must be mowed periodically to maintain a neat appearance). Automobiles and pickup or utility trucks with a capacity of one (1) ton or less shall only be parked in garages, carports or other designated parking areas. The restrictions of this Section 9.8 shall not, however, be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to the Property or for the Declarant or other Owners.

9.9 No Excavation. No excavation shall be made except in connection with Improvements approved as provided in this Declaration. For purposes of this Section, "excavation" means any disturbance of the surface of the land which results in a removal of earth, rock, or other substance a depth of more than twelve (12) inches below the natural surface of the land.

9.10 Signs and Advertising. No sign of any character shall be displayed or placed upon any Parcel, except signs meeting the following requirements: (i) one (1) sign

per Parcel of not more than four (4) square feet in total area (per side) advertising a Parcel for sale shall be permitted on each Parcel; (ii) the Declarant shall have the right to place a permanent development sign within common space adjacent to County Road 21; (iii) until such time as the Declarant is no longer the Owner of a Parcel within the Property, the Declarant or its agents shall have the right to place one (1) or more signs on the Property, with a maximum size of 48 square feet, offering the Parcels within the Property for sale; (iv) additional signs may be permitted if approved by the DRC and follow Weld County Sign regulations as detailed in Chapter 16 of the City of Fort Lupton Code.

9.11 Trash. No trash, ashes, building materials, firewood or other unsightly items should be thrown, dumped or stored on any land or area within the Development. Rubbish, refuse, garbage, and other solid, semi-solid and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate on any Parcel, and shall be disposed of in a sanitary manner. No Parcel shall be used or maintained as a dumping ground for any materials, provided that the foregoing shall not prohibit a properly maintained compost pile from being located upon a Parcel. All trash containers shall be kept in a neat, clean and sanitary condition and shall be stored inside a garage or other approved structure. No trash, litter or junk shall be permitted to remain exposed upon any Parcel and visible from adjacent public roads or other Parcels. There shall be no burning or other disposal of refuse out of doors. No lumber or other building materials shall be stored or permitted to remain on any Parcel unless screened from view from other Parcels and public roads except for reasonable storage during construction. No Owner shall be deemed prohibited from personally disposing of trash from his or her Parcel.

In order to minimize damage to the common roads, the Association, acting through its Executive Board, shall have the right to require trash collection from Parcels be performed by only one (1) company and that the trash shall be collected from all Parcels by such trash company on the same day of each week. The Executive Board shall select the trash collection company based upon competitive bids. The costs of removal of trash and debris from an Owner's Parcel shall be paid by each Owner directly to the trash collection company and the Association shall not have the duty to assess the costs of trash collection as a Common Expense. No Owner shall be deemed prohibited from personally disposing of trash from his or her Parcel.

This Section 9.11 shall not apply to any contractor during the construction of a Dwelling Unit or other Improvements within a Building Envelope. The contractor may dispose of trash, rubbish, debris and other construction material from a Parcel either personally or by contracting with a trash collection company. The trash collection company may remove trash, rubbish, debris and other construction materials from a Parcel during the construction of the Dwelling Unit as often as the contractor deems appropriate or as required by the Design Review Committee. However, all trash to be removed from the Development, including trash removed during the period of construction, shall be subject to such Rules and Regulations as shall be established from time to time by the Association for the purpose of minimizing damage to the common roads.

9.12 Abandoned, Inoperable, or Oversized Vehicles. No abandoned or inoperable vehicles of any kind shall be stored or parked on any portion of the Property, except as provided below. "Abandoned or inoperable vehicle" is defined as any vehicle which has not been driven under its own propulsion for a period of seven (7) days or longer; provided, however, this shall not include vehicles parked by Owners in an approved location while on vacation or residing away from the Development. All unsightly or oversized vehicles, recreational vehicles, snow removal equipment, garden maintenance equipment, and all other oversized or unsightly equipment, machinery or vehicles may not be parked or stored on the Property except within a residential garage or accessory structure, if any, approved by the DRC. "Oversized" vehicles, for purposes of this Section, shall be vehicles, including recreational vehicles, which are too high to clear the entrance to a customary residential garage.

