

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR SELECTED LOTS  
SPRUCE MOUNTAIN ESTATES, UNITS ONE AND TWO  
(40 SELECTED LOTS)

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS (the "Amended and Restated Declaration") is made as  
of the 16<sup>th</sup> day of January, 2010, by the Spruce Mountain Ranch Homeowners  
Association, Inc., a Colorado non-profit corporation (the "Association").

WITNESSETH:

WHEREAS, Spruce Mountain Ranch Properties, LLC (the "Developer") was the  
developer of forty (40) lots, zoned ER-Estate Residential, in Douglas County, Colorado, more

*specifically*  
**UNOFFICIAL COPY**

LOTS 1, 4 AND 6, IN SPRUCE MOUNTAIN ESTATES, UNIT ONE, ACCORDING  
TO THE RECORDED PLAT RECORDED FEBRUARY 18, 1961, AT RECEPTION  
NO. 110432, AND LOTS 4 THROUGH AND INCLUDING 13, 17 THROUGH AND  
INCLUDING 19, AND 22 THROUGH AND INCLUDING 45, SPRUCE MOUNTAIN  
ESTATES, UNIT TWO, ACCORDING TO THE RECORDED PLAT THEREOF,  
RECORDED NOVEMBER 3, 1966. AT RECEPTION NO. 136460, TOGETHER  
WITH ADJACENT ROADWAYS TO SAID LOTS ON THE RECORDED PLATS OF  
SPRUCE MOUNTAIN ESTATES, UNITS ONE AND TWO, RECORDED WITH  
THE CLERK AND RECORDER IN DOUGLAS COUNTY, COLORADO (the  
"Property"); and

WHEREAS, the control of the Association has transferred from the Developer to the  
Lot Owners;

WHEREAS, the Association desires to maintain the Property as a highly desirable rural  
residential subdivision; protect the natural beauty, growth, native setting, and surroundings;  
prevent Owners from improper use of the Property, the construction of unsuitable  
improvements, the creation of unsightly conditions on any Lots; and otherwise avoid any use  
of permanent construction which would depreciate the value of the Property and any Lot; and

WHEREAS, the forty (40) Lots are subject to a Plan for Augmentation, as set forth in the  
Decree entered by Division 1 of the Water Court of the State of Colorado in Case No. 90 CW  
179, dated December 31, 1998; and

WHEREAS, the Association shall be responsible for implementing and administering the  
Plan for Augmentation in the Decree set forth In Water Court Case No. 90 CW 179 and  
administering the Plan for Augmentation and otherwise enforcing the covenants as set forth  
herein; and

WHEREAS, the Developer recorded the Declaration of Covenants, Conditions and Restrictions for Selected Lots Spruce Mountain Estates, Units One and Two (40 Selected Lots) with the Clerk and Recorder in Douglas County, State of Colorado at Reception No. 99041790 (the "Original Declaration"); and

WHEREAS, the Association desires to amend and restate in their entirety the covenants and restrictions contained in the Original Declaration relating to the Property.

NOW, THEREFORE, the Association hereby declares, makes and establishes the following covenants, conditions, restrictions, reservations, uses, limitations, and obligations which the Property and all of its Lots shall be subject to, encumbered by, and which shall expressly run with the land:

~~ARTICLE 1.00 - DEFINITIONS~~  
**UNOFFICIAL COPY**

The following words, when used in this Amended and Restated Declaration or any supplementary declaration, unless otherwise stated, shall have the following meanings:

1.01 Act shall mean C.R.S. § 38-33.3-101, et seq., the Colorado Common Interest Ownership Act.

1.02 Association shall mean "Spruce Mountain Ranch Homeowners Association, Inc.," a non-profit corporation organized pursuant to the Act to maintain and administer the common elements herein defined and administer and enforce the covenants, collect, disburse, and account for assessments and charges as herein provided.

1.03 By-Laws mean any instrument, however denominated, which are adopted by the Association for its regulation and management, including any amendments to the same.

1.04 Common Elements means the Association's right, title, and interest in and to the Water Plan for Augmentation dated December 31, 1998 in Case No. 90 CW 179 of Division 1 of the Water Court of the State of Colorado as the same relates to the Property.

1.05 Common Interest Community means real estate described in a declaration with respect to which a person, by virtue of ownership, is obligated to pay insurance on and/or for the maintenance of other real estate described in the Amended and Restated Declaration.

1.06 Executive Board means the body, regardless of name, designated in the Amended and Restated Declaration to act on behalf of the Association.

