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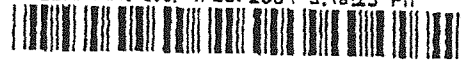
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DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
TOLLGATE CROSSING

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**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
TOLLGATE CROSSING**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TOLLGATE CROSSING (this "Declaration") is made as of this _____ day of _____, 2004, by KDB Homes, Inc., a Delaware corporation, d/b/a Continental Homes ("Declarant").

RECITALS

A. Declarant is the owner of the real estate in Arapahoe County, Colorado described in **Exhibit A** as Tollgate Crossing Subdivision Filing Nos. 1, 2, 3, and 5. As of the date of this Declaration, Declarant is under contract to purchase the real estate described in **Exhibit A** as Tollgate Crossing Subdivision Filing No. 4. All of the real estate described in **Exhibit A** is hereafter referred to collectively as the "Annexable Real Estate." Declarant desires to create a planned community known as "Tollgate Crossing" (the "Community") upon some or all of the Annexable Real Estate.

B. Portions of the Community will be designated for separate ownership and uses of a residential nature, and portions of the Community will be designated for ownership by a homeowners' association.

C. Declarant has caused the Tollgate Crossing Homeowners Association, Inc., a Colorado non-profit corporation, to be incorporated under the laws of the State of Colorado as an owners' association for the purpose of exercising the functions as herein set forth.

**ARTICLE I
ESTABLISHMENT OF COMMUNITY**

Section 1.1 Planned Community. Declarant intends to develop the Annexable Real Estate as a high quality, planned community of single-family residences in accordance with the terms and provisions of the Colorado Common Interest Ownership Act.

Section 1.2 Purposes of Declaration. This Declaration is executed (a) in furtherance of a common and general plan for the development of the Community; (b) to protect and enhance the quality, value, aesthetics, desirability, and attractiveness of the Community; (c) to set forth Tollgate Crossing Homeowners Association, Inc.'s responsibilities and authority to hold, maintain, care for, and manage the Community, including internal landscaped areas that will benefit all owners of "Lots" (hereafter defined) within the Community; (d) to define certain duties, powers, and rights of the "Owners" (hereafter defined); and (f) to define certain duties, powers, and rights of Declarant.

Section 1.3 Submission of Real Estate. Declarant further declares that all of the Annexable Real Estate now or hereafter described in **Exhibit A**, and as added by exercise of "Development Rights" (hereafter defined), shall be held, sold, and conveyed subject to the

easements, restrictions, covenants, and conditions described in this Declaration including, without limitation, the Development Rights and/or "Special Declarant Rights" (hereafter defined) set forth in Article VIII below. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Community; that this Declaration shall run with any and all portion of the Annexable Real Estate annexed into the Community and shall be binding on all parties and on their heirs, legal representatives, successors, and assignees having any right, title, or interest in the Annexable Real Estate or any part thereof annexed into the Community; and shall inure to the benefit of each Owner.

ARTICLE II DEFINITIONS

Section 2.1 "Act" means the Colorado Common Interest Ownership Act, codified as amended at C.R.S. 38-33.3-101, *et seq.*

Section 2.2 "Administrative Functions" means all functions of the Association as are necessary and proper under this Declaration and the Act and shall include, without limitation, providing management and administration of the Association; providing architectural review services under Article VI hereof; incurring reasonable attorneys' fees and accountants' fees; obtaining errors and omissions insurance for "Officers," "Directors" (hereafter defined), and agents of the Association; obtaining fidelity bonds for anyone handling funds of the Association; paying taxes levied against the "Common Elements" (hereafter defined); incurring filing fees, recording costs, and bookkeeping fees; obtaining and maintaining offices and office furniture and equipment; and performing such other reasonable and ordinary administration tasks associated with operating the Association.

Section 2.3 "Agency" means any mortgage insurance agency such as the VA, FHA, HUD, FNMA, FHLMC and shall include any rules and/or regulations promulgated by such mortgage insurance agency.

Section 2.4 "Allocated Interests" means the proportion of the votes in Association matters and liability for the payment of "Common Expenses" (hereafter defined) that are allocated to each Lot as more fully set forth in Section 9.5.

Section 2.5 "Annexable Real Estate" means the property that may be added to the Community and made subject to this Declaration at Declarant's discretion pursuant to the Development Rights set forth in Article VIII below.

Section 2.6 "Articles of Incorporation" means the Articles of Incorporation of Tollgate Crossing Homeowners Association, Inc., as the same may be amended from time to time, that have been or will be filed in the office of the Secretary of State of the State of Colorado.

Section 2.7 "Assessment" means all assessments for Common Expenses levied against a Lot pursuant to this Declaration and the Act including, without limitation, all "Common Assessment," "Special Assessment," or "Reimbursement Assessment" as defined herein.

Section 2.8 "Association" means the Tollgate Crossing Homeowners Association, Inc., a Colorado non-profit corporation, its successors and assignees.

Section 2.9 "Budget" means a written, itemized estimate of the income to be derived and the expenses to be incurred by the Association on an annual basis in performing its functions under this Declaration and prepared pursuant to Section 11.11 below.

Section 2.10 "Bylaws" means the Bylaws of the Association, as may be amended from time to time, that have been or will be adopted by the "Executive Board" (hereafter defined).

Section 2.11 "City" means the City of Aurora, Colorado.

Section 2.12 "Common Assessment" means the annual assessment levied against each Lot pursuant to the Budget for the purpose of paying the annual costs of operating the Association, including expenses incurred by the Association in connection with the performance of any Administrative Functions.

Section 2.13 "Common Elements" means any Real Estate owned by the Association and all Improvements now or hereafter made thereto, upon annexation into the Community and conveyance to the Association by Declarant, and any personal property owned from time to time by the Association. The term, "Common Element" is synonymous with the term, "common element" as defined at Section 103(5)(b) of the Act.

Section 2.14 "Common Expenses" means any expenditure made or liability incurred by, or on behalf of, the Association, together with any allocations to reserves, as the Executive Board may find necessary and appropriate pursuant to the "Governing Documents" (hereafter defined). Common Expenses shall not include any expenses incurred during the "Declarant Control Period" (hereafter defined) for initial development or other original construction costs unless approved by Owners representing a majority of the total votes of the Association, excluding votes held by Declarant.

Section 2.15 "Community" means the community known as the Tollgate Crossing, a "planned community" as defined at Section 103(22) of the Act.

Section 2.16 "County" means Arapahoe County, Colorado.

Section 2.17 "Declarant" means KDB Homes, Inc., a Delaware corporation, d/b/a Continental Homes, together with any Person to which any or all of the rights of Declarant may expressly be transferred in accordance with the requirements of the Act, including its successors and assignees. A Person shall be deemed to be a "successor and assignee" of KDB Homes, Inc., as a Declarant, only if specifically designated as a successor or assignee of Declarant under this Declaration in a "Recorded" (hereafter defined) instrument, and shall be deemed a successor and assignee of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the written instrument. A successor to Declarant by consolidation or merger shall automatically be deemed a successor or assignee of Declarant as a successor declarant under this Declaration.

Section 2.18 "Declarant Control Period" means the period that begins with the appointment of the initial Executive Board and continues until the earlier of: (a) 60 days after Declarant conveys to Owners other than a Declarant 75% of the Lots that may be created in the Community; (b) two years after the last conveyance of a Lot by Declarant in the ordinary course of business; or (c) two years after the right to add new Lots was last exercised. Declarant may voluntarily relinquish such power evidenced by a Recorded notice executed by Declarant. In that event, Declarant may, at its option, reserve the right to approve or veto specified actions of the Association or the Executive Board as described in the Recorded notice, during the period that Declarant would otherwise be entitled to appoint and remove Directors and Officers.

Section 2.19 "Declaration" means this instrument as it may be amended or supplemented from time to time.

Section 2.20 "Design Guidelines" means the guidelines and rules relating to the procedures, materials to be submitted, fees, and additional factors that will be taken into consideration in connection with the approval of any proposed Improvements, as the same may be published, amended, and supplemented from time to time by the "Design Review Committee" (hereafter defined).

Section 2.21 "Design Review Committee" means the committee established by the Association pursuant to Article VI hereof for the purpose of reviewing and approving all plans for Improvements to be constructed or installed by Owners upon the Lots.

Section 2.22 "Development Rights" means those rights set forth in this Declaration and those "development rights" set forth at Section 103(14) of the Act, all as more specifically described in Article VIII hereof.

Section 2.23 "Directors" means the members of the Executive Board.

Section 2.24 "Easements and Licenses" means those easements and licenses appurtenant to, or included in, the Community or to which any portion of the Community is or may become subject by a reservation in this Declaration, including those Easements and Licenses to which the Real Estate is subject as set forth on **Exhibit B** attached hereto.

Section 2.25 "Eligible Holder" means those "Mortgagees" (hereafter defined) that hold a first lien security interest on any Lot, as more fully set forth in Section 14.2 hereof.

Section 2.26 "Executive Board" means the Board of Directors of the Association.

Section 2.27 "Extraordinary Action" means any of the following actions taken by the Association: (a) determining not to require professional management if such management has been required by a majority vote of the Owners or of the Mortgagees; (b) except pursuant to the Development Rights set forth in Article VIII, expanding the Community to include land not included in the Annexable Real Estate if such additional land would increase the total number of Lots; or (c) abandoning, partitioning, encumbering, mortgaging, conveying, selling, or otherwise transferring or relocating the boundaries of the Common Elements (except for (i) granting easements that are not inconsistent with or that do not interfere with the intended use of the Common Element, (ii) dedicating real estate as required by a public authority, (iii) causing

limited boundary line adjustments made in accordance with this Declaration, (iv) using insurance proceeds for purposes other than construction or repair of the insured Improvements, or (v) making capital expenditures other than for repair or replacement of existing Improvements during any 12-month period costing more than 20% of the Budget).

Section 2.28 "Governing Documents" means this Declaration, any applicable "Supplemental Declaration" (hereafter defined), the Bylaws, the Articles of Incorporation, the Design Guidelines, and the "Rules and Regulations" (hereafter defined), each as they may be amended from time to time.

Section 2.29 "Improvements" means all construction, installation, and expansion of structures and improvements located upon or made to a Lot and any appurtenances thereto of every type or kind including, but not limited to, "Residences" (hereafter defined), swimming pools, patio covers, awnings, the painting of any exterior surfaces of any visible structure, roofing, trash containers, mail boxes, satellite dishes, additions, walkways, screen or storm doors, outdoor sculptures or artwork, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, grading, filling, or similar disturbance to the surface of the land, and exterior air conditioning.

Section 2.30 "Lease" means any agreement for the leasing or rental of a Lot, or any dwelling unit located thereon and shall specifically include, without limitation, a month-to-month rental.

Section 2.31 "Limited Common Elements" means portions of the Common Elements primarily benefiting one or more, but less than all, Lots, as more particularly described in Article IV and as defined as "limited common element" at Section 103(19) of the Act.

Section 2.32 "Lot" means a physical portion of the Community that is designated for separate ownership or occupancy, the boundaries of which are depicted upon the "Plat" or any "Supplemental Plat" (hereafter defined) together with a non-exclusive easement for use and enjoyment of the Common Elements. For the purposes of conforming the terms and provisions of this Declaration to the terms and provisions of the Act, the term "Lot" shall be analogous to the term "Unit" as that term is defined at Section 103(30) of the Act. The term Lot shall not include any property owned by a public body or the Common Elements.

Section 2.33 "Maintenance Funds" means the accounts into which the Executive Board shall deposit money paid to the Association consisting of the "Operating Fund" and the "Reserve Fund" (hereafter defined), and any other fund that the Executive Board in its reasonable discretion deems necessary or desirable for the operation of the Community, and from which disbursements shall be made in the performance of the functions of the Association pursuant to Articles VI, IX, X, and XI hereof.

Section 2.34 "Managing Agent" means any one or more persons employed by the Association who is engaged to perform any of the duties, powers, or functions of the

Association, which Managing Agent shall be subject to replacement from time to time by the Executive Board.