9.13 Antennas and Satellite Dishes. All external radio antennas, television antennas, satellite dishes or other external signal receiving devices shall be installed or erected in such a manner and with appropriate screening as shall be required by the Design Guidelines. The Design Guidelines shall encourage the use of screening, unobtrusive placement, planting, painting and other measures to ensure that the aesthetics of the Development are protected and to ensure the safety of the installation of any such devices. In no event shall any satellite dish in excess of one (1) meter in diameter be permitted within the Development. The Design Review Committee may promulgate reasonable rules and regulations to regulate the proposed locations and require screening or painting to minimize visual intrusion of such devices, provided that no such rules and regulations shall impair dish or antenna reception nor result in an unreasonable cost or delay in the installation and maintenance of a satellite dish or antenna.

9.14 Outside Burning. There shall be no exterior fires, except barbecues, outside fireplaces and braziers contained within facilities or receptacles and in areas designated and approved by the Design Review Committee. Incinerators and incinerator fires are prohibited. No Owner shall permit any condition upon his or her Parcel which creates a fire hazard or is in violation of fire prevention regulations.

9.15 Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

Without limiting the generality of the foregoing, each Owner shall abide by any wildlife regulations imposed by any agency or authority having jurisdiction over the Property. No Owner shall dispose of, or allow any person under the Owner's control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

9.16 Control of Weeds/Mowing. The Owner of each Parcel shall control Canadian thistle and other noxious weeds upon his or her Parcel by mowing or applying weed control chemicals prior to maturity of the weeds and the windborne disbursement of seeds therefrom. The Association shall have the right to establish reasonable rules and regulations from time to time with respect to cutting or mowing of grasslands on each Parcel which are reasonably accessible by tractor or other mowing equipment in order to minimize potential fire hazards to persons and property within the Development. In the event an Owner fails to mow or cut his or her grass in accordance with any rules and regulations established by the Association for the purpose of minimizing fire hazards, the Association may enter upon such Parcel and cut and/or mow grasses and vegetation and the Association shall be liable to the Association for the costs and expenses incurred in doing so.

9.17 Maintenance of Parcels and Improvements. Each Owner shall keep or cause to be kept all buildings, fences, and other structures located on his or her Parcel in good repair and shall otherwise comply with the Design Guidelines. The exterior of all Dwelling Units and any and all appurtenant structures within the Development shall be maintained in good, attractive condition by the Owners thereof. All Dwelling Units and appurtenant structures shall be repainted or re-stained periodically as needed. The Association may require an Owner to paint or stain a Dwelling Unit and appurtenant structures, and upon such Owner's failure to do so, the Association may cause such action to be taken, and may assess such Owner for the costs incurred thereby. If any Owner fails to maintain the exterior surfaces in accordance with the foregoing requirements, the Association may give the Owner written notice to perform such work within not less than fifteen (15) days, and if the Owner fails to perform such work within that time, the Association may have such work done at the expense of the Owner. If the work is done by the Association at the Owner's expense, the Owner shall pay for such work within three (3) days after notice is given in writing to the Owner as to the cost of such work. If the Owner fails to pay within that time and if the Association thereafter incurs reasonable attorneys' fees and costs in collecting such amount from the Owner, all such attorneys' fees and costs incurred shall likewise be a debt owing by the Owner to the Association.

Prior to the start of construction of a Dwelling Unit on each Parcel, the Association shall have the right to plant and maintain grass on it; periodically mow such grass and other vegetation; remove any trash or other debris; and remove snow from any sidewalk on the Parcel. The Association may charge reasonable fees to the Owners of such vacant Parcels, for such services. Such services shall be deemed rendered solely to the Owners of each such vacant Parcel and charged to such Owners accordingly. The service charges shall be based upon actual costs incurred by the Association to perform the services, as well as an administrative fee; such service charges need not be identical for the Parcels. Such service charge shall be due upon billing by the Association and payable within fifteen (15) days of such billing. The Owner shall be liable for reasonable attorneys' fees and costs incurred by the Association in collecting such service charge.