1.07 Lot shall refer to any one of the forty (40) lots identified above.

1.08 Owner means and refers to the owner of record, whether one or more persons

or entities of fee simple title to any Lot situated within the Property which is subject to this Amended and Restated Declaration, but notwithstanding any applicable theory relating to mortgages, deeds of trust, or other liens or encumbrances upon any such property. Owner shall not include or refer to a mortgagee, beneficiary of a deed of trust, or a lien holder unless and until such party has acquired title pursuant to a foreclosure or any applicable procedure in lieu of foreclosure.

1.09 Planned Community means a Common Interest Community that is not a condominium or cooperative.

ARTICLE 2.00 - PLANNED COMMUNITY, LOT OWNERSHIP, ASSOCIATION  
MEMBERSHIP

2.01 Recording. When recorded, these Amended and Restated Declarations shall replace in their entirety, covenants and/or amendments thereto recorded November 3, 1966, in Book 1173, at Page 159; August 17, 1970, in Book 208, at Page 253; January 17, 1986, in Book 619, at Page 311; March 5, 1999, in Book 1677, at Page 1828; and May 11, 1999, in Book 1705, at Page 199-2009. With these Amended and Restated Declarations is established a Planned Community, a type of Common Interest Community, pursuant to the Act, which is neither a condominium nor a cooperative, inclusive of the Property.

2.02 Nonpartition/Common Element. All rights in the Common Elements and any easement rights as set forth herein shall be owned and administered in common for the use and benefit of all Lot Owners and shall remain undivided. No Lot shall be subject to any manner of subdivision and shall be governed by existing ER-Estate Residential Zoning of Douglas County which currently exists on the Property, except as modified herein. Each Lot Owner, with the acceptance of his or her deed or other instrument of conveyance, specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the rights in the Common Elements or a subdivision of his or her Lot.

2.03 Common Element Rights. Every Lot Owner, its family members, guests, invitees, and licensees shall have a right and easement of enjoyment in and to the use of the Common Elements, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Lot, provided, however, that such rights and easements shall be subject to: the terms and conditions of this Declaration; the right of the Association to adopt Rules and Regulations concerning the same; and the right of the Association to make assessments for their maintenance and upkeep, as provided herein.

2.04 Association Membership, Voting Rights. Each Lot shall be subject to assessment as hereinafter set forth. Each Lot Owner shall be a member of the Association and shall remain a member for the period of his ownership, provided however that, in no event, shall the total number of Association votes which are cast with respect to any Lot exceed the total number of votes allocable thereto. Membership in the Association may

not be separated from ownership of the Lot.

2.05 Classes of Voting Membership. The Association shall have one (1) class of voting membership. Each Lot Owner shall be entitled to one (1) vote for each Lot owned. When more than one Lot Owner holds an interest in the same Lot, all such Lot Owners shall be members, and the vote for such Lot shall be cast as the Lot Owners thereof agree, but in no event shall more than one (1) vote per question be cast with respect to such Lot. If the Lot Owners of such Lot do not agree as to the manner in which their vote should be cast when called upon to vote, then they shall be treated as having abstained.

**ARTICLE 3.00 - COMMON ELEMENTS – ASSOCIATIONS’ RIGHTS**

3.01 In General. In addition to promulgating rules and regulations on the use of Common Elements as may be necessary and prudent, the Association shall have the right to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the proper service and maintenance of the Property.

3.02 Water Rights. The rights of the Association in the Water Augmentation Plan, being the rights of forty (40) Lots, pursuant to the Decree of the Water Court for Division 1, in Case No. 90 CW 179, may also be assigned to any state or local governmental authority authorized and capable to administer and operate the same.

3.03 Insurance. The Executive Board of the Association may obtain insurance insuring the Association, its directors and/or officers, as it deems necessary or prudent.

**ARTICLE 4.00 - ASSESSMENTS**

4.01 Personal Obligation. All Lot Owners and any purchaser under an executory land sales contract covenant and agree that they shall be personally obligated to pay to the Association:

- A. Annual Common Expense Assessments imposed by the Association to meet the Common Expense and reserve requirements of the Association, pursuant to 4.02 below.
- B. Special Assessments, pursuant to Section 4.03 below; and
- C. Other charges, fees and assessments, including, without limitation, default assessments, and as may be otherwise provided in this Amended and Restated Declaration.

All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees and charges attributable to their Lot. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges and fees provided for herein by abandonment or leasing of his Lot.