Section 2.35 "Material Amendment" means the addition, deletion, or modification of any provisions contained herein regarding: (a) the Allocated Interests; (b) reserves for maintenance, repair, or replacement of Common Elements; (c) maintenance obligations; (d) allocation of rights to use Common Elements; (e) any scheme of regulation or enforcement of standards for maintenance, architectural design, or exterior appearance of Improvements; (f) reduction of insurance requirements; (g) restoration or repair of Common Elements; (h) the addition, annexation, or withdrawal of land to or from the Community except pursuant to Development Rights; (i) restrictions affecting the leasing or sale of a Lot; or (j) any provision that is for the express benefit of Mortgagees.

Section 2.36 "Metropolitan Districts" means any applicable quasi-municipalities formed pursuant to Title 32, Colorado Revised Statutes.

Section 2.37 "Mortgage" means any mortgage, deed of trust, or other such instrument given voluntarily by an Owner that encumbers such Owner's Lot to secure the performance of an obligation or the payment of a debt and that is required to be released upon performance of the obligation or payment of the debt.

Section 2.38 "Mortgagee" means a mortgagee or beneficiary under a Mortgage, as the case may be, and the assignees of such Mortgagee.

Section 2.39 "Notice and Hearing" means the procedural due process that must be provided to each Owner as set forth in the Bylaws and this Declaration upon an accusation that such Owner has violated an obligation under any Governing Document of the Association that would entitle the Association to enforce certain remedies provided for such violation under the Governing Documents.

Section 2.40 "Officers" means the officers of the Association including, but not limited to, a president, secretary, and treasurer.

Section 2.41 "Operating Fund" means the Maintenance Fund defined in Section 11.3 hereof.

Section 2.42 "Owner" means Declarant and any Person, or, if more than one, all Persons collectively, who hold fee simple title to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.

Section 2.43 "Person" means a natural person, a corporation, a partnership, a limited liability company, or any other entity permitted to hold title to real property pursuant to Colorado law.

Section 2.44 "Plat" means any of the Final Plat of Tollgate Crossing Filing Nos. 1 through 5, all Recorded or to be Recorded in the County of Arapahoe, State of Colorado.

Section 2.45 "Real Estate" means the real property Declarant annexes into the Community and makes subject to this Declaration by supplemental declaration or deed pursuant to the Development Rights set forth in Article VIII.

Section 2.46 "Record," "Recording," or "Recorded" refer to the acts and the resulting status, respectively, of filing for record of any document in the Office of the Clerk and Recorder of the County.

Section 2.47 "Reimbursement Assessment" means a charge against a particular Owner and such Owner's Lot for the purpose of reimbursing the Association for expenditures and other costs and expenses incurred by the Association that arise from or are related to any actions or violation of the Governing Documents by an Owner, together with late charges and interest thereon as more fully provided for herein.

Section 2.48 "Reserve Fund" means the fund defined in Section 11.3 hereof.

Section 2.49 "Residence" means the house constructed on a Lot for occupancy as a single-family home.

Section 2.50 "Rules and Regulations" means the rules and regulations adopted by the Executive Board.

Section 2.51 "Special Assessment" means a charge against each Owner and such Owner's Lot representing a portion of the costs of the Association for the purpose of defraying, in whole or in part, payments for any operating deficit, loss or unbudgeted expense, and/or unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the Common Elements.

Section 2.52 "Special Declarant Rights" means those rights set forth in this Declaration and those "special declarant rights" set forth at Section 103(29) of the Act and the other reserved rights, all as more specifically described in Article VIII.

Section 2.53 "Supplemental Declaration" means a written instrument, containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof that is Recorded in conjunction with the annexation of additional real property or other change to the Community.

Section 2.54 "Supplemental Plat" means and includes any land survey plat or supplement to the Plat that is Recorded by Declarant for the purpose of annexing the real estate described thereon to the Community.

Section 2.55 "Tract" means any real estate designated as a "Tract" on the Plat.

Section 2.56 "Working Capital Fund" means the fund established and maintained by the Association pursuant to Section 11.23 hereof.

ARTICLE III GENERAL RESTRICTIONS

Section 3.1 Binding Effect. The Real Estate shall be held, used, and enjoyed subject to the following limitations and restrictions and subject to the rights and reservations of Declarant set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Executive Board if such strict application would be unreasonably or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Design Review Committee or the Executive Board, as applicable. Violation of any provision of this Article by an Owner shall permit the Association a right of entry to enter upon the Lot of such Owner to cure such violation or otherwise cause compliance with such provision without the prior written notice to, or consent of, such Owner. Notwithstanding the foregoing, there shall be no entry into the interior of a Residence without the consent of the Owner thereof unless a clear emergency exists.

Section 3.2 Maintenance of the Community. No property within the Community shall be permitted to fall into disrepair, and all property within the Community, including any Improvements, shall be kept and maintained in a clean, attractive, and slightly condition. Maintenance, repair, and upkeep of each Lot, including all maintenance, repair, or replacement of any fence, whether installed by Declarant or Owner, shall be the responsibility of the Owner of the Lot. Easement areas specified on the Plat within each Lot, if any, are to be maintained by the Owner of the Lot. Maintenance, repair, and upkeep of Common Elements shall be the responsibility of the Association as more particularly provided herein.

Section 3.3 Permitted Uses. Lots shall be used primarily for residential purposes and uses that are customarily incidental thereto, including short-term and long-term rentals. No Improvement erected on a Lot shall be used or occupied for any purpose other than for a Residence. No Lot shall be used at any time solely for business, commercial, or professional purposes, except as are inherent in the types of residential uses described above. Notwithstanding the foregoing, an Owner may use his or her Lot for a professional occupation or home business, as long as the Lot is also being used for a Residence, the applicable zoning ordinances permit such use, and there is no external evidence of the occupational/business use. The Association is hereby authorized to adopt reasonable Rules and Regulations governing the use and occupancy of the Lots that are not inconsistent with the provisions of this Declaration.

Section 3.4 Construction Type. All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a Lot, except as expressly hereinafter provided for temporary buildings.

Section 3.5 Annoying Sounds or Odors. No sound or odor shall be emitted from any Lot or Common Element that is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security or safety devices used exclusively for security or safety purposes, shall be located or used on any property except with the prior written approval of the Executive Board.

Section 3.6 Use of Fertilizers, Pesticides, and Herbicides. Owners shall use only biodegradable and environmentally sensitive fertilizers, pesticides, and herbicides.

Section 3.7 No Hazardous Activities. No activity shall be conducted on, and no Improvement shall be constructed on, any Lot that is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property within the Community, and no open fires shall be lighted or permitted on any property within the Community except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

Section 3.8 No Unsightliness. All unsightly conditions, facilities, equipment, and objects shall be enclosed within a structure, including snow removal equipment, trash containers, and garden or maintenance equipment, except when in actual use.

Section 3.9 Weeds. Each Lot shall be kept free from weeds, brush, or other growth or trash that, in the reasonable opinion of the Association or the Design Review Committee, is unsightly or causes undue danger of fire. Subject to Section 3.6, each Owner shall employ weed control measures as needed to the unimproved areas.

Section 3.10 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub, tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot except within an enclosed structure or appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up, provided this is done no earlier than 24 hours before the scheduled pick-up. Such materials shall be contained inside garbage containers.

Section 3.11 Animals. No non-domesticated animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot. Domesticated birds or fish and other small domestic animals (e.g., cats and dogs) are allowed, provided that they are not kept, bred, or maintained for any commercial purpose. No animal of any kind shall be permitted that, in the reasonable opinion of the Executive Board, poses a threat to the health, safety, or welfare of the Owners or makes an unreasonable amount of noise or odor or is a nuisance. All pets shall be controlled by their Owners and shall not be allowed off their Owners' Lots except when properly leashed and accompanied by the Owner or such Owner's representative. Each Owner shall be responsible for proper collection and disposal of pet refuse from any property within the Community, including along trails or in open space areas. Additionally, each Owner of a pet shall be financially responsible and liable for any damage caused to person or property by said pet.

Section 3.12 No Temporary Structures. No tent, shack, temporary structure, or temporary building shall be placed upon any property within the Community for more than 24 hours, except with the prior written consent of the Executive Board. This Section 3.12 shall in no way limit the Development Rights and Special Declarant rights reserved in Article VIII that permit Declarant to erect temporary structures in the Community.

Section 3.13 No Storage Sheds. No manufactured or individually constructed storage sheds, shacks, buildings, or structures shall be placed upon any property within the Community without the prior written consent of the Design Review Committee.

Section 3.14 Restriction on Exterior Electronic Devices. Subject to applicable law, and subject to reasonable Rules and Regulations adopted by the Executive Board, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station, or similar device of any type ("Electronic Device") shall be erected, installed, or maintained on the Common Elements. Any exterior Electronic Device erected, installed, or maintained by an Owner on such Owner's Lot is subject to the reasonable and valid safety restrictions and the reasonable restrictions as to screening of the device from view by neighboring Lots that may be adopted from time to time by the Executive Board. All costs associated with the installation or maintenance of any Electronic Device by an Owner, including costs of repair, replacement, improvement, and maintenance of the structure on which the Electronic Device is affixed, erected, and/or installed, shall be the sole responsibility of that Owner.

Section 3.15 Restrictions on Signs and Advertising. No signs, including political signs, posters, billboards, advertising devices, or displays of any kind shall be erected or maintained anywhere within the Community so as to be evident to public view, except: (a) signs that may be approved in writing by the Design Review Committee; or (b) signs, posters, billboards, or any other type of advertising device or display erected by Declarant pursuant to Special Declarant Rights. A sign advertising a Lot for sale or for lease may be placed on a Lot, but the standards relating to dimensions, color, style, and location of such sign shall be determined from time to time by the Design Review Committee. No signage shall be allowed upon any Lot or Common Element that may detract from the aesthetic value of the Community or that may detract from the property value of the Lots, as determined by the Design Review Committee in its reasonable discretion.

Section 3.16 Maintenance of Drainage. There shall be no interference with the established drainage pattern over any property within the Community except as approved in writing by the Design Review Committee. Approval shall not be granted unless provision is made for adequate alternate drainage that complies with all applicable laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Real Estate, including, without limitation, the subdivision regulations of County, and all ordinances, rules, and regulations relating to storm water runoff, sediment or erosion control, or any other water or sediment discharge relating to the Real Estate. The "established drainage pattern" shall mean the drainage pattern that exists at the time the overall grading of any property is completed and shall include any established drainage pattern shown on any plans approved by the County. The established drainage pattern may include the drainage pattern (a) from Common Elements over any Lot; (b) from any Lot over the Common Elements; (c) from any property owned by the County or other Persons over any Lot; (d) from any Lot over property owned by the County or other Persons; or (e) from any Lot over another Lot.

Section 3.17 Compliance with Insurance Requirements. Except as may be approved in writing by the Executive Board, nothing shall be done or kept on property within the Community

that may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 3.18 Compliance with Laws. Nothing shall be done or kept on any property within the Community in violation of any law, ordinance, rule, or regulation of any governmental authority having jurisdiction over the Community.

Section 3.19 Further Subdivision of Lots. Following any re-subdivision caused by Declarant in compliance with all of the provisions of this Declaration, no Lot or Residence may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof (including the Association, but excluding Declarant) without the prior written approval of the Executive Board and Declarant. Nothing in this Section 3.19 shall be deemed to prevent an Owner from, or require the approval of the Executive Board or Declarant for, (a) selling or leasing a Lot, or (b) transferring or selling any Lot to more than one Person to be held as tenants-in-common or joint tenants. All Leases must be in writing and be subject to the requirements of the Governing Documents and any other requirements of the Association.

Section 3.20 Restoration upon Damage or Destruction. If any Improvement on any Lot is damaged or destroyed, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Committee, or Owner shall cause the damaged or destroyed Improvement to be demolished and the Lot to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance.

Section 3.21 Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of an Improvement.

Section 3.22 Vehicle Repairs. No maintenance, servicing, repair, dismantling, or repainting of any type of vehicle, boat, machine, or device may be carried on except within a completely enclosed structure that screens the sight and sound of such activity from the street and from other Lots. The changing of motor oils, fuels, and antifreeze shall be performed in a manner that prevents releases or spills. All used motor oils, fuels, and antifreeze shall be disposed of in accordance with applicable law. Disposal of such oils, fuels, and antifreeze in the storm drainage systems in the Community is strictly prohibited. This provision shall be subject to enforcement pursuant to this Declaration.