9.18 Business Activities. Business, trade or similar activity or any activity or use

which involves an unreasonable number of guests or visitors upon a Parcel shall not be conducted on or from any Parcel without the prior written Consent of the Association, which Consent may be withheld in the sole discretion of the Association. Notwithstanding any Approval by the Association, any such activities may be conducted only so long as (i) the existence or operation of the business activity is appropriately screened from surrounding properties and the road right-of-way; (ii) such business shall conform to all applicable zoning requirements for the Development; (iii) the activity involves minimal visits to the Parcel by customers, patients, clients, suppliers or other business invitees or door-to-door solicitation of residents of the Development; (iv) the business shall be conducted primarily by the residents of the Dwelling Unit; (v) the activity is consistent with the residential character of the Development and does not constitute a nuisance, a hazardous or offensive use or threat to the safety or security of other residents of the Development, which may be determined in the sole discretion of the Association; and (vi) no retail sales shall be conducted on the Parcel. The terms "business" and "trade" as used in this Section shall have their ordinary and generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit or a license is required.

9.19 Animals. An Owner or tenant of any Parcel may keep animals upon his or her Parcel for recreational purposes and for use by the immediate family of such Owner or tenant, subject to the following restrictions and limitations:

(a) No animals may be grazed upon an Owner's Parcel unless the Parcel, or portion thereof upon which such grazing activities occur, has a fence installed thereon in accordance with the design criteria acceptable to the Design Review Committee, which fence shall be sufficient to contain such animals upon the Owner's Parcel.

(b) No more than one (1) animal unit per acre , not to exceed four (4) animal units may be maintained upon the Owner's Parcel. Animal units are described by Weld County as follows:

<i>Unit Equivalents</i>	<i>Animal</i>	<i>Number of Animals Equivalent to One Animal Unit</i>	<i>Maximum Number Per Acre</i>
Cattle	1	1	1
Horse	1	1	1
Mule	1	1	1
Burro	1	1	1
Sheep	.5	2	2
Goat	.5	2	2
Llama	.1	10	10

Alpaca	.075	13	13
Poultry	.04	25	25
Rabbit	.04	25	25

(c) No domestic elk, buffalo, ostriches, pigs, roosters or other animals not specifically authorized shall be permitted upon any Parcels within the Development. Braying animals such as mules shall not be permitted since they may create excessive noise.

(d) Each Parcel shall be maintained in a clean and sanitary condition at all times.

(e) All hay and animal feed must be stored inside a barn or other structure approved by the Design Review Committee suitable for such purpose.

(f) No Parcel shall be overgrazed resulting in the destruction of pasture and excessive dust conditions, and the character of the Parcel shall not be changed by the grazing of animals and livestock.

(g) All permitted animals and livestock shall be cared for in a humane and husband like manner.

(h) Corrals and other outbuildings not to exceed a combined maximum of 15,000 square feet may be erected and maintained for permitted animals and livestock. Any barns, indoor arenas, corrals or outbuildings which are erected upon a Parcel for animals shall be located within a designated building envelope so as not to interfere with the view of other Parcel Owners, and shall be similar in appearance and color to the Dwelling Unit located on such Parcel. All such structures shall first be approved in writing by the Design Review Committee.

(i) All permitted animals and livestock shall be tethered or confined by a fence or corral approved in writing by the Design Review Committee within an Owner's Parcel.

(j) Household pets, such as dogs and cats, shall be permitted on an Owner's Parcel, provided that said pets shall remain under the control of their owner at all times by voice control or physical restraint and shall not be allowed to chase domestic animals, livestock or wildlife. Household pets may not be kept, trained, bred or maintained on a Parcel for commercial purposes without the prior written Consent of the Association, which Consent may be withheld in the sole discretion of the Association and all relevant zoning requirements. No more than five (5) adult household pets of one species or a total of eight (8) household pets of two or more species as determined by the Executive Board shall be kept on a Parcel. Any offspring of a household pet over six (6) months of age shall be considered an adult.

(k) Pet runs or other fenced-in areas for the containment of dogs or other pets shall be permitted upon a Parcel only with the prior written Approval of the Design Review Committee. In considering whether to approve any such pet run or other fenced-in areas, the Design Review Committee shall consider the location, size, concealment, proximity to surrounding structures and adjacent Parcels, proposed building materials, aesthetic appeal and harmony of exterior design in relation to surrounding structures.