4.02 Annual Common Expense Assessments. Annual Common Expense Assessments initially in the amount of One Hundred Ten Dollars (\$110.00) per year per Lot shall be due and payable on or before January 31<sup>st</sup> of each year.

Annual Common Expense Assessments shall be based on the Association's advance budget of cash requirements needed to provide for payment of all estimated expenses related to or connected with the administration of the Association. Such Common Expense Assessments shall not exceed ten percent (10%) of the previous year's expense assessment, except in lieu of an emergency, where this annual amount can be greater than ten percent (10%), if approved by a fifty-one percent (51%) vote of all Lot Owners voting pursuant to Section 2.04 above.

4.03 Special Assessments. At any time and from time to time, the Association, with the consent of two-thirds (2/3) of the votes of the Lot Owners voting pursuant to Section 2.04 above, may add an annual Special Assessment annually for the purpose of defraying, in whole or in part, payments for any operating deficit or unbudgeted expenses in the administration of the Association and/or for the repair, maintenance, or improvement of any facilities within the Common Elements.

4.04 Notice/Quorum. Written notice for any meeting establishing a budget for Common Expense Assessments or for emergency or Special Assessments shall be sent to all Lot Owners not less than thirty (30) days nor more than sixty (60) days in advance of said meeting. At the first such meeting the presence of members or of proxies entitled to cast fifty percent (50%) of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

4.05 Lien for Assessments. The assessments, charges and fees, including, without limitation, any default assessment arising under the provisions of this Article, together with all interest, costs, late charges, expenses and reasonable attorney fees which may arise under the provisions of this Amended and Restated Declaration, shall, pursuant to the Act, be a lien in favor of the Association and upon the Lot to which such assessments, charges and fees apply. The Association shall have all rights of enforcement and of collection of any sums due and the enforcement of any lien rights pursuant to the Act. Any assessment, charge or fee which is not fully paid within thirty (30) days after the due date thereof shall bear interest at the rate of eighteen percent (18%) per annum, and the Association, may, in addition, assess a monthly late charge.

4.06 First Mortgagees May Pay Assessments and Cure Default. In the event any assessment, monthly or other installment thereof on any Lot shall not be paid by the Owner thereof within thirty (30) days after the same is due, or if a default by any Lot Owner of

any provision of this Amended and Restated Declaration, the Articles of Incorporation or By-Laws of the Association shall not be cured within thirty (30) days after written notice thereof is given to such owner, then any first mortgagee may (but shall not be required to) pay such assessment, monthly or other installment thereof, together with any other amounts secured by the Association's lien created by this Article 4.00, and may (but shall not be required to) cure any such default.

4.07 Individual Assessments. In the event that maintenance or repair of any area of the Common Elements is required, which is determined to be caused by or through the negligent or willful act or omission of a Lot Owner, his or her agent, a member of his or her family, a guest, invitee, or licensee, then the expense, costs and fees incurred by the Association for such repair and maintenance shall be a personal obligation of such Lot Owner, and if not paid to the Association within thirty (30) days after the Association shall have given notice to the Lot Owner of its determination of liability and the amount of the assessment for such expense, costs and fees, then the same may be enforced as any other assessment under this Article, and the Association shall have all lien rights against the Owner's Lot for enforcement and collection of their assessment.

UNNOTIFIED ORIGINAL COPY

**ARTICLE 5.00 - ARCHITECTURAL CONTROL  
COVENANTS AND RESTRICTIONS**

5.01 Architectural Control Committee. The Association shall maintain an architectural control committee (the "Committee"), which shall have and exercise all powers, duties and responsibilities as set forth herein and promulgate rules, regulations and procedures to fairly and efficiently perform the same. The Committee shall be comprised of three (3) members and shall be independent of the Executive Board. However, positions may be filled by members of the Executive Board if necessary.

A. General Duties of Committee. The Committee shall ensure that the construction of all improvements, all landscaping, and all alterations on every Lot of the Property is complimentary to the natural surroundings; and the seclusion of each home from other homes shall be protected to the extent possible. All improvements shall be constructed to minimally impact the natural vegetation and landscape, and the Committee shall ensure that no structure, of a temporary or permanent nature, nor occupancy, occurs on any Lot, unless complete plans for such construction or alteration are approved in writing by the Committee prior to the commencement of work.

If the Committee fails to take action within thirty (30) days after complete plans for such work have been submitted, then all of such submitted plans shall be deemed to be approved, if construction is commenced thereafter. Approval by the Committee shall not be deemed to constitute compliance with the requirements of any local building codes, and it shall be the responsibility of the Lot Owner to comply therewith.