Section 3.23 Storage of Gasoline and Explosives, Etc. No Lot shall be used for the storage of explosives, gasoline, or other volatile and/or incendiary materials or devices. Gasoline or fuel for an Owner's lawn mower, snow blower, and the like may be maintained on an incidental basis on the Lot in an amount not to exceed five gallons.

Section 3.24 Trailers, Campers, and Junk Vehicles. The following vehicles shall not be stored in, on, or about any Lot or any street within the Community except within a garage unless approved by the Design Review Committee: boats; campers (on or off of supporting vehicles); trailers; tractors; trucks; industrial or commercial vehicles (both cabs or trailers); towed trailer units; motorcycles; disabled, junk, or abandoned vehicles; motor homes or mobile homes;

recreational vehicles; horse trailers or other trailers; or any other recreational vehicle. For the purposes of this covenant, 3/4-ton or smaller vehicles commonly known as "pickup trucks" and "SUVs" shall not be deemed commercial vehicles or trucks. The Association shall have the right to enter a Lot to remove or have removed and/or store any vehicle in violation of this Section at its Owner's expense. An Owner shall be entitled to seven days' written notice prior to such action by the Association. An Owner may temporarily park such a vehicle in his or her driveway or in the street adjacent to his or her Lot for a period not to exceed 24 hours, and no Owner may park such a vehicle in his or her driveway or on the street for more than two 24-hour periods in a week.

Section 3.25 Fencing Restrictions.

(a) All Owners of Lots adjacent to East Belleview Avenue, South de Gaulle Street, East Wagontrail Avenue, South Fultondale Way, South Eaton Park Way, South Elk Way, South Flat Rock Way, East Bellewood, East Grand Place, East Whitaker Drive, East Chenango Place, East Saratoga Place, South Biloxi Way, South Catawaba Street, South Coolidge Street, South Duquesne Street, Harvest Mile Road, South Haleyville Street, South Haleyville Way, East Crestline Place, South Harvest Mile Way, East Crestline Place, East Berry Place, South Gold Bug Way, and East Layton Place shall be required to comply with requirements of the Aurora City Code that may restrict the ability to build a fence along those streets or the types and sizes of fences that can be built along those streets.

(b) No fences shall be constructed or removed along or adjacent to the boundary or Lot line of any Lot without the prior approval of the Design Review Committee unless in conformance with the Design Guidelines. No gates may be installed by any Owner in any portion of the perimeter fencing installed by Declarant or the Association unless approved by the Design Review Committee. No "double gates" will be allowed in any fences installed within the Community. If an Owner damages any portion of the perimeter fencing, such Owner shall be obligated to repair, replace, or restore such portion of the perimeter fencing at its sole cost. If the Owner fails to do so within 30 days following a written demand from the Executive Board, the Association may perform such work, and the cost to do so will be a Reimbursement Assessment allocable solely to such Owner's Lot. Failure to pay such Reimbursement Assessment in a timely manner shall entitle the Association to initiate any of the remedies for failure to pay Common Assessments set forth in Article XI.

Section 3.26 Air Conditioning and Heating Equipment. No heating, air conditioning, or refrigeration equipment shall be placed, allowed, or maintained anywhere other than on the ground unless properly screened and not visible from adjacent Lots, Common Elements, or public areas. Approval by the Design Review Committee is required. Solar units meeting all governmental guidelines for residential uses, however, may be located on the roof only if (a) such solar unit is built into and made an integral part of the roof flashing or the structure of the Residence constructed on such Lot; and (b) such solar unit is specifically approved by the Design Review Committee in accordance with Article VI below.

Section 3.27 No Hanging Articles. No clothing or household fabrics or other articles shall be hung, dried, or aired on any Lot or Common Element in such a way as to be visible from

other Lots or from the Community, except to the extent otherwise provided in the Design Guidelines.

Section 3.28 Basketball Hoops. Basketball hoops shall only be allowed in the front areas of a Lot if (a) the backboard is installed on a separate free-standing post or pole and is set perpendicular to the street and is either clear or painted a color to match the Residence; (b) is portable and can be removed from the driveway each evening (portable basketball hoops are not allowed in the public street or on a public sidewalk); or (c) as otherwise approved by the Design Review Committee. No basketball backboards shall be attached to a garage or set facing the street.

Section 3.29 Play Equipment. Play equipment may be erected within a fenced or screened area but must be a minimum of five feet from the boundary line of the Lot upon which it is located. Such play equipment shall be of an appropriate scale and constructed of approved material and of an approved color. Play equipment utilizing natural materials (wood vs. metal) is preferred.

Section 3.30 Swimming Pools/Hot Tubs. All swimming pools, spas, hot tubs, jacuzzis, and the like shall be screened from view of adjacent Lots and rights of way by screening materials and methods approved by the Design Review Committee.

Section 3.31 Dog Houses/Runs. Dog houses, shelters, and runs shall be completely screened from view of adjacent public and private property and streets and shall be built from materials compatible with the Improvements installed on the Lot. Chain link fencing is prohibited.

Section 3.32 Owner's Right to Lease Lot. No Owner shall have the right to lease his or her Lot until such Owner has owned the Lot for at least six months (the "Holding Period"). After owning a Lot for the Holding Period, an Owner shall have the right to lease the Lot provided that: (a) the Lease is in writing; (b) the Lease is for occupancy of a completed Residence; (c) the Lease provides that the lessee's occupancy shall be subject to the Governing Documents, and any failure by the lessee to comply with any Governing Document in any respect shall be a default under such Lease; and (d) such Owner shall notify the Association immediately upon the leasing of such Lot and register with the Association both the name(s) of the tenant(s) and new mailing information for notices to be sent by the Association directly to such Owner. Owners who purchase Lots with FHA financing are not subject to the Holding Period restriction on leasing their Lots set forth in this Section 3.32.

ARTICLE IV DESIGNATION OF LOTS, COMMON ELEMENTS, AND LIMITED COMMON ELEMENTS

Section 4.1 Number of Lots. The number of Lots initially included in the Community is zero. Declarant reserves the right to create and add up to 1,100 Lots or the maximum number of Lots for the real estate subject to this Declaration that are allowed by any governmental entity having jurisdiction, whichever is greater. Annexable Real Estate shown on any Plat shall become part of the Community either (a) as it is annexed by Declarant pursuant to a

Supplemental Declaration, or (b) automatically by a deed conveying a Lot to an Owner (other than a Declarant) if such deed describes the Lot and refers to this Declaration.

Section 4.2 Identification/Description of Lots. The identification of each Lot is shown on the Plat. Every contract for sale, deed, Lease, Mortgage, will, or other legal instrument shall legally describe a Lot by its identifying lot number, followed by the name of the Community, with reference to the Plat and the Declaration. An illustrative description is as follows:

Lot _____, Block _____, Final Plat of Tollgate Crossing Filing No. _____, recorded _____, 200____, at Reception No. _____ in the records of the Clerk and Recorder, Arapahoe County, State of Colorado, subject to

Reference to the Declaration, the Plat, and any map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration, the Plat, or map without specific references thereto.

Section 4.3 Lot Boundaries. The boundaries of each Lot are as depicted on the Plat.

(a) Inclusions. Each Lot includes the spaces and improvements lying within the boundaries described above. Declarant has the reserved right to prepare and record a map depicting these areas. Each Lot also includes the spaces and improvements containing utility meters, electrical switches, wiring, pipes, conduits, and communications, television, telephone, and electrical receptacles and boxes serving that Lot exclusively, the surfaces of these items being the boundaries of that Lot, whether or not the spaces are contiguous.

(b) Exclusions. Any area designated by fencing installed by Declarant and shown on an improvement location certificate provided by Declarant at the initial conveyance of a Lot may be excluded from a Lot. Declarant has the reserved right to prepare and record a map depicting these areas. Also excluded (except as provided above under the title "Inclusion") are the following: the spaces and improvements lying outside the boundaries of a Lot and any chutes, pipes, flues, ducts, wires, conduits, and other facilities running through or within a Lot for the purpose of furnishing utility and other service to other Lots or the Common Elements. The Common Elements are excluded from each Lot and any utilities or other facilities running through or within any Lot for the purpose of furnishing utility and other service to other Lots and/or the Common Elements are also excluded.

(c) Common Elements. Portions of any Common Elements may be designated as a part of a Lot or as a Limited Common Element to a Lot or otherwise changed, pursuant to reserved Development Rights. Portions of Lots may become Common Elements or Limited Common Elements pursuant to rights reserved elsewhere in this Declaration.

Section 4.4 Limited Common Elements. If Common Expenses are associated with the maintenance, repair, or replacement of a Limited Common Element, those Common Expenses may be assessed equally against the Lots to which the Limited Common Element is assigned. The following portions of the Real Estate are Limited Common Elements assigned to the Lots as follows: fences, walls, and hedges that jointly serve or lie within the boundary plane of more than one Lot or within the boundary plane of a Lot and the Common Elements shall be considered Limited Common Elements appurtenant to the Lots enclosed or served.

ARTICLE V EASEMENTS

Section 5.1 Real Estate Burdened. The Annexable Real Estate is legally described in **Exhibit A** and is subject to the Easements and Licenses set forth on **Exhibit B** and on the applicable Plat. Additional easements are set forth in this Article, in Article VIII below, and in the Act. Both the Real Estate and the Annexable Real Estate may become subject to other easements or licenses granted by authority reserved in any Recorded document.

Section 5.2 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties.

Section 5.3 Utilities. There is hereby created a blanket easement for the benefit of the Owners upon, across and through the Common Elements for the installation, replacement, repair, and maintenance of utilities including, but not limited to water, sewer, gas, telephone, electricity, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment, and appurtenances on the Common Elements necessary to repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits, and meters. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Common Elements without conflicting with the terms hereof. Such right and authority of Declarant shall cease and terminate upon the earliest of 20 years after this Declaration is Recorded, conveyance by a Declarant of all Lots (after Declarant has added all real estate to the Community that it has a right to add pursuant to its Development Rights hereunder) to Owners other than a Declarant, or when Declarant elects to surrender such right, at which time said reserved right shall vest in the Association. Easements are reserved on each Lot for the installation, maintenance, and repair of irrigation meters and equipment. The easements provided for in this Section 5.3 shall in no way affect, avoid, extinguish, or modify any other Recorded easement on the Common Elements.

Section 5.4 Maintenance Easement. An easement is hereby granted to the Association and its Officers, Directors, agents, employees, and assignees upon, across, over, in, and under the Common Elements, and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration, as the case may be, including the right of the Association to construct and maintain maintenance and storage facilities on the Common Elements for use by the Association.

Section 5.5 Drainage Easement. An easement is hereby granted to the Association and its Officers, Directors, agents, employees, successors, and assignees to enter upon, across, over, in, and under any portion of the Real Estate for the purpose of changing, correcting, or otherwise modifying the grade or drainage improvements on the Real Estate to improve the drainage of water on the Real Estate.

Section 5.6 Easements Deemed Created. All conveyances of Lots hereafter made, whether by a Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

Section 5.7 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of access to his or her Lot and of enjoyment in and to any Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to promulgate and publish rules and regulations with which each Owner and his or her tenants, invitees, licensees, and guests shall strictly comply;

(b) the right of the Association to suspend an Owner's voting rights and rights to use the Common Elements for any period during which any Assessment against his or her Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right, power, and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer, conveyance, or grant of any similar interest affecting the Common Elements to the extent permitted by the Act;

(d) the right of the Association to close or limit the use of the Common Elements while maintaining, repairing, and making replacements in the Common Elements; and

(e) the Development Rights and Special Declarant Rights reserved in this Declaration.

Section 5.8 Delegation of Use. Any Owner may delegate his or her easement and right of enjoyment to the Common Elements to family members, tenants, guests, or contract purchasers who reside at his or her Lot.

Section 5.9 Easements for the Executive Board and Owners. Each Lot shall be subject to an easement in favor of the Executive Board (including its agents, employees, and contractors) and in favor of all Owners to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages, and a lien therefore is authorized and established against that party's property pursuant to this Declaration.