(l) No Person owning, keeping or possessing a dog upon a Parcel shall permit his or her dog to bark and/or howl continuously for a period in excess of ten (10) minutes between the hours of 10:00 p.m. and 6:00 a.m., or for a period in excess of twenty (20) minutes between the hours of 6:00 a.m. and 10:00 p.m., if such barking or howling is audible at the boundary of the Parcel upon which such Person resides. Such Person shall be entitled only to one (1) warning by the Association before being required to remove the dog from the Parcel or enclose it in a structure from which such barking and/or howling cannot be heard.

The Association may, in its discretion, after considering the number and type of animals to be kept upon a Parcel, require the Owner thereof to submit and comply with a livestock management plan to be approved by the Association.

9.20 Private Driveways. The private driveway providing access to an Owner's Dwelling Unit shall be maintained in a good state of repair at all times. In the event the Parcel Owner(s) fail to maintain the private driveway, the Association may enter upon the Parcel and maintain and repair the private driveway in such condition as it deems appropriate. In the event the Association shall undertake to maintain and repair the private driveway due to the failure of the Parcel Owner(s) to do so, the Parcel Owner(s) shall be liable to the Association for an Individual Assessment as set forth in this Declaration. In addition, in the event of a shared private driveway servicing two (2) or more Parcels, the Association may serve as an arbitrator or mediator with respect to determining and enforcing the maintenance requirements for any such private driveway upon written request of all such Parcel Owners.

The Owner of each Parcel shall install and maintain culverts to wherever private driveways or other personal roadways are constructed within such Parcel at locations which may interfere with stormwater drainage. All culvert diameters shall be sufficient to allow for the passage of such stormwater drainage and shall be maintained in a good state of repair at all times.

9.21 Landscaping. Formal landscaping plans will not be required, however a stabilizing, erosion control growing material must be installed front the front of the home to the street. Such plans need be submitted to the Design Review Committee, and material installed within 24 months of occupancy. All landscaping shall be maintained in a healthy and sightly condition at all times.

9.22 No Re-subdivision. Under no circumstances may any Parcel be further

divided, subdivided or re-subdivided without the prior written Consent of the Association, which Consent may be withheld in the sole discretion of the Association. However, nothing contained herein shall be construed to prevent an Owner from combining two (2) or more contiguous Parcels and building only one (1) Dwelling Unit on one (1) of such Parcels. Changes to properties legal boundaries would require compliance with all applicable Weld County regulations and with all applicable Design Guidelines, including, but not limited to, any requirements in connection with adjustments to (i) accommodate a larger Dwelling Unit on a Parcel; (ii) modify minimum and maximum areas of living area that may be constructed and (iii) undertake measures necessary to preserve any easements reserved with respect to the contiguous Parcels. In the event two (2) or more contiguous Parcels are owned by one (1) Owner and developed with only one (1) Dwelling Unit, such action shall not affect the number of votes or Assessments allocated to such Parcels. In the event the Owner of such contiguous Parcels is required by Weld County or any other governmental authority or by the holder of a First Security Interest to plat the Parcels in order to construct Improvements on them, the obligation for Assessments, voting rights and Allocated Interests set forth herein for the Parcels shall remain the same as existed immediately prior to such platting.

9.23 Disturbing the Peace. No Person shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, disorderly, or obstreperous conduct, and no Owner shall knowingly permit such conduct upon any Parcel owned by such Owner.

9.24 Noise/Nuisance. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Property or Improvements, shall be placed or used on any portion of the Property. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its occupants. No activity which creates a foul or unpleasant odor as determined by the DRC shall be permitted on any Parcel.

9.25 Lighting. All exterior lighting of the Improvements and grounds on the Property shall be illuminated only with downlighting on other similarly unobtrusive lighting as may be approved by the DRC. The foregoing restriction shall not prohibit "gas lights" not exceeding one hundred (100) watts located in front of a Dwelling Unit or security lighting which is triggered by motion, sound or heat, provided that such lights shall not remain on continuously during nighttime hours. The purpose of the foregoing prohibition is to restrict farm-type lighting which is intended to illuminate significant portions of a Parcel during nighttime hours. Outdoor arena lighting, as may be approved by the DRC, shall be permitted, but shall not be used between the hours of 11:00 p.m. and 6:00 a.m.