B. Variances. Where circumstances, such as topography, property lines,

location of trees, vegetation, or other physical interference dictates the Committee may, by a two-thirds (2/3) vote, allow reasonable exceptions to and modifications of these covenants.

C. Enforcement. The Committee shall have the right to prosecute any actions for damages to enforce the provisions of all covenants by injunctive relief or otherwise on behalf of itself and all or part of the Lot Owners. In addition, each Lot Owner shall have the right to prosecute any violation of these covenants for injunctive relief and/or damages.

D. Non-Liability. The Committee shall not be liable in damages to any person or entity submitting any plans for approval or to any Lot Owner by reason of any action taken, the failure to act, the approval of or the denial of plans. Any person or entity acquiring title to a Lot or submitting plans to the Committee for approval, in so doing, agrees, covenants and warrants that he or it will not bring any action or suit to recover damages against the Committee, its members individually, or its advisors, employees, or agents.

UNOFFICIAL COPY

5.02 Protective Covenants. Improvements on any Lot of the Property shall be subject to the following:

A. Zoning, Use and Occupancy. All uses and structures on the Property shall be subject to current Douglas County zoning of the Property, ER-Estate Residential Zoning, and shall be subject to all other ordinances, resolutions, rules and regulations of Douglas County as the same presently exist or may hereinafter be amended. Any provision in this Declaration in conflict with the aforesaid Douglas County enactments shall be invalid. Provisions more limiting, however, or restrictive than those of Douglas County shall not be deemed a violation of or in conflict with the same. Each Lot shall be limited to residential use and occupancy only; and occupancy shall be "single-family," as that term is defined by Douglas County. "Multi-family" occupancy, meaning two (2) or more single-family units, is expressly prohibited.

B. Dwelling Size, Number and Location of Buildings. No building or structure shall be placed, erected, altered, or permitted to remain on any Lot other than one (1) single-family dwelling, with an attached or detached garage, together with one (1) service type out-building. A detached garage or out-building shall not be constructed until after commencement of construction of the dwelling house. The use of modular homes shall be prohibited. The minimum square footage of each single-family dwelling, exclusive of porches, garages, and basements, shall be 1,800 square feet. For a structure of one and one-half (1 1/2) stories or more, the total ground floor space, exclusive of porches, garages, and basements must not be less than 1,200 square feet. No buildings shall be located on any Lot nearer than 50 feet to the front Lot line or nearer than 35 feet to any side street line or rear Lot line, nor nearer than 25 feet to any interior Lot line otherwise, and no building shall be located nearer than 10 feet from any water well site and/or sewage septic tank or leach field.

Any setback requirements more restrictive for any Lot, which may be set forth on the plats of the Property, referenced above, shall have no force and effect. All detached garages and all accessory buildings shall be located to the rear of the main residential dwelling unless a variance is granted by the Committee.

C. Construction. The type and nature of construction and the materials to be used in all dwelling houses, garages and out-buildings shall be as approved by the Committee. All such approvals shall be in the form of written permission issued by the Committee. All improvements or structures to be erected or built on any Lot in this subdivision shall be fully completed within one (1) year after the date of the commencement of construction, and all building material and other equipment normally used for the erection and construction of said structures shall be completely removed from the premises within said period of time, provided, however, interior finishing of dwelling houses may extend beyond this period so long as there are no building materials or other equipment used for the purpose of construction and erection stored on the premises beyond the one (1) year period of time herein designated. All detached garages and out-buildings on any Lot must be faced in like exterior materials as the residential dwelling.

D. Trees, Shrub, and Rocks. No trees, shrubbery, rocks or other natural resources shall be destroyed or removed from the Property without the consent of the Committee. Thinning of trees and clearing for buildings or improvements will be allowed. None of the native trees on the Property shall be cut or removed without the express approval of the Committee. Such approval shall not be unreasonably withheld in connection with the proposed construction or improvements. Notwithstanding the foregoing, diseased or dead trees shall be removed or treated by the Owner as soon as practicable. All Lots, whether vacant or occupied by dwellings, shall be kept free of accumulation of brush, trash, or other materials which may constitute a fire hazard or render a Lot unsightly, provided, however, that this shall not restrict Owners from storing fireplace wood in neat stacks on their Lots.