Section 5.10 Additional Easements. Additional easements for utilities and other purposes over and across the Lots and Common Elements may be as shown upon the Plat, any Supplemental Plat, and on any Recorded map of the Community, and additional utility easements may be established pursuant to the provisions of this Declaration or granted by authority reserved in any Recorded document. Easements are also reserved along all private streets, access drives, alleys, and Lot boundaries for street signs, stop signs, mailboxes, and other Improvements as allowed or permitted by Declarant or the Association. Non-exclusive sidewalk easements have been granted to the City for the purpose of maintaining, reconstructing,

controlling, and using such sidewalks together with the right of ingress and egress, but the City shall not interfere with any other structures or improvements.

ARTICLE VI DESIGN REVIEW AND APPROVAL

Section 6.1 Approval of Improvements Required. The approval of the Design Review Committee shall be required for any Improvement on any Lot except: (a) for any Improvement to Real Estate made by Declarant; (b) where, in the reasonable discretion of the Executive Board, approval is not required to carry out the purposes of this Declaration; and (c) where prior approval of Improvements may be waived or certain Improvements may be exempted in writing or under written guidelines or rules promulgated by the Design Review Committee.

Section 6.2 Membership of Committee. The Design Review Committee shall consist of three members, all of whom shall be appointed by the Executive Board. Members of the Design Review Committee may be removed at any time by the Executive Board and shall serve for such term as may be designated by the Executive Board or until resignation or removal by the Executive Board. The Executive Board may at any time and from time to time change the authorized number of members of the Design Review Committee, but the number of members of the Design Review Committee shall be an odd number no fewer than three. Members of the Design Review Committee shall not necessarily be Owners and may be paid professionals if appointed by the Executive Board in its reasonable discretion.

Section 6.3 Address of Design Review Committee. The address of the Design Review Committee shall be at the principal office of the Association.

Section 6.4 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement ("Applicant") shall submit to the Design Review Committee at its offices in accordance with the Design Guidelines such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Design Review Committee may request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement. The Applicant shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvement. Until receipt by the Design Review Committee of all required materials in connection with the proposed Improvement, it may postpone review of any materials submitted for approval.

Section 6.5 Criteria for Approval. The Design Review Committee shall approve any proposed Improvement only if it deems in its reasonable discretion that (a) the appearance of the proposed Improvement will be in harmony with the surrounding areas of the Community; (b) the Improvement will not detract from the enjoyment of the Community by Owners; (c) the upkeep and maintenance of the proposed Improvement will not become a burden on the Association; and (d) the proposed Improvement will not affect the drainage plan for the Community or any portion thereof. The Design Review Committee may condition its approval of any proposed

Improvement upon the making of such changes therein by the Applicant as the Design Review Committee may deem appropriate.

Section 6.6 Design Guidelines. The Design Review Committee shall establish the Design Guidelines and may revise them from time to time. The Design Guidelines may specify circumstances under which the strict application of standards, limitations, or restrictions will be waived or deemed waived in whole or in part, because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. The Design Guidelines may waive the requirement for approval of certain Improvements or exempt certain Improvements from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

Section 6.7 Design Review Fee. The Design Review Committee may, through the Design Guidelines or otherwise, provide for the payment of a fee to accompany each request for approval of any proposed Improvement. The Design Review Committee may provide that the amount of such fee shall be uniform for similar types of proposed Improvements or that the fee shall be determined in any other reasonable manner.

Section 6.8 Decision of Committee. The Design Review Committee shall promptly and diligently review the Applicant's proposal once it has received a complete set of plans from the Applicant. The Design Review Committee shall render its decision within 30 days after its receipt of all materials required from the Applicant. The decision shall be in writing, and if the decision is not to approve a proposed Improvement, the reasons therefor shall be stated. The decision of the Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Design Review Committee.

Section 6.9 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement shall be deemed disapproved unless approval or a request for additional information or materials is transmitted to the Applicant by the Design Review Committee within 30 days after the date of receipt by the Design Review Committee of all required materials.

Section 6.10 Prosecution of Work after Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with (a) the description of the proposed Improvement; (b) any materials submitted to the Design Review Committee in connection with the proposed Improvement; and (c) any conditions imposed by the Design Review Committee. Failure to complete the proposed Improvement within 12 months after the date of approval or such shorter period as specified in writing by the Design Review Committee, or to complete the Improvement in accordance with the description and materials furnished to, and the conditions imposed by, the Design Review Committee, shall constitute noncompliance with the requirements for approval of Improvements.

Section 6.11 Inspection of Work. Upon completion of the Improvement, the Applicant may give written notice of completion to the Design Review Committee ("Notice of Completion"). The Design Review Committee shall be deemed to have been given Notice of Completion of such Improvement on the date of its receipt. The Design Review Committee or

its duly authorized representative shall have the right to inspect any Improvement prior to or after completion.

Section 6.12 Notice of Noncompliance. If, as a result of inspections or otherwise, the Design Review Committee finds that any Improvement is being performed or has been completed without obtaining the approval of the Design Review Committee or was not done in complete conformity with the description and materials furnished to, and any conditions imposed by, the Design Review Committee, the Design Review Committee or Association representative shall notify the Applicant in writing of the noncompliance ("Notice of Noncompliance"), which notice shall be given no later than 30 days after the Design Review Committee receives a Notice of Completion from the Applicant. The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

Section 6.13 Failure of Committee to Act after Completion. If, for any reason other than the Applicant's act or neglect, the Design Review Committee fails to deliver to the Applicant a Notice of Noncompliance within 30 days after receipt by the Design Review Committee of written Notice of Completion from the Applicant, the Improvement shall be deemed in compliance if the Improvement was, in fact, completed as of the date of Notice of Completion.

Section 6.14 Appeal to Executive Board of Finding of Noncompliance. If the Design Review Committee gives any Notice of Noncompliance, the Applicant may appeal to the Executive Board by giving written notice of such appeal to the Executive Board and the Design Review Committee within 30 days after receipt of the Notice of Noncompliance by the Applicant. If, after a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Design Review Committee shall request a finding of noncompliance by the Executive Board by giving written notice of such request to the Association and the Applicant within 60 days after delivery to the Applicant of a Notice of Noncompliance from the Design Review Committee. In either event, the Executive Board shall hear the matter in accordance with the provisions hereof and the Bylaws, and it shall decide whether or not there has been such noncompliance, and if so, the nature thereof and the estimated cost of correcting or removing the same.

Section 6.15 Correction of Noncompliance. If the Executive Board determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than 14 days from the date of receipt by the Applicant of the ruling of the Executive Board or such longer period as the Executive Board may prescribe. If the Applicant does not comply with the ruling, the Executive Board may, at its option, Record a Notice of Noncompliance against the Lot on which the noncompliance exists, may, with a right of entry especially granted thereby, enter upon such Lot and remove the non-complying Improvement, or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all costs and expenses incurred by the Association in connection therewith including, but not limited to, attorneys' fees. If such expenses are not promptly repaid by the Applicant to the Association, the Executive Board may levy a Reimbursement Assessment against the Applicant for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies that the Association may have

at law, in equity, or under this Declaration. The Applicant shall have no claim for damages or otherwise on account of the entry upon the property and removal of the non-complying Improvement.

Section 6.16 No Implied Waiver or Estoppel. No action or failure to act by the Design Review Committee or by the Executive Board shall constitute a waiver or estoppel with respect to future action by the Design Review Committee or the Executive Board with respect to any Improvement. The approval of the Design Review Committee of any Improvement shall not be deemed a waiver of any right to withhold approval for any similar Improvement or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement.

Section 6.17 Committee Power to Grant Variances. The Design Review Committee may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size, floor area, building materials, placement of structures, or similar restrictions when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental consideration may require such variances. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Design Review Committee. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned including, but not limited to, zoning ordinances imposed by any governmental authority having jurisdiction.

Section 6.18 Meetings of Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval to any Improvement and granting of variances. The action of such representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the Design Review Committee shall constitute the action of the Design Review Committee.

Section 6.19 Records of Actions. The Design Review Committee shall report in writing to the Executive Board all final actions of the Design Review Committee, and the Executive Board shall keep a permanent record of such reported action.

Section 6.20 Estoppel Certificates. The Executive Board shall, upon the reasonable request of any interested Person and after confirming any necessary facts with the Design Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

Section 6.21 Non-Liability of Committee Action. There shall be no liability imposed on the Design Review Committee, any member of the Design Review Committee, any representative of the Design Review Committee, the Association, any member of the Executive Board, or Declarant for any loss, damage, cost, expense, or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee unless due to the gross negligence or willful misconduct of the party to be held liable. In reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement be deemed approval of, the Improvement from the standpoint of safety, whether structural or otherwise, or such Improvement's conformance with building codes or other governmental laws or regulations.

Section 6.22 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement, and provided construction is proceeding with due diligence, the Design Review Committee shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction, provided that during the course of any such construction, nothing is done which will result in a violation of any of the provisions of this Declaration upon completion of construction, and nothing is done that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within the Community.

ARTICLE VII USE OF COMMON ELEMENTS

Section 7.1 Owner's Rights of Use/Association Obligations. Unless otherwise provided in this Declaration, all Owners may use Common Elements, and the Association shall have the duty and obligation to keep all Common Elements in good order, condition, and repair. All costs and expenses associated with such obligations shall be Common Expenses, and no third parties, other than Owners in accordance with the provisions hereof, will have any liability or obligation therefor.

Section 7.2 Right of Association to Regulate Use. The Association, acting through the Executive Board, shall have the power to regulate the use of Common Elements by Owners and the public to further enhance the overall rights of use and enjoyment of all Owners.

Section 7.3 No Partition of Common Elements. No Owner shall have the right to partition or seek partition of the Common Elements or any part thereof.

Section 7.4 Liability of Owners for Damage by Owner. Each Owner shall be liable to the Association for any damage to Common Elements or for any expense or liability incurred by the Association, to the extent not covered by insurance, that may be sustained by reason of (a) the actions or conduct of such Owner or any Person using the Common Elements through such Owner; or (b) for any violation of the Governing Documents by such Owner or any Person using the Common Elements through such Owner. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Reimbursement Assessment against an Owner, after Notice and Hearing as provided in the Bylaws, to cover all costs and expenses incurred by the Association arising from or related to violation of the Governing Documents or for any increase in insurance premiums directly attributable to any of the foregoing actions.

Section 7.5 Association Duties if Damage or Destruction to Common Elements. If the Common Elements are damaged by fire or other casualty, or if any governmental authority requires any repair, reconstruction, or replacement of any Common Elements, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of the damage or destruction of Common Elements by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment in accordance with Article XI of this Declaration. If any Owner or group of Owners is liable for any such damage, the Association may levy a Reimbursement Assessment against the Lot of every Owner responsible therefor to provide the additional funds necessary. Repair, reconstruction, or replacement of Common Elements shall be done under such contracting and bidding procedures as the Association determines are appropriate. If insurance proceeds available to the Association exceed the cost of repair, reconstruction, and replacement of any Improvement, the Association may use the same for any future maintenance, repair, or replacement of any Improvement and for the operation of other Common Elements.

Section 7.6 Association Powers upon Condemnation. If any Common Elements or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable therefor shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in such Maintenance Fund as determined by the Executive Board as a reserve for future maintenance, repair, reconstruction, or replacement of Common Elements, or such funds may be used for Improvements or additions to or for the operation of Common Elements. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings related to Common Elements.

ARTICLE VIII DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 8.1 Period of Reservation of Rights. Declarant shall have, retain, and reserve certain Development Rights and Special Declarant Rights as set forth in this Article VIII for 20 years following the date this Declaration or any Supplemental Declaration hereto is Recorded ("Development Period"). The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Association whether or not specifically stated therein and in each deed or other instrument by which any property within the Community is conveyed by Declarant. The rights, reservations, and easements set forth herein shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be

construed as consent to any other subsequent amendment. Declarant makes no assurances that Declarant will exercise the rights reserved by Declarant herein with respect to all or any portion of the Community, and Declarant reserves the right to exercise such rights with respect to the Community in such time frames and in such a manner as Declarant deems fit in its sole and absolute discretion.