9.26 General Practices Prohibited. The following practices are prohibited within the Development:

9.26.1 Removing any rock, plant material, topsoil or similar items from any



property of others;

9.26.2 Careless disposition of cigarettes and other flammable materials; or

9.26.3 Violation of any state, federal, or local law, ordinance, rule or regulation.

9.27 Leasing. The Owner of a Parcel shall have the right to lease his or her Parcel, subject to the following conditions:

9.27.1 All leases shall be in writing and shall be for a term of not less than three (3) months.

9.27.2 Any lease shall be for the entire Dwelling Unit and related Improvements.

9.27.3 The lease shall be specifically subject to this Declaration, and any failure of a tenant to comply with this Declaration shall be a default under the lease.

9.27.4 The Owner shall be liable for any violation of this Declaration committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant.

9.28 Enforcement. The Association, or the Design Review Committee, or any Parcel Owner, may take such action as it deems advisable to enforce this Declaration as provided herein. In addition, the Association and the Design Review Committee shall have a right of entry on any part of the Property for the purposes of enforcing this Article, and any costs incurred by the Association or the Design Review Committee in connection with such enforcement which remain unpaid thirty (30) days after notice of the cost has been given to the Owner shall be subject to interest at the rate of eighteen percent (18%) per annum from the date of the advance through the date of payment in full by the Owner, and shall constitute a lien against such Owner's Parcel.

9.29 Zoning Regulation. No Parcel shall be occupied or used by or for any structure or purpose which is in violation of the building codes, zoning resolutions, subdivision regulations or other governmental rules and regulations applicable to the Development, including the zoning regulations of Weld County, Colorado. Such governmental restrictions on the use and construction and erection of Improvements upon the Property may be more restrictive than those set forth in this Declaration and the Declarant makes no representation that Approval of any use or structure by the Design Review Committee shall be deemed approved by the appropriate governmental entity.

## **ARTICLE 10. INSURANCE AND FIDELITY BONDS**

10.1 Authority to Purchase. All insurance policies relating to the Common Elements shall be purchased by the Association or its duly authorized agent. The

Executive Board, any manager and the Declarant shall not be liable for failure to obtain any coverage required by this Article 10 or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs. Notwithstanding the foregoing, if the insurance described in Sections 10.3 and 10.4, below, is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or otherwise delivered to all Owners.

10.2 General Insurance Provisions. All such insurance coverage obtained by the Executive Board shall conform to, the following provisions:

10.2.1 As long as the Declarant owns any Parcel, the Declarant shall be protected by all such policies in the same manner as any other Owner. The coverage provided to the Declarant under the insurance policies obtained in compliance with this Article 10 shall not be deemed to protect or be for the benefit of any general contractor engaged by the Declarant, nor shall such coverage be deemed to protect the Declarant for (or waive any rights with respect to) warranty claims against the Declarant as the developer of the Common Interest Community.

10.2.2 The deductible, if any, on any insurance policy purchased by the Executive Board may be treated as a Common Expense payable from annual Common Expense Assessments or Special Assessments allocable to all of the Parcels or to only some of the Parcels, if the claims or damages arise from the negligence of particular Owners (if the repairs benefit only particular Owners), or as an item to be paid from working capital reserves established by the Executive Board. Except as otherwise set forth in this Article, the maximum deductible amount shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount.

10.3 Physical Damage Insurance on Common Elements. The Association shall obtain insurance for all insurable Improvements, if any, on the Common Elements in an amount equal to the full replacement value (i.e., one hundred percent [100%] of the current "replacement cost" exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage), which shall include all building service equipment and the like, common personal property and supplies, and any fixtures or equipment within the Common Elements. In addition, such policy shall afford protection against at least the following:

10.3.1 Loss or damage by fire and other hazards covered by the standard extended coverage endorsement with the standard "all-risk" endorsement covering sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage.