E. Fences and Signs. All fences erected on any Lot must be approved by the Committee. No chain link fencing and no barbed wire fencing shall be allowed, except that chain link fencing may be used for dog runs. Distinctive house numbers shall be required at the entrance of each driveway. No sign shall be displayed or placed upon any Lot except one (1) sign no larger than six (6) square feet, 2x3 feet in area for the purpose of advertising the property for sale, house numbers, occupant's name, or signs used by a builder during the construction and sales period. Political signs shall not be permitted. All signs are subject to the approval of the Committee.

F. Wells Irrigation and Septic Systems. No well for domestic or irrigation use nor a septic system shall be drilled or constructed, altered or used, unless each is fully approved as to design, capacity, location and construction (including construction materials) after approval by the appropriate state and local agencies, including but not limited to the State Water Engineer, the State Health Department and Douglas



County or regional health authorities. No more than 10,000 square feet shall be placed under irrigation for lawn and garden purposes on any Lot, subject to other restrictions, if any, placed on each Lot by the State Water Engineer and subject to the Decree in Case 90 CW 179 in Division 1 of the Water Court for the State of Colorado and the Plan for Augmentation set forth therein and other rules and regulations of the Association reasonable and necessary to effectuate said Decree.

**5.03 Use Restrictions.** The following restrictions shall apply to each Lot:

A. In General. No improvements or noxious activities shall be permitted on any Lot, which is or might become a nuisance to adjoining Lots or other Lots within the Property. No hunting of any animals, birds, or other wildlife shall be allowed, and the discharge of firearms for recreational purposes shall be strictly prohibited. All fireplaces, chimneys and barbecues shall be equipped and maintained with spark arresting screens. Reasonable precautions shall be taken against fire hazards, and no outdoor burning of any kind, except for family cooking in a controlled pit, grill or barbecue, shall be permitted; otherwise, no open fires will be allowed.



B. Refuse and Rubbish. All Lots shall at all times be kept clean, sightly and in a wholesome condition, and no trash, litter or junk shall be permitted to remain exposed upon any Lot and visible from any road or adjoining lot. Rubbish, garbage, trash or other waste (including animal waste) shall be kept and disposed of in a sanitary manner. No Lot or easement shall be used or maintained as a dumping ground for rubbish, garbage or trash. No refuse or trash shall be burned at any time on the Property. All trash containers or receptacles shall be hidden from view except on trash pick up day. All trash containers or receptacles shall be placed on the road in front of each Lot for pick up when scheduled.

C. Animals and Pets. Animals are limited to household pets as defined in Douglas County Zoning Resolutions. Household pets include, but are not limited to, dogs, cats, small rodent animals (i.e. hamsters, ferrets, gerbils) and small birds, provided they are not raised for commercial purposes. Livestock, including but not limited to domestic hooved livestock, poultry, fowl, pigeons, ducks and rabbits, whether confined and/or caged in the exterior of the Owner's Lot are not permitted. Non-domestic/exotic animals are not permitted in accordance with Douglas County Zoning Resolutions.

Dogs are to be contained by acceptable enclosures and are not allowed to roam free off the Owner's Lot. All animal enclosures must be fifty (50) feet from the front, twenty (20) feet from the side and back Lot lines in accordance with Article 5.00, Section 5.02, Paragraph E (Fences and Signs).

The following types of dogs (whether pure bred or mixed breed) are prohibited from being kept on an Owner's Lot: those known as Pit Bulls (American Staffordshire Terriers, American Pit Bull Terriers or Staffordshire Bull Terriers), Rottweilers, Presa Canarios, Tosas, Cane Corsas, Dogo Argentinas, Wolf Hybrids and any dog specifically trained to

attack persons, other dogs, animals, or to guard persons or property. The Executive Board may also impose additional restrictions on prohibiting dog types with repeated prior history of causing bodily injury or those breeds that are potentially hazardous to the Association or its occupants, and potentially may not be kept on the property.

D. Prohibited Structures. Any energy efficient device (those considered to be off grid, i.e. windmills and solar panels) added to the Lot and Owner's residence shall be submitted to the Committee for approval. Notwithstanding the foregoing, towers, radio antennae and propane tanks are prohibited.

E. Automobiles. All non-operative and/or unlicensed automobiles which are being stored on the Lot must be enclosed in a garage, out-building, or otherwise concealed, either by a solid fence, berm, vegetative barrier or combination thereof. Under these covenants, a one ton or smaller vehicle, commonly known as a pickup truck, shall be considered the same as an automobile. An automobile which is not operable or is not currently licensed or which has not been moved for more than thirty (30) days shall be deemed to be a vehicle which is being stored on the Lot.