Section 8.2 Development Rights. In addition to the rights reserved in Sections 4.1 and 5.3 above, Declarant hereby reserves the following Development Rights, which Development Rights are appurtenant to, benefit, and burden, all of the Real Estate that is subject to this Declaration:

(a) The right to create additional Lots, Common Elements, and Limited Common Elements and to convert Lots into Common Elements.

(b) The right to withdraw all or any part of the Common Elements from the Community and the right to withdraw Lots from Community if such Lots are owned by Declarant.

(c) The right to withdraw any of the real estate described in **Exhibit A** from the Annexable Real Estate and the provisions of this Declaration.

(d) The right to add real estate to the Community as follows:

(1) Declarant reserves the right during the Development Period to annex the Annexable Real Estate, described on **Exhibit A** hereto, into the Community including any portion of the Annexable Real Estate, which it may have previously conveyed. In accordance with the foregoing, each Owner grants to Declarant the right to annex the Annexable Real Estate into the Community and to modify such Owner's right to the Common Elements as more particularly set forth in this Article VIII. Further, any purchaser of a Lot within the Annexable Real Estate understands, acknowledges, and confirms that if such annexation fails to occur for any reason, Declarant shall have the right, in Declarant's sole discretion, to annex such Lot even after the conveyance to such purchaser without such purchaser's approval. Notwithstanding the foregoing, Declarant reserves the right to convey all or any portion of the Annexable Real Estate to such third party or parties as Declarant deems appropriate whether for purposes consistent with the Declaration or otherwise. Declarant makes no assurances that all or any portion of the Annexable Real Estate will be annexed to the Community, and Declarant reserves the right to annex all or any portion of the Annexable Real Estate to the Community in such order and in such a manner as Declarant deems fit in its sole and absolute discretion.

(2) The annexation of additional real estate into the Community by Declarant shall be achieved by Recording: (A) a deed or Supplemental Declaration containing a legal description of the real estate to be annexed into the Community and such other terms and provisions as Declarant may prescribe in accordance with the terms and provisions hereof; and, if applicable, (B) a Supplemental Plat or map depicting the real estate to be annexed into the Community, if not already included on the Plat and that otherwise contains all information required by the Act. The Supplemental Declaration shall incorporate by reference the covenants, conditions, and restrictions set forth herein and contain such additional covenants, conditions,

restrictions, limitations, reservations, exceptions, equitable servitudes, and provisions as Declarant may impose on such annexed real estate, taking into account the unique and particular aspects of the proposed development of the real estate encumbered by such Supplemental Declaration. Declarant shall have the right to reserve in a Supplemental Declaration any and all Development Rights, which Declarant deems necessary or appropriate to complete the development of the property being annexed to the Community or that is otherwise necessary to meet the unique and particular aspects of such property. A Supplemental Declaration may provide for a sub-association of Owners within the property described in the Supplemental Declaration and for the right of such sub-association to assess such Owners.

(3) Upon the Recording of a deed or Supplemental Declaration and a Supplemental Plat, if applicable, the real estate described therein shall be subject to all covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration. If any real estate is annexed to the Community as provided herein, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Community as expanded. References to this Declaration shall mean this Declaration as so supplemented by any Supplemental Declaration. Upon the Recording of a Supplemental Declaration and Supplemental Plat, if applicable, every Owner in such annexed area shall, by virtue of ownership of such Lot, be a member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other member of the Association. Except as may otherwise be provided herein, upon the annexation of any property to the Community, the Allocated Interests of each Owner's Lot shall be reallocated according to the formulas provided in Section 9.5.

(4) Declarant hereby reserves the right to annex additional, unspecified real estate to the Community to the fullest extent permitted by the Act. If Declarant elects to annex such additional real estate, Declarant shall annex such real estate to the Community in accordance with the provisions of this Section 8.2.

(5) Any Lot and any Tract may be withdrawn from the Community by Declarant at any time prior to the time that such Lot or Tract has been conveyed to a third party. Such withdrawal may be accomplished by the execution, acknowledgment, and Recording of a "Notice of Withdrawal." The Notice of Withdrawal shall (a) be executed and acknowledged by Declarant; (b) contain an adequate legal description of the property being withdrawn from the Community; (c) contain a reference to the Supplemental Declaration by which such property was annexed to the Community including the date thereof and Recording information of such Supplemental Declaration; and (d) contain a statement that such property is withdrawn from the Community and shall not be thereafter subject to this Declaration or the Supplemental Declaration for such property. The withdrawal of such property from the Community shall be effective upon Recording the Notice of Withdrawal, and thereafter, said property shall no longer be part of the Community or subject to this Declaration or Supplemental Declaration for such property.

(e) The right to enlarge Lots as allowed by the governmental authorities having jurisdiction over the Community; the right to reduce or diminish the size of Lots, the right to reduce or diminish the Common Elements, the right to relocate boundaries between adjoining or otherwise contiguous Lots, the right to enlarge the Common Elements, and the right to

complete or make improvements, as expansion rights may be approved by the governmental authorities having jurisdiction over the Community.

Section 8.3 Special Declarant Rights. In addition to the rights reserved in Section 4.1 and 5.3 above, Declarant hereby reserves the following Special Declarant Rights, which Special Declarant Rights are appurtenant to, benefit, and burden, all of the Real Estate that is subject to this Declaration: (a) maintain sales offices, management offices, and models on Lots owned by Declarant or on the Common Elements; (b) maintain signs and advertising on the Community to advertise the Community or other communities developed or managed by, or affiliated with the Declarant; (c) enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulations of parking and/or recreational facilities and/or Common Elements that may or may not be a part of the Community; (d) make the Community subject to a master association and master declaration; (e) merge or consolidate the Community with another "common interest community" as that term is defined in the Act; (f) appoint or remove any officer of the Association or any member of the Executive Board during the Declarant Control Period; (g) exercise any additional reserved right created by any other provision of this Declaration; and (h) exercise any "development rights" reserved or allowed in the Act.

Section 8.4 Additional Rights Reserved by Declarant. Declarant hereby reserves the following additional rights, which additional reserved rights are appurtenant to, benefit, and burden, all of the Real Estate that is subject to this Declaration:

(a) The right to repair any portion of the Community, the right to perform construction work, and the right to store materials in secure areas, on Lots and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a First Mortgage. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in or assigned under this Declaration. Declarant also has a reserved easement for access and utilities to any properties which Declarant may have the right to add, even if not added to the Community. Such easements include the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate;

(b) The right to allocate areas that constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the Owners of the Lots to which those specified areas shall become appurtenant. The Declarant may allocate or assign Limited Common Elements (i) by making such an allocation in a Recorded instrument, or (ii) in the deed to the Unit to which such Limited Common Element shall be appurtenant, or (iii) by Recording an appropriate amendment or supplement to this Declaration, or (iv) by Recording a map or an amendment to the Plat. Such allocations by the Declarant may be made as a matter of reserved right.

(c) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary;

(d) The right to amend the Declaration in connection with the exercise of any Development Right.

(e) The right to amend the Plat in connection with the exercise of any Development Right.

(f) The right to establish, from time to time, by dedication or otherwise, public streets and utility and other easements for purposes including but not limited to public access, access, paths, walkways, skyways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions.

(g) Declarant or its assignees may exercise any reserved rights on all or any portion of the Real Estate in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

ARTICLE IX ASSOCIATION GOVERNANCE

Section 9.1 Formation of the Association. The Association is a Colorado nonprofit corporation under the Colorado Nonprofit Corporations Act. The Association reserves all of the duties, powers, and rights set forth in the Act, the Colorado Nonprofit Corporations Act, this Declaration, the Articles of Incorporation, and the Bylaws.

Section 9.2 Executive Board.

(a) Management Responsibilities. The Executive Board shall manage the affairs of the Association. The number, term, and qualifications of the Directors shall be fixed in the Articles of Incorporation and the Bylaws in accordance with the provisions hereof. The Executive Board may, by resolution, elect to delegate portions of its authority to its Officers or the Managing Agent, but such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the Association. Action by or on behalf of the Association may be taken by the Executive Board or any duly authorized executive committee, Director, Officer, agent, or employee without a vote of the Owners, except as otherwise specifically provided in this Declaration,

(b) Selection of Directors. Declarant shall be entitled to select and appoint Directors, in its sole discretion, until the expiration of the Declarant Control Period. Not later than 60 days after the conveyance by Declarant to Owners other than Declarant of 25% of the Lots that may be created within the Community, at least one Director, and not less than 25% of the Directors, must be elected by Owners other than Declarant; and (b) that no later than 60 days after the conveyance by Declarant of 50% of the Lots that may be created within the Community to Owners other than Declarant, not less than 33-1/3% of the Directors, must be elected by Owners other than Declarant. Upon expiration of the Declarant Control Period, the Owners shall elect an Executive Board of at least three Directors, a majority of whom shall be Owners other than Declarant or designated representatives of Declarant.

Section 9.3 Indemnification. To the extent permitted by law, each Officer and Director shall be and is hereby indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an Officer or Director, or any settlements thereof, whether or not they are an Officer or Director at the time such expenses are incurred, except in such cases wherein such Officer or Director is adjudged guilty of reckless or willful misconduct in the performance of his duties. In the event of a settlement, the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Association.

Section 9.4 Membership in Association. Everyone who is a record Owner of a fee simple title in any Lot shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. Where more than one person holds an interest in any Lot, all such persons shall be members of the Association. Declarant shall be a member of the Association for as long as Declarant is an Owner. Membership in the Association shall not be pledged, transferred, alienated, or assigned separate and apart from the fee simple title to a Lot, except that an Owner may assign some or all of his rights as an Owner and as a member of the Association to a tenant or Mortgagee and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Declaration. Notwithstanding the foregoing, no Owner shall be permitted to relieve himself of the responsibility for fulfillment of the obligations of membership in the Association under this Declaration.

Section 9.5 Allocated Interests. The Common Expense liability and votes in the Association allocated to each Lot are set as follows:

- (a) the percentage of liability for Common Expenses, equally; and
- (b) the number of votes in the Association, equally.

Section 9.6 Voting Rights of Owners. Each Owner shall have the right to cast one vote for each Lot owned by such Owner in accordance with the Bylaws, but in no event shall there be more than one vote per Lot. If title to a Lot is owned by more than one Person, such Persons shall collectively vote their interest as a single vote.

Section 9.7 Eligible Votes. Notwithstanding anything to the contrary contained herein, only Owners whose voting rights are in good standing under the Bylaws (e.g., voting rights that have not been suspended as provided therein) shall be entitled to vote on Association matters. In accordance therewith, any and all provisions contained herein requiring the approval of a requisite percentage of Owners shall be deemed satisfied when the requisite percentage of Owners entitled to vote has been met.

Section 9.8 Delivery of Documents upon Termination of Declarant Control Period. No later than 60 days after the termination of the Declarant Control Period, Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant including, without limitation, the following items:

(a) the original or a certified copy of the Recorded Declaration, as amended, the Articles of Incorporation, Bylaws, Rules and Regulations, minute books, and other books and records;

(b) to the extent required by the Act, an accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Declarant Control Period ends, audited by an independent certified public accountant, paid for by Declarant, and accompanied by the accountant's letter expressing either the opinion that the financial statements fairly present the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefore;

(c) the Association funds or control thereof;

(d) all of Declarant's tangible personal property that has been represented by Declarant to be the property of the Association and all of Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties;

(e) a copy of the plans and specifications used in the construction by Declarant of the Improvements in the Common Elements;

(f) all insurance policies then in force in which the Owners, the Association, or the Directors and Officers are named as insured persons;

(g) copies of any certificates of occupancy in Declarant's possession that may have been issued with respect to any Improvements within the Community;

(h) any other permits issued by governmental bodies applicable to the Community and that are currently in force or that were issued within one year prior to the date on which the Declarant Control Period expired;

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

(j) a roster of Owners and Eligible Holders and their addresses and telephone numbers, if known, as shown on Declarant's records;

(k) employment contracts in which the Association is a contracting party; and

(l) any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the Persons performing the services.

ARTICLE X DUTIES AND POWERS OF ASSOCIATION

Section 10.1 General Duties and Powers of the Association. The Association has been formed to further the common interests of the Owners. The Association, acting through the Executive Board or Officers or other Persons to whom the Executive Board has delegated such powers, shall have the duties and powers hereinafter set forth; the power to do anything that may be necessary or desirable to further the common interests of the Owners, not prohibited by law; the powers necessary to maintain, improve, and enhance Common Elements; and the powers necessary to improve and enhance the attractiveness, aesthetics, and desirability of the Community.