10.3.2 Such other risks as shall customarily be covered with respect to projects similar in construction, location and use to the Development.

In contracting for the insurance coverage obtained pursuant to this Section above, the Executive Board shall be required to make reasonable efforts to secure coverage which provides the following:

- (i) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to this Declaration not to do so.
- (ii) The following endorsements (or equivalent): (a) "cost of demolition;" (b) "contingent liability from operation of building laws or codes;" (c) "increased cost of construction;" (d) "agreed amount" or elimination of co-insurance clause; and (e) "inflation guard" (if available).

Prior to obtaining any policy of physical damage insurance or any renewal thereof, and at such other intervals as the Executive Board may deem advisable, the Executive Board shall obtain an appraisal from a general contractor or such other source as the Executive Board may determine of the then current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Article.

10.4 Liability Insurance. The Association shall obtain a comprehensive policy of commercial general liability insurance (including bodily injury, libel, slander, false arrest and invasion of privacy coverage) and property damage insurance with such limits as the Executive Board may from time to time determine, insuring each member of the Executive Board, the Association, the Manager, each Owner and the respective employees, agents and all Persons acting as agents of the Association against any liability to the public or the Owners (and their guests, invitees, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance, or use of the Common Elements and common roads within the Development and any other areas under the control of the Association. The Declarant and its officers, directors, agents and authorized representatives shall be included as additional insureds in their capacity as an Owner, officer, director, agent or authorized representative. The Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements.

Such comprehensive policy of public liability insurance shall include the following:

10.4.1 Coverage for contractual liability, liability for non-owned and hired automobiles, and, if applicable, host liquor liability, employer's liability, and such other risks as shall customarily be covered with respect to developments similar to the Development in construction, location, and use.

10.4.2 A cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured.

10.4.3 A "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to an Owner because of the negligent acts of the Association or another Owner.

The Executive Board shall review the coverage limits at least once every two (2) years, but, generally, the Executive Board shall carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to the Development, and in no event shall such coverage be less than One Million Dollars (\$1,000,000.00) for all claims for bodily injury or property damage arising out of one (1) occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than One Million Dollars (\$1,000,000.00).

10.5 Fidelity Insurance. Fidelity bonds shall be maintained by the Association to protect against dishonest acts on the part of its officers, Directors, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds shall be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as a responsible party and shall be written in such an amount as the Executive Board may determine appropriate. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of Persons serving without compensation from the definition of "employees," or similar terms or expressions. Such bonds shall cover the maximum funds that will be in the custody of the Association or any management agent at any time while the bond is in force.

10.6 Provisions Common to Physical Damage Insurance, Liability Insurance, Fidelity Insurance and Flood Insurance. Any insurance coverage obtained by the Association under the provisions of this Article above shall be subject to the following provisions and limitations:

10.6.1 The named insured under any such policies shall include the Declarant, until all of the Parcels in the Development have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under such policies.

10.6.2 Each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

10.6.3 In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or the holders of their Security Interests.

10.6.4 The policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner (including an Owner's family, tenants, servants, agents, invitees, and guests) when such act or neglect is not within the control of the Association, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control; or (iii) conduct of any kind on the part of an Owner (including the Owner's family, tenants, servants, agents and guests) or any Director, officer, employer, or manager of the Association, without prior demand to the Association and a reasonable opportunity to cure the matter.

10.6.5 The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be cancelled in the middle or at the end of any policy year or other period of coverage or substantially modified or reduced (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice mailed to the Association and to each Owner and holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

10.6.6 The policies shall contain a waiver by the insurer of any right to claim by way of subrogation against the Declarant, the Executive Board, the Association, the manager, and any Owner and their respective agents, employees, or tenants, and in the case of Owners, members of their households, and of any defenses based upon co-insurance.

10.6.7 The policies described in Sections 10.3 and 10.4, above, shall provide that any "no other insurance" clause shall expressly exclude individual Owners' policies from its operation so that the physical damage policy or policies purchased by the Association shall be deemed primary coverage, and any individual owners' policies shall be deemed excess coverage.

10.7 Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and Directors from personal liability in relation to their duties and responsibilities in acting as such officers and Directors on behalf of the Association.