F. Other Vehicles, Boats, Campers, and Motorcycles. Commercial vehicles, boats, campers, horse trailers, motor homes, motorcycles, and/or recreational vehicles and associated trailers kept, stored, or parked on any Lot must be in an enclosed garage, out-building or completely hidden from view, except the same shall be permitted to be kept outside for no more than a forty-eight (48) hour period for the purpose of cleaning, maintenance, or repairs. Contractors, commercial vehicles, trucks, and construction trailers incidental to building projects on a Lot are excepted from this restriction. Storage of heavy equipment (i.e. backhoes, skidders, front end loaders, or contract commercial vehicles and equipment) is strictly prohibited.

G. Vehicle Parking. The parking of any vehicle (including inoperable and unlicensed vehicles) on any public and/or Douglas County roadway within the Property or that of the neighboring Property for longer than forty-eight (48) consecutive hours is prohibited. Non-operable vehicles are subject to storage in accordance with paragraph E above.

H. Utilities. Except for such utility lines erected prior to the recording of the Original Declaration all electrical, telephone, gas, water, sewer, cable television and other utility lines and pipe on any Lot or any roadway easement shall be placed underground. No transformer or gas, electric, water or other meter, of any type, or any other apparatus, shall be located on any pole.

I. Businesses. No commercial businesses of any kind shall be permitted or conducted on any Lot including an existing home or Lot purchased for investment purposes. Nothing contained herein, however, shall preclude home occupations as defined and governed by the Douglas County zoning and ordinances.

5.04 Written Request for Consideration and/or Exemption. Any Lot Owner may seek exemption or variance from any provision contained in Articles 4.00 or 5.00 by providing a written request for Consideration (the "Consideration") to the Committee. Such Consideration shall be submitted in a format or form designed and approved by the Committee for the specific purpose of evaluating, approving, or denying the request. The Committee in its sole discretion (or by Lot Owner request), may seek approval or denial of the Consideration by other Lot Owners at a regularly scheduled meeting, or a special meeting of the Committee.

5.05 Escalation Procedure. In accordance with Section 5.01, paragraph C, the Committee, in its sole discretion, shall have the right to escalate disputes between the Committee and a Lot Owner to the Executive Board for further consideration and resolution.

UNOFFICIAL COPY  
ARTICLE 6.00 - MISCELLANEOUS PROVISIONS

6.01 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

6.02 Captions. The captions to the articles and sections herein are for convenience and reference only.

6.03 Primacy of Act/Conflict. The provisions of this Amended and Restated Declaration shall be in addition to, supplemental of, and consistent with the Act, as the same currently exists and as the same may be amended from time to time, and to all other applicable provisions of law. To the extent this Amended and Restated Declaration shall be in conflict with the Act, the provisions of the Act shall replace those contained in this Amended and Restated Declaration. In the case of any conflict between this Amended and Restated Declaration and the Articles of Incorporation or the By-laws of the Association this Amended and Restated Declaration shall control. In case of any conflict between the Articles of Incorporation and the By-Laws of the Association, the Articles of Incorporation shall control.

6.04 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provision, contained in the Amended and Restated Declaration, the Articles of Incorporation, or By-Laws of the Association, as amended, shall be by any proceeding, at law or in equity, against any person or persons violating or attempting to violate any such provision, to enjoin or restrain such violation or attempted violation or to recover damages, or both, and the Association, any Owner or any first mortgagee shall have the right to institute, maintain and/or prosecute any such proceedings.

6.05 Amendment. This Amended and Restated Declaration may be amended pursuant to the terms and conditions of the Act and this Amended and Restated Declaration. Upon an affirmative vote of sixty-five (65%) percent of the members as defined in Section 2.04 above, this Amended and Restated Declaration may be amended at any time.

6.06 Non-Waiver. Failure by the Association, any Lot Owner, first mortgagee, or any other person, to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Amended and Restated Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

6.07 Severability. The provisions of this Amended and Restated Declaration shall be deemed to be independent and severable, and any provision inconsistent with the Act shall be replaced by the appropriate provision of the Act. The invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

6.08 Notices. Notice of actions affecting the Lot Owners shall be given by mailing a copy of such notice, postage prepaid, addressed to the member's last address appearing on the books of the Association or supplied by such members in writing to the Association for the purpose of notice. Such notice shall specify the action to be taken, the place, day and hour upon which the action will be taken. Any meeting of the Association shall be held upon notice given in accordance with the provisions contained in the By-Laws of the Association.

DATED this 1<sup>st</sup> day of April, 2010.