Section 10.2 Duty to Accept Real Estate and Facilities Transferred by Declarant. The Association shall accept title to any real estate, including any Improvements thereon, and any personal property transferred to the Association by Declarant, together with the responsibility to perform any and all Administrative Functions associated therewith, provided that such property and Administrative Functions are not inconsistent with the terms of this Declaration. Real Estate interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests, and licenses. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all liens and monetary encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, and such easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances of record.

Section 10.3 Duty to Manage and Care for Common Elements. The Association shall manage, operate, care for, maintain, and repair all Common Elements and keep the same in an attractive and desirable condition for the use and enjoyment of the Owners. The Association shall maintain all landscaping on the Common Elements.

Section 10.4 Duty to Maintain Public Sidewalks. The City shall maintain all sidewalks in accordance with the non-exclusive sidewalk easements granted pursuant to the Plats.

Section 10.5 Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Common Elements and all taxes and assessments payable by the Association. The Association shall have the right to dispute any such taxes or assessments provided that the Association contests the same by appropriate legal proceedings that are intended to have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment and provided that the Association holds sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties that may accrue with respect thereto if the dispute of such taxes is unsuccessful.

Section 10.6 Duty to Maintain Insurance. The Association shall obtain and keep in full force and effect at all times the insurance coverage set forth in Article XII below.

Section 10.7 Duty to Keep Association Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act including, but not

limited to, financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against an Owner.

Section 10.8 Duties with Respect to Design Review Committee Approvals. The Association shall perform functions to assist the Design Review Committee as elsewhere provided in this Declaration.

Section 10.9 Power to Acquire Real Estate and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property. The Association may construct Improvements on Common Elements and may demolish existing Improvements thereon.

Section 10.10 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce Rules and Regulations or specific policies as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Common Elements, and the use of any other property within the Community, including Lots. Any such Rules and Regulations or specific policies shall be effective only upon adoption by resolution of the Executive Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation or specific policies shall be given in writing to each Owner at the address for notices to Owners as elsewhere provided in this Declaration or the Bylaws, and copies of the currently effective Rules and Regulations or specific policies shall be made available to each Owner upon request and payment of the reasonable expense of copying the same. Each Owner shall comply with such Rules and Regulations or specific policies and shall see that Persons claiming through such Owner comply with such Rules and Regulations or specific policies. Such Rules and Regulations or specific policies shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations or specific policies and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 10.11 Power to Enforce Governing Documents. The Association shall have the power to enforce the provisions of all Governing Documents and shall take such action that the Executive Board deems necessary or desirable to cause such compliance by each Owner and each Person claiming by, through, or under such Owner ("Related User"). Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of the Governing Documents by any one or more of the following means: (a) immediate entry upon any Lot (with notice where practicable and where no state of emergency exists), without liability to the Owner thereof, for the purpose of enforcement or causing compliance with the Governing Documents; (b) commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of the Governing Documents; (c) commencing and maintaining actions and suits to recover damages for breach of any of the provisions of the Governing Documents; (d) suspension, after Notice and Hearing, of the voting rights of an Owner during and for up to 60 days following any breach by such Owner or a Related User of such Owner of the Governing Documents, unless the breach is a continuing breach in which case such suspension shall continue for a period not to exceed 60 days from the date such breach is cured; (e) levying and collecting a Reimbursement Assessment against any Owner for breach of the Governing Documents by such Owner or Related User; (f) filing a lien on the property of the Owner in default, and (g) uniformly applied fines and penalties, established in advance in the

Rules and Regulations, from any Owner or Related User for breach of the Governing Documents by such Owner or Related User.

Section 10.12 Judicial Proceedings. The Association shall have no authority to initiate, maintain, or prosecute any legal or equitable proceeding except to enforce the provisions of this Declaration and to collect Assessments due and payable under Article XI hereof, unless the Owners approve such proceeding by a vote of at least 67% of all of the eligible votes in the Association cast in person, not by proxy, at a special meeting of the Association called for that purpose.

Section 10.13 Power to Grant Easements. In addition to the easements reserved and established in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility, and other such easements in, on, over, or under Common Elements, as well as the power to designate portions of the Common Elements as Limited Common Elements for the benefit of specific Owners.

Section 10.14 Power to Convey and Dedicate Real Estate to Governmental Agencies. The Association, with the approval of at least 67% of the Owners entitled to vote, shall have the power to grant, convey, dedicate, or transfer any Common Elements or facilities to any public, governmental, or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, subject to the provisions elsewhere contained in this Declaration for approval of the same by Declarant with respect to property transferred to the Association by Declarant.

Section 10.15 Power to Provide Services to Metropolitan Districts. Any applicable Metropolitan Districts or the Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation.

Section 10.16 Cooperation with Other Associations. The Association shall have the right and authority at any time, from time to time, (a) to enter into agreements and otherwise cooperate with other community associations to share the costs and/or responsibility for any maintenance, repair, replacement or other matters that benefit the Association and such other community associations; (b) to perform maintenance, repair, or replacement for any other persons including, without limitation, other community associations in consideration of payment or reimbursement thereof; (c) to utilize the same contractors, subcontractors, managers, or others employed by other community associations to perform services for the Association; and (d) otherwise to cooperate with any other community associations in order to increase consistency or coordination between such other community associations and the Association as to matters affecting both, reduce Common Expenses, or as may otherwise be deemed appropriate or beneficial by the Executive Board in its reasonable discretion from time to time. The costs and expenses of all such cooperation with other community associations, if any, shall be shared or apportioned between the Association and the applicable community association as the Executive Board may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association to collect assessments, other charges, or other amounts that may be due to such entity and to permit any such entity to collect

assessments, other charges, or other amounts that may be due to the Association. In any such instance, the Association shall provide for remittance to such community association of any amounts collected on its behalf by the Association and for remittance to the Association of any amounts collected on its behalf by such community association.

Section 10.17 Power to Borrow Money and Encumber Real Estate. The Association shall have the power to borrow money and, with the approval of Owners representing at least 67% of the eligible votes, to encumber Common Elements as security for such borrowing, subject to provisions elsewhere contained in this Declaration with respect to required approvals and consents to such action. An agreement to convey or subject the Common Elements to a security interest shall be evidenced by the execution of an agreement, or ratification thereof, by the requisite number of Owners. The agreement shall be effective upon Recording and shall specify a date after which the agreement will be void unless Recorded.

Section 10.18 Power to Engage Employees, Agents, and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for management, legal, and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

Section 10.19 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado nonprofit corporation including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration, the Articles of Incorporation, or the Bylaws. The Association shall also have the power to do any and all lawful things authorized, required, or permitted to be done under this Declaration, the Articles of Incorporation, or the Bylaws and to do and perform any and all acts necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association.

Section 10.20 Association Agreements. Any agreement for professional management of the Community and any contract providing for services of Declarant may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon 30 days' written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant Control Period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than 30 days' notice to the other party thereto.

Section 10.21 Powers Provided by Law. In addition to the above-referenced powers, the Association shall have full power to take and perform any and all actions that may be lawfully taken by the Association under the Colorado Nonprofit Corporations Act and the Act, as the same may be amended from time to time.

Section 10.22 Powers as to Trash Collection. The Association shall have the power to regulate the days and hours during which trash, solid waste, and recycling materials may be collected or put out for collection in any part of the Community, and to regulate the number of trash collection service providers permitted to operate within all or any portion of the

Community. The Association shall also have the power to provide services for the collection of trash, solid waste, and recycling materials within all or any portions of the Community, and the expenses of such services shall be Common Expenses for which a portion of the Budget shall be allocated. If the Association provides for such services, each Owner within any area served by such services shall, whether or not such Owner utilizes the service, be obligated to pay Common Assessments levied by the Association to cover the costs of providing such function. The areas to be served and the amount of Common Assessments shall be reasonable and shall represent a fair allocation of the costs of providing the services, including a fair allocation of administrative and overhead costs of the Association.

ARTICLE XI ASSESSMENTS, BUDGETS, AND FUNDS

Section 11.1 Maintenance Funds to Be Established. The Association shall establish and maintain the following separate Maintenance Funds: (a) an "Operating Fund;" and (b) a "Reserve Fund." The Maintenance Funds shall be established as one or more trust savings or trust checking accounts at any financial institution in which deposits are insured by an agency of the federal government.

Section 11.2 Establishment of Other Funds. The Association may, upon approval of Owners representing at least 51% of the eligible votes in the Association, establish other funds as and when needed including, but not limited to, a fund established to allow for the enforcement of the terms and provisions of this Declaration. Nothing herein shall limit, preclude, or impair the authority of the Association to establish other funds for specified purposes authorized by this Declaration. If the Association establishes any additional funds, the Executive Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Association.

Section 11.3 Deposit of Common Assessments to Maintenance Funds. Money received by the Association from payments of Common Assessments shall be deposited in the Maintenance Funds in accordance with the following provisions: (a) there shall be deposited in the "Operating Fund" that portion of the Common Assessments allocated by the Budget for operating costs and expenses relating to or arising from the performance of Administrative Functions by the Association; and (b) there shall be deposited to the "Reserve Fund" that portion of the Common Assessments allocated by the Budget for capital repairs, replacements, and improvements.

Section 11.4 Other Deposits to Maintenance Funds. The Association shall deposit money received by the Association from sources other than Common Assessments in the Maintenance Fund determined by the Executive Board to be most appropriate. For example, Reimbursement Assessments shall be deposited to the Maintenance Fund from which the costs and expenses were or will be paid that form the basis for the Reimbursement Assessments. Special Assessments for capital repairs, maintenance, replacements, and Improvements shall be deposited to the Reserve Fund from which such capital costs have been or will be paid. Interest and late charges received on account of delinquent Assessments may be allocated among the Maintenance Funds in the same proportions as the delinquent Assessments were allocated or, at

the discretion of the Executive Board, may be allocated to any one or more of the Maintenance Funds or other funds.

Section 11.5 Disbursements from Maintenance Funds. All amounts deposited in the Maintenance Funds shall be used solely for the common benefit of all the Owners for purposes authorized by this Declaration. Disbursements from particular Maintenance Funds shall be limited to specified purposes as follows: (a) disbursements from the Operating Fund may be made for such purposes as are necessary or proper under this Declaration, except those purposes for which disbursements are to be made from other Maintenance Funds; and (b) disbursements from the Reserve Fund shall be made solely for purposes of funding those Administrative Functions that cannot be expected to recur on an annual or more frequent basis.

Section 11.6 Authority for Disbursements. The Executive Board shall have the authority to make or to authorize an agent to make disbursements to or from any Maintenance Fund.

Section 11.7 Common Assessments. For each calendar year, the Association may levy Common Assessments against Lots to reimburse the Association for Common Expenses. Each Owner shall be obligated to pay the Common Assessments levied against and allocated to such Owner's Lot, as hereinafter provided. Common Assessments shall be apportioned among all Lots according to the Allocated Interests of each Lot.

Section 11.8 Funding of Reserves. The Executive Board, in budgeting and levying Common Assessments, shall endeavor to fund the Reserve Fund by regularly scheduled payments included as part of the Common Assessments rather than by Special Assessments.

Section 11.9 Special Assessments. In addition to Common Assessments, the Executive Board may levy Special Assessments. Special Assessments may be levied for the purpose of raising funds not otherwise provided under the Budget from Common Assessments to (a) construct, reconstruct, repair, or replace capital improvements upon Common Elements, including necessary personal property related thereto; (b) add to the Common Elements; (c) provide for necessary facilities and equipment to offer the services authorized in this Declaration; or (d) repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments for capital improvements that may be used by all Owners of the Association shall be levied solely on the basis of, and in proportion to, the Allocated Interests of each Lot as set forth in Section 9.5. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is due and payable.