10.8 Workmen's Compensation Insurance. The Association shall obtain workmen's compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

10.9 Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it deems appropriate with respect to the Association's responsibilities and duties.

10.10 Insurance Obtained by Owners. Each Owner shall have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Owner's personal property and personal liability (except to the extent any Owner's Parcel is encumbered by an easement conveyed to the Association as a Common Element). In addition, each Owner may obtain such other and additional insurance coverage on and in relation to his or her Parcel as such Owner concludes to be desirable; provided, however, that no insurance coverage obtained by an Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner shall include a waiver of the insurance company's right of subrogation against the Association and other Owners. Each Owner may obtain such insurance coverage on and in relation to his or her Parcel or Dwelling Unit as such Owner concludes to be desirable. Neither Declarant nor the Association shall be required to maintain insurance for any Owner or with respect to any Parcel or Dwelling Unit.

## **ARTICLE 11. CONDEMNATION**

11.1 Rights of Owners. Whenever all or any part of the Common Elements shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

11.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless, within sixty (60) days after such taking, Owners representing at least sixty-seven percent (67%) of the votes in the Association, including, during the Period of Declarant Control, the vote of the Declarant, shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available therefor, in accordance with plans approved by the Executive Board, the Design Review Committee and any other authority having jurisdiction in such matters. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed on the basis of the Common Expenses allocated to the Owners under this Declaration, first to the holders of Security Interests and then to the Owners, as their interests appear.

11.3 Complete Condemnation. If all of the Development is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award

attributable to the Common Elements shall be distributed as provided in Section 11.2, above.

## **ARTICLE 12. FIRST SECURITY INTEREST PROTECTIONS**

12.1 Special Rights of First Security Interests. Any holder of a First Security Interest encumbering any Parcel, upon filing a written request therefor with the Association, shall be entitled to (a) written notice from the Association of any default by the mortgagor of such Parcel in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Executive Board or Members of the Association; (e) receive written notice of abandonment or termination of the Association; (f) receive thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; and (g) receive thirty (30) days' written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements following a decision of the Association to assume self-management of the Common Elements.

12.2 First Security Interest Right to Pay Taxes, Rental and Insurance Premiums. Any one (1) or more First Security Interests, jointly or singly, shall be entitled to pay (a) any taxes or other charges which are in default and which may or have become a lien against any of the Common Elements; or (b) any overdue premiums on hazard insurance policies or, if such policies are cancelled, secure new hazard insurance coverage for the Common Elements or Parcels, and the First Security Interests making such payments shall be entitled to immediate reimbursement therefor from the Association.

12.3 Association Right to Security Interest Information. Each Parcel Owner hereby authorizes any First Security Interest holding a Security Interest on such Owner's Parcel to furnish information to the Association concerning the status of such First Security Interest and the loan which it secures.

## **ARTICLE 13. ENFORCEMENT OF COVENANTS**

13.1 Violations Deemed a Nuisance. Every violation of this Declaration is deemed to be a nuisance and is subject to all the remedies provided for the abatement or correction of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of this Declaration shall be available.

13.2 Compliance. Each Owner or other occupant of any part of the Property shall comply with the provisions of this Declaration as the same may be amended from time to time.

13.3 Failure to Comply. Failure to comply with this Declaration shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both.

13.4 Who May Enforce. Any action to enforce the Documents may be brought by the Declarant, the Association or the Design Review Committee in the name of and on behalf of the Association or of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce this Declaration, then the aggrieved Owner may bring such an action.

13.5 Remedies. In addition to the remedies set forth above in this Article, any violation of this Declaration shall give to the Executive Board, the Association, the Design Review Committee or the Declarant, on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest of the Owners and the meaning of this Declaration. Any such cure shall be at the expense of the Owner or other person responsible for the offending condition.

13.6 Nonexclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

13.7 No Waiver. The failure of the Executive Board, the Association, the Declarant, the Design Review Committee, or any aggrieved Owner to enforce this Declaration shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of this Declaration at any future time.

13.8 No Liability. Neither the Executive Board, the Association, the Declarant, the Design Review Committee, nor any Owner shall be liable to any other Owner for the failure to enforce any of this Declaration at any time.

13.9 Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of this Declaration, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of this Declaration or the restraint of violations of this Declaration, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees (and legal assistants' fees) as may be incurred, or if suit is brought, as may be determined by the court.

#### **ARTICLE 14. DURATION OF THESE COVENANTS AND AMENDMENT**

14.1 Term. This Declaration and any amendments or supplements hereto shall remain in effect from the date of recordation until the twenty-first (21st) anniversary of the date this Declaration is first recorded in the office of the Clerk and Recorder of Larimer County, Colorado. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless otherwise terminated or modified as



provided below.

14.2 Amendment. Except as otherwise provided in this Article 14, this Declaration, or any provision of it, may be terminated, extended, modified, or amended, or revoked as to the whole or any portion of the Property, upon the written consent of Owners representing ownership of seventy-five percent (75%) or more of the Parcels. Amendments made pursuant to this Section shall inure to the benefit of and be binding upon all Owners of any part of the Property, their family, tenants, guests, invitees, and employees, and their respective heirs, successors, and assigns.

14.3 Requirement for Declarant's Approval Generally. Notwithstanding the provisions of Section 14.2, (i) no termination, extension, modification, amendment or restatement of this Declaration may be made during the Period of Declarant Control without the Declarant's written consent; and (ii) no termination, extension, modification, amendment or restatement of this Declaration may be made during the Period of Declarant Control affecting (a) the right of the Declarant to appoint the Design Review Committee, (b) any right expressly reserved to the Declarant under this Declaration or (c) the protection of the Declarant's rights under this Article 14, without the Declarant's written consent.

14.4 Notice of Amendment. No amendment or revocation of this Declaration shall be effective unless a written notice of the proposed amendment is sent to every Owner reasonably in advance of any action taken or purported to be taken and such Owner has been given the opportunity to vote or give his or her consent thereto.

14.5 Effective on Recording. Any modification, amendment or revocation shall be immediately effective upon recording with the Clerk and Recorder of Weld County, Colorado, a copy of such amendment, modification, or revocation executed and acknowledged by the necessary number of Owners (and by the Declarant, as required).

## **ARTICLE 15. MISCELLANEOUS PROVISIONS**

15.1 Severability. This Declaration, to the extent possible, shall be construed or reformed to give validity to all its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

15.2 Construction. In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

15.3 Headings. The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.

15.4 Waiver. No failure on the part of any party to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver. No

waiver shall be effective unless it is in writing and signed by the party against whom such waiver is sought to be enforced.

15.5 Notices. Notice of matters affecting the Common Interest Community may be given to Parcel Owners by the Association or by other Parcel Owners in the following manner: Notice shall be hand delivered or sent by United States mail, postage prepaid, to the mailing address of each Parcel or to any other mailing address designated in writing by the Parcel Owner to the Association. Such notice shall be deemed given when hand delivered or when deposited in the United States mail, postage prepaid.

15.6 Limitation of Liability. Neither the Association nor any officer or member of the Executive Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Documents if the action or failure to act was made in good faith. The Association shall indemnify all the officers and Executive Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

15.7 Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Name: 4Z Investments, LLP,  
a Colorado Limited Liability Partnership

By: \_\_\_\_\_  
Chris Zadel, Manager

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF WELD                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2020, by Chris Zadel as Manager of 4Z Investments, LLP ., a Colorado Limited Liability Partnership .

WITNESS my hand and official seal.

My commission expires:

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Notary Public

APPROVAL, RATIFICATION AND CONFIRMATION

The undersigned, having a security interest in the real property described on **Exhibit "A"** attached hereto and incorporated herein by reference, hereby approves, ratifies, confirms and consents to the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Thunder Valley Estates .

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed by its Manager this \_\_\_\_\_ day of March, 2020.

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF WELD            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires:

\_\_\_\_\_  
Notary Public

EXHIBIT "A" ATTACHED TO AND MADE A PART OF THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THUNDER VALLEY ESTATES .

Legal Description of the Property

EXHIBIT "B" ATTACHED TO AND MADE A PART OF THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THUNDER VALLEY ESTATES .

Site Plan