Section 11.10 Reimbursement Assessments. The Executive Board may levy a Reimbursement Assessment against any Owner if the willful or negligent failure of an Owner, or a Person acting by or through an Owner, to comply with the Governing Documents results in the expenditure of funds by the Association including, but not limited to, court costs and attorneys' fees. Such Assessment shall be known as a Reimbursement Assessment. The amount of the Reimbursement Assessment shall be due and payable to the Association 30 days after notice to the Owner of the decision of the Executive Board that the Reimbursement Assessment is due and

payable. An Owner shall be entitled to Notice and Hearing prior to the issuance of a Reimbursement Assessment against such Owner by the Association.

Section 11.11 Annual Budgets. At least 60 days prior to the commencement of each calendar year, the Executive Board shall prepare a Budget for such calendar year, including a reasonable provision for contingencies and deposits into the Operating Fund and the Reserve Fund. The proposed Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Maintenance Fund and shall reflect any expected income of the Association for the coming calendar year and any expected surplus from the prior year and any existing surplus in the Reserve Fund. The proposed Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the Reserve Fund for major capital repairs, replacements, and improvements for Common Elements. Within 30 days after the adoption of any proposed Budget by the Executive Board, it shall distribute a summary to every Owner, post a summary at the principal office of the Association, and set a date for a meeting of the Owners to consider ratification of the proposed Budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. Such meeting may be concurrent with the annual meeting of Owners as provided in the Bylaws. Unless at that meeting a majority of the Owners reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. If the proposed Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent Budget proposed by the Executive Board. If the Association does not have an address for any Owner, the posting of such Budget summary at the principal office of the Association shall be deemed notice to any such Owner. At such time as the Association publishes a newsletter for Owners, the Budget shall be published in such newsletter. Copies of the Budget shall be made available by the Association to any Owners requesting a copy of the same upon payment of the reasonable expense of copying the same.

Section 11.12 Commencement of Common Assessments. Except as otherwise provided herein, Common Assessments shall commence as to each Lot within the Community on the first day of the first month following the date the first deed is Recorded conveying a Lot. The Common Assessments for the first calendar year of that Lot shall be prorated within the Community on the basis of the number of months in such calendar year remaining from the date of commencement of such Common Assessments to the end of such calendar year.

Section 11.13 Payment of Assessments. Common Assessments shall be due and payable in advance to the Association and shall be payable on such dates as the Executive Board may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments shall be given to each Owner as soon as practical after the Budget has been ratified by the Owners.

Section 11.14 Failure to Fix Assessments. The failure by the Executive Board to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments, or any installment thereof, for that or any subsequent year. No abatement of the Common Assessment or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or Improvements to Common Elements or from

any action taken to comply with any law or any determination of the Executive Board or for any other reason.

Section 11.15 Interest and Late Charges on Past-Due Assessments. Any Assessment, or installment of an Assessment, that is not paid when due shall bear interest from the date such Assessment or installment was due at a rate of 21% per annum or the highest rate permitted under the Act, whichever is greater. In addition, the Association may charge a reasonable one-time late fee for any Assessment or portion thereof that is paid more than 30 days after the date the payment is due.

Section 11.16 Notice of Default and Acceleration of Assessments. If any Assessment, or any installment thereof, is not paid when due, the Executive Board may, but shall not be required to, mail a notice of default ("Notice of Default") to the Owner and to each Eligible Holder of the Lot who has requested a copy of the notice. The Notice of Default shall specify (a) the fact that the installment is delinquent; (b) the date and the amount of the payment required to cure the delinquency; and (c) that failure to cure the delinquency on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current calendar year and the foreclosure of the lien for the Assessment against the Lot of the Owner. If the delinquent Assessment or installment and any interest thereon are not paid in full on or before the date specified in the Notice of Default, the Executive Board, at its option, may declare all of the unpaid balance of the Assessment to be due and payable immediately without further demand and may enforce the collection of the full Assessment, all interest thereon, and all costs of collection including attorney's fees, in any manner authorized by law or in this Declaration, subject to the protection afforded to Mortgagees under this Declaration.

Section 11.17 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of each Owner. In the event of a default in payment of any Assessment or installment thereof, the Executive Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by foreclosure of the lien therefor as provided herein.

Section 11.18 Legal Proceedings to Enforce Assessments. The Executive Board may initiate legal proceedings in any court of competent jurisdiction to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge against the defaulting Owner.

Section 11.19 Lien to Enforce Assessments. Pursuant to and in accordance with the Act, the Association shall have a statutory lien on a Lot for any Assessment levied against that Lot, or fines imposed against its Owner, from the time such Assessment or fine becomes due. All expenses, costs, attorneys' fees, and interest outstanding from such Owner shall be included in such lien. The lien created hereby and under the Act shall be prior to any declaration of homestead rights Recorded after the time that the Lot becomes a part of the Community and shall have the priority attached to such lien under the Act and under Colorado law. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid

or otherwise satisfied. Unless paid or otherwise satisfied, the lien may be foreclosed in the manner prescribed for the foreclosure of mortgages in the State of Colorado or in any other manner provided under the Act.

Section 11.20 Estoppel Certificates. Upon the written request of any Owner and any Person with, or intending to acquire, any right, title, or interest in the Lot of such Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot that is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association and all Persons for all purposes that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

Section 11.21 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 11.22 Surplus Funds. The Association shall not be required to pay, or otherwise refund, to the Owners any surplus funds remaining after payment of, or provision for, Administrative Functions or reserves. Such surplus shall be deposited into one of the Maintenance Funds and used to offset future Assessments.

Section 11.23 Working Capital Fund. The Association may require each Owner to make a one-time, non-refundable payment to the Association in an amount determined necessary and appropriate in the reasonable discretion of the Executive Board (not to exceed an amount equal to 25% of the annual Common Assessment against that Owner's Lot), which sum shall be held by the Association as a working capital fund (the "Working Capital Fund"). Interest on such funds shall accrue to the benefit of the Association. If required by the Association, the Working Capital Fund shall be collected and held by the Association, as aforesaid, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of Common Assessments as the same become due. Upon the transfer of his or her Lot, an Owner shall be entitled to a credit from the transferee for any unused portion of the aforesaid Working Capital Fund. Notwithstanding the foregoing, no Mortgagee who becomes an Owner through foreclosure or acceptance of a deed in lieu thereof shall be required to make a payment to the Association for the Working Capital Fund, and no Owner whose Lot has been foreclosed upon or transferred to a Mortgagee by a deed in lieu of foreclosure shall be entitled to a credit from the Mortgagee for any unused portion of the aforesaid Working Capital Fund.

ARTICLE XII INSURANCE

Section 12.1 Property Insurance on the Lots. All Owners shall obtain adequate property insurance covering loss, damage, or destruction by fire or other casualty to the Improvements installed or made to their Lots and their other property. The liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by

reason of any such insurance carried by Owners. The Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Owners to obtain insurance for their own benefit.

Section 12.2 General Provisions of Insurance Carried by the Association.

(a) The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act. All policies shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, or the first occupancy of a Lot.

(b) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 30 days' prior written notice to all of the Owners, Eligible Holders, and the Association.

(c) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all Eligible Holders at least ten days prior to the expiration of the then-current policies.

(d) All liability insurance shall be carried in blanket form, naming the Association, the Executive Board, the manager or managing agent, if any, the officers of the Association, Declarant, Eligible Holders, their successors and assigns, and Owners as insureds.

(e) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence, or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, that under the provisions of such policy would otherwise invalidate or suspend the entire policy. The insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 12.3 Association Property Insurance. The Association shall obtain property insurance covering all insurable improvements located on the Common Elements in an amount equal to 100% of the replacement cost exclusive of land, foundation, excavation, and other items normally excluded from coverage. Such insurance policy shall contain a standard non-contributory mortgage clause in favor of each Eligible Holder, and their successors and assignees, and shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such Eligible Holders and their successors and assignees as their interests may appear of record in the records of the Clerk and Recorder of the County. Such insurance shall afford protection against loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and such other risks as are customarily covered with respect to planned communities similar in construction, location, and use.

Section 12.4 Association Liability Insurance. The Association shall obtain a policy of public liability insurance, in such limits as the Executive Board may determine from time to time, but not in any amount less than \$2,000,000.00 per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 12.5 Association Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its Officers, Directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees, and employees" shall not include any officer, director, agent, or employee of Declarant or any officer, director, agent, or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its Officers, Directors, trustees, and employees.

Section 12.6 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 12.7 Association Officers' and Directors' Personal Liability Insurance. The Association may obtain officers' and directors' personal liability insurance to protect the Officers and Directors from personal liability in relation to their duties and responsibilities in acting as Officers and Directors.

Section 12.8 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 12.9 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the Common Assessments levied by the Association.

Section 12.10 Managing Agent Insurance. The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association.

Section 12.11 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another, the Executive Board, and Declarant to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 12.12 Annual Insurance Review. The Executive Board shall review the insurance carried by and on behalf of the Association at least annually for the purpose of determining the amount of insurance required.

Section 12.13 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any Eligible Holder. The Association shall hold any insurance proceeds in trust for the Association, Owners, and Eligible Holders as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners, and Eligible Holders not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 12.14 Duty to Repair. Any portion of the Community for which insurance is required under this Article that is damaged or destroyed must be repaired or replaced promptly by the Association or Owner except as provided in the Act.

ARTICLE XIII AMENDMENTS

Section 13.1 Amendment of Declaration or Plat by Declarant. If Declarant determines that any amendment to this Declaration, the Plat, or any map of the Community is necessary in order to make non-material changes, such as for the correction of a technical, clerical, or typographical error or for clarification of a statement or for any changes to property not yet part of the Community, then subject to the following sentence of this Section 13.1, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners. Each such amendment shall be made, if at all, by Declarant prior to the expiration of 20 years from the date this Declaration is Recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this Section 13.1 on behalf of each Owner and Mortgagee. Each deed, Mortgage, other evidence of obligation, or other instrument affecting a Lot, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute, and Record an amendment under this Section 13.1.

Section 13.2 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least 67% of the votes in the Association. The amendment or repeal shall be effective upon the Recording of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association. Notwithstanding anything herein to the contrary, meetings of the Owners called for the purposes of approving or rejecting Extraordinary Actions and/or Material Amendments must comply with the following: (a) at least 25 days' advance written notice to all Owners must be given; (b) the notice must state the purpose of the meeting and contain a summary of the Extraordinary Action and/or Material Amendment to be approved

or rejected; (c) the notice must include a proxy that can be cast in lieu of attendance at the meeting; and (d) a quorum of at least ten percent of the Owners entitled to vote either in person or by proxy must be present at such meeting.

Section 13.3 Amendments Required by Agencies. Prior to 20 years after the date of this Declaration, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration that an Agency, Mortgagee, or any similar entity requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the Recording of a certificate setting forth the amendment or repeal in full.

Section 13.4 Required Consent of Declarant to Amendments. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving Development Rights, Special Declarant Rights, or for the benefit of Declarant or its assignees shall not be effective unless Declarant and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate at the end of the Development Period, or upon conveyance of 100% of the Lots to Owners, whichever occurs first.

Section 13.5 Required Consent of VA/FHA to Certain Amendments. During the Declarant Control Period, amendments to the Declaration, the Articles of Incorporation, or the Bylaws must first be approved by the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans. Further, the Association may not be merged or consolidated with another association without the prior written consent of the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans.

ARTICLE XIV SPECIAL PROVISIONS FOR ELIGIBLE HOLDERS

Section 14.1 General Provisions. The provisions of this Article are for the benefit of Mortgagees. To the extent applicable, necessary, or proper, the provisions of this Article apply to both this Declaration, and to the Articles and the Bylaws.

Section 14.2 Special Rights. Upon written request therefor to the Association, stating both its name and address and the Lot number on which it holds, insures, or guarantees a first lien Mortgage, a Mortgagee of such first lien Mortgage ("Eligible Holder") who has submitted such written request shall be entitled to: (a) timely written notice of any default by a mortgagor of a Lot in the performance of the mortgagor's obligations under the Governing Documents, which default is not cured within 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 the Owners; (e) designate a representative to attend any such meetings; (f) receive written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(g) receive written notice of abandonment or termination by the Association of the plan contemplated under this Declaration; (h) receive 30 days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) receive 30 days' written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management has been required previously under the Governing Documents or by an Eligible Holder; and (j) receive prompt written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or to the Lot on which the Eligible Holder holds a first lien Mortgage if the cost of reconstruction is reasonably expected to exceed \$20,000.00 and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Lots.

Section 14.3 Special Approvals. Unless at least 67% of the Eligible Holders (based on one vote for each Mortgage held) of Lots in the Association and the requisite percentage of Owners have given their written approval, neither the Association nor any Owner shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements or any improvements thereon that are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements, water facilities easements, easements for other public purposes consistent with the intended use of such Real Estate by the Association, and easements granted by Declarant or its successor-in-interest pursuant to the Special Declarant Rights shall not be deemed within the meaning of this provision); (b) change the Allocated Interests or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive, or abandon any scheme or regulation or enforcement thereof pertaining to architectural approval of Improvement, including the architectural design of the exterior appearance of Lots, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire, and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement, or reconstruction of Improvements that have been damaged or destroyed; (f) take action to terminate the legal status of the Community after substantial destruction or condemnation occurs; (g) amend any material provision of this Declaration; and (h) establish self-management by the Association when professional management has previously been required by the Governing Documents or by an Eligible Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors or for clarification only. If an Eligible Holder receives written request for approval of the proposed act, omission, change, or amendment by certified or registered mail with a return receipt requested and does not deliver or post to the requesting party a negative response within 30 days, it shall be deemed to have approved such request.

Section 14.4 Right to Pay Taxes and Insurance Premiums. Any Eligible Holder shall be entitled to pay any taxes or other charges that are in default and which may or have become a lien against a Lot or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Lots, and the Eligible Holder making such payments shall be entitled to immediate reimbursement from the Association.

ARTICLE XV MISCELLANEOUS

Section 15.1 Term of the Community. Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect until December 31, 2055, and thereafter shall be automatically extended for successive periods of ten years each unless terminated by the vote, by written ballot, of at least 67% of Owners eligible to vote. Any termination of the Community shall be in strict compliance with the Act, and if the Act is not in effect at the time of termination, then such termination shall be in strict compliance with the Act as it existed on the date this Declaration was originally Recorded.

Section 15.2 Association Right to Obtain Mortgage Information. Each Owner hereby authorizes any Eligible Holder to furnish information to the Association concerning the status of such Eligible Holder and the loan it secures.

Section 15.3 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, telephone, telecopier, or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Post Office. Such address may be changed from time to time by notice in writing to the Association.

Section 15.4 Persons Entitled to Enforce Declaration. The Association, acting by authority of the Executive Board, and any Owner entitled to vote shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration against any property within the Community and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Declaration.

Section 15.5 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 15.6 Enforcement by Self-Help. Declarant, the Association, or any authorized agent of either of them may enforce by self-help any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration to the fullest extent permitted by this Declaration and the law.

Section 15.7 Violations of Law. Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation pertaining to the ownership, occupation, or use of any property within the Community is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth in this Declaration.

Section 15.8 Mediation. If a dispute arises relating to this Declaration between Declarant and the Association or Declarant and any Owner, the parties thereto shall first proceed in good faith to resolve the matter by mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate if the entire dispute is not resolved within 30 days after the date written notice requesting mediation is sent by one party to the other(s) (the "Mediation Period").

Section 15.9 Arbitration. Any controversy arising out of or relating to this Declaration between Declarant and the Association or Declarant and any Owner that is not settled prior to the expiration of the Mediation Period shall be settled by binding arbitration administered by an arbitrator (such as the Judicial Arbitrator Group or similar arbitration organization) mutually agreed upon by the parties in accordance with the American Arbitration Association Commercial Arbitration Rules and shall be held in the Denver metropolitan area. If a dispute involves Declarant or the Association, no Person shall file a memorandum of *lis pendens* or similar instrument that would encumber or create a lien upon the land owned either by Declarant or the Association. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction. The initiating Person shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the dispute, the amount involved and the remedy sought. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and expenses including attorney's fees, arbitrator's fees and out-of-pocket expenses of any kind. The term "prevailing party" shall mean the party whose position is most nearly upheld in arbitration. (For example, the prevailing party would be the party who is required to pay \$1,000.00 in the arbitration proceeding where such party had, prior to the commencement of the arbitration, offered \$500.00 by way of settlement and the opposing party, refusing such offer, had claimed entitlement to \$10,000.00.) The consideration of the parties to be bound by arbitration is not only the waiver of access to determination by a court and/or jury, but also the waiver of any rights to appeal the arbitration finding. Declarant, the Association, and each Owner expressly consent to arbitration as their sole and exclusive remedy, and expressly waive any right they may have to seek resolution of any dispute with Declarant as contemplated by this Article in any court of law or equity, and any right to trial by judge or jury.

Section 15.10 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

Section 15.11 Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the prevailing party shall recover its costs and expenses in connection therewith including reasonable attorneys' fees and costs. Each reference to a "prevailing party" herein means the party whose position is most nearly upheld in arbitration, as described in Section 15.9 above.

Section 15.12 Limitation on Liability. The Association, the Executive Board, the Design Review Committee, Declarant and any agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

Section 15.13 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to carry out the purpose of this Declaration.

Section 15.14 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 15.15 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

Section 15.16 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

Section 15.17 Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

Section 15.18 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may be transferred by operation of law to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added by operation of law to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Community, together with the covenants and restrictions established upon any other property, as one plan.

Section 15.19 Exhibits Incorporated. All Exhibits to this Declaration are incorporated herein and made a part hereof as if fully set forth herein.

Section 15.20 Disclaimer Regarding Safety. DECLARANT HEREBY DISCLAIMS ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. ANY OWNER OF PROPERTY WITHIN THE COMMUNITY ACKNOWLEDGES THAT DECLARANT IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION AND BYLAWS, AND IS NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

Section 15.21 No Representations or Warranties. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, SHALL BE DEEMED TO HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE COMMUNITY, OR ANY IMPROVEMENT THEREON, ITS OR THEIR PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE,

TAXES OR REGULATION THEREOF, UNLESS AND EXCEPT AS SHALL BE SPECIFICALLY SET FORTH IN WRITING IN A SEPARATE DOCUMENT.

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IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

KDB HOMES, INC., a Delaware corporation,
d/b/a Continental Homes

By: David Boten

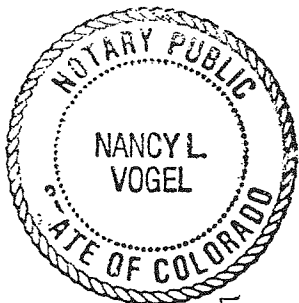
Title: Vice President Land Development

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

The foregoing instrument was acknowledged before me this 15th day of April, 2004, by David Boten as Vice President of KDB Homes, Inc., a Delaware corporation, d/b/a Continental Homes.

WITNESS my hand and official seal.

My commission expires 5-11-04.



My Comm. Expires 5-11-04

Nancy L. Vogel
Notary Public

**EXHIBIT A
TO THE
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR TOLLGATE CROSSING**

Legal Description of Annexable Real Estate

Tollgate Crossing Subdivision Filing No. 1, according to the Plat thereof Recorded August 26, 2003 at Reception No. B3188024;
Tollgate Crossing Subdivision Filing No. 2, according to the Plat thereof to be Recorded;
Tollgate Crossing Subdivision Filing No. 3, according to the Plat thereof Recorded August 26, 2003 at Reception No. B3188026;
Tollgate Crossing Subdivision Filing No. 4, according to the Plat thereof to be Recorded; and
Tollgate Crossing Subdivision Filing No. 5, according to the Plat thereof Recorded December 15, 2003 at Reception No. B3266745,

All in the County of Arapahoe
State of Colorado.

**EXHIBIT B
TO THE
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR TOLLGATE CROSSING**

Easements and Licenses Applicable to Filings 1, 2, 3, 4, and 5

1. Taxes for 2004 and subsequent years, a lien not yet due or payable.
2. Right of way for Murphy Creek.
3. The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded March 21, 1898 in Book A68 at Page 28; and any and all assignments thereof or interest therein.
4. Right of way for ditches as reserved in United States Patent, recorded March 21, 1898 in Book A68 at Page 28.
5. Mineral reservations with the right of ingress and egress as set forth in Deed recorded January 20, 1905 in Book 2 at Pages 394 through 397, and Release and Relinquishment unto the Government, recorded June 9, 1961 in Book 1264 at Page 200, and any and all assignments or interests therein.
6. Right of way and easement granted to Intermountain Electric Association by instrument recorded July 11, 1983 in Book 3911 at Page 117.
7. Terms, conditions, provisions, agreements and obligations specified under the Annexation Agreement by and between ADM, BLT-Quincy, LLC, a Colorado limited liability company and the City of Aurora, a municipal corporation recorded November 7, 2000 at Reception No. B0145181.
8. Zoning Ordinance No. 2000-121 recorded November 6, 2000 at Reception No. B0144065.
9. Terms, conditions, provisions, agreements and obligations specified under the Memorandum of Agreement by and between ADM-BLT, Quincy, LLC, Steven A. Nichols, Lynn Nichols, Arthur D. McFall, Janis McFall and Barry L. Talley recorded October 22, 2001 at Reception No. B1179558.

Easements and Licenses Applicable Only to Filings 1, 2, and 3

1. Right of way granted to Colorado Interstate Corporation in Judgment recorded February 18, 1970 in Book 1853 at Page 48.

Easements and Licenses Applicable Only to Filings 1 and 3

1. Effect of Shoemaker Property Framework Development Plan First Amendment, recorded December 12, 2002 at Reception No. B2238406.

Easements and Licenses Applicable Only to Filings 4 and 5

1. The effect of Shoemaker Property Framework Development Plan recorded November 19, 2001 at Reception No. B1197806.

Easements and Licenses Applicable Only to Filing 1

1. Effect of Tollgate Crossing Filing No. 1 Contextual Site Plan recorded November 27, 2001 at Reception No. 1201624.
2. The effect of Tollgate Crossing Filing No. 1 Contextual Site Plan Amendment No. 1, recorded August 26, 2003 at Reception No. B3188025.
3. Easement, Covenants, and Notes as shown on the plat of said subdivision, recorded August 26, 2003 at Reception No. B3188024.
4. Terms, conditions, provisions, agreements and obligations specified under the Master License Agreement by and between City of Aurora, Colorado and KDB Homes, Inc. recorded October 15, 2003 at Reception No. B3225991.
5. Terms, conditions, provisions, agreements and obligations specified under the Public Improvement Phasing Agreements by and between Continental Homes and the City of Aurora, Colorado recorded December 1, 2003 at Reception Nos. B3255711, B3255712 and B3255713.
6. Easement for utilities and incidental purposes set forth in instrument recorded February 20, 2004 at Reception No. B4031394.

Easements and Licenses Applicable Only to Filing 2

1. Notice of Right to Use Surface of Land recorded at Reception No. B3019486.

Easements and Licenses Applicable Only to Filing 3

1. Terms, conditions, provisions, agreements and obligations specified under the Master License Agreement by and between City of Aurora, Colorado and KDB Homes, Inc., recorded October 15, 2003 at Reception No. B3225990.
2. The effect of Tollgate Crossing Filing No. 3 Contextual Site Plan Amendment No. 1, recorded August 26, 2003 at Reception No. B3188027.

4. Easement for utilities and incidental purposes as set forth in instrument recorded February 20, 2004 at Reception No. B4031393.

Easements and Licenses Applicable Only to Filing 4

1. The effect of Tollgate Crossing Contextual Site Plan for Filing 4 recorded November 27, 2001 at Reception No. B1201627.

Easements and Licenses Applicable Only to Filing 5

1. The effect of Tollgate Crossing Contextual Site Plan for Filing 5 recorded November 27, 2001 at Reception No. B1201628.
2. The effect of Tollgate Crossing Filing No. 5 Contextual Site Plan Amendment No. 1 recorded December 15, 2003 at Reception No. B3266746.
3. Easement, notes and covenants as shown on Plat of Tollgate Crossing Subdivision Filing No. 5, recorded December 15, 2003 at Reception No. 3266745 in Map Book 255 at Page 7.
4. Terms, conditions, provisions, agreements and obligations specified under the Master License Agreement by and between the City of Aurora and KDB Homes, Inc. recorded January 26, 2004 at Reception No. B4016178.