



***SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS
FOR
DEVIL'S THUMB***

05441343.WPD;1

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**SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
DEVIL'S THUMB**

THIS SECOND AMENDED AND RESTATED DECLARATION is effective upon recording.

RECITALS:

A. On June 19, 1967, The Writer Construction Corporation submitted the real property described on Exhibit A to that certain Devil's Thumb Homeowners' Association Declaration of Covenants and Restrictions recorded in the real property records of Boulder County, Colorado at Reception No. 849648, as amended and restated in its entirety by that certain Devil's Thumb Homeowners' Association Amended and Restated Declaration of Covenants and Restrictions (collectively, the "Original Declaration") to its covenants, conditions and restrictions;

B. The Owners within the Devil's Thumb Community desire to amend and restate the Original Declaration by virtue of this Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Devil's Thumb ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration; and

C. The Original Declaration provides for and allows for this Declaration in Section 11.2, which provides as follows:

The covenants and restrictions set forth in this Declaration may be amended by an instrument executed on behalf of the Association by the President and attested to by the Secretary; provided that any amendment shall have the assent of a Majority of all of the Members entitled to vote. Members entitled to vote shall have paid all assessments due through the calendar month preceding the meeting at which the vote occurs. Members shall vote by secret ballot, in person or by proxy, at a meeting duly called for this purpose. Written notice of the meeting (and its purpose) shall be sent to all Members postmarked at least thirty (30) days in advance of the meeting;

D. The Original Declaration, in Section 11.3, also requires a special quorum requirement for amendments to the Original Declaration, as follows:

At the first meeting called to consider certain proposed amendments as provided in Section 11.2, the presence at the meeting, in person or by proxy, of a Majority of all Members entitled to vote shall constitute a quorum. In the event the required quorum is not forthcoming at the first such meeting or any subsequent meeting, another meeting may be called, subject to the notice requirements set forth in Section 11.2



herein, and the required quorum at any such subsequent meeting shall be one half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

F. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

G. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

H. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots and to further the interests of the residents of the Community and Members of the Association; and

I. Pursuant to the requirements set forth in Sections 11.2 and 11.3 of the Original Declaration, the Association has obtained the assent for this Declaration of a majority of all Members entitled to vote, via secret ballot, in person or by proxy, at a meeting duly called for such purpose after 30 days written notice of such meeting and its purpose was provided to all Members; or alternatively, a court order entered by the District Court for Boulder County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW THEREFORE, the Original Declaration is replaced and superceded by the covenants, servitudes, easements and restrictions set forth below:

**ARTICLE 1
DEFINED TERMS**

Section 1.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

(a) Act shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et. seq., as it may be amended.



(b) Architectural Review Committee or Committee means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

(c) Assessment shall include all Common Expense Assessments and any other expense levied to Lots pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) Association or Master Association shall mean Devil's Thumb Homeowners' Association, a Colorado nonprofit corporation, and its successors and assigns.

(e) Bear Mountain Subassociation or Subassociation shall mean and refer to the Bear Mountain Townhouse Homeowners' Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(f) Bear Mountain Townhouses shall mean the planned community of Bear Mountain Townhouses located within the Community, as further set forth in that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Bear Mountain Townhouses recorded February 8, 2008 in the real property records of Boulder County at Reception No. 2908805, as may be amended and supplemented from time to time.

(g) Board or Board of Directors shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(h) Common Area or Common Elements shall mean all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon and all common property owned by the Association, but excluding the Lots, and shall include any Common Area located upon any real property which is annexed to the Property.

(i) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.

(j) Community or Devil's Thumb Community or Planned Community shall mean the planned community known as "Devil's Thumb," and the real property subject to this Declaration and as further defined by the recorded Plats and the legal descriptions contained in this Declaration, and the Members of the Association.



(k) Declaration shall mean and refer to this Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Devil's Thumb, as amended, recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

(l) Governing Documents shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, any Maps and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(m) Lot shall mean and refer to any of the Lots shown upon any recorded subdivision Map or Plat of the Property, together with all appurtenances thereto and improvements now or hereafter located thereon, with the exception of the Common Area.

(n) Member shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(o) Owner shall mean the owner of record title, whether one or more persons or entities, to any Lot or Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(p) Pet shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations.

(q) Plat or Map shall mean and refer to the plat(s) and/or map(s) of the Property and improvements that are subject to this Declaration and which are designated in the Plat or Map recorded in the records of the Office of the Clerk and Recorder of Boulder County. More than one plat, map or supplement thereto may be recorded, and, if so, then the term "Plat" or "Map" shall collectively mean and refer to all of such plats, maps and supplements thereto.

(r) Property shall mean the property described in or which is subject to the Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(s) Residence shall mean the residential dwelling improvement constructed on a Lot which is designed and intended for use and occupancy as a residence by a single family.

(t) Rules and Regulations shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community and/or clarification of the Governing Documents, including any amendment to those instruments.



ARTICLE 2 NAMES & DESCRIPTION OF PROPERTY/EASEMENTS

Section 2.1 Name and Type. The type of common interest community is a master planned community, as further set forth in the Act. The name of the master planned community is Devil's Thumb. The name of the Association is the "Devil's Thumb Homeowners' Association".

Section 2.2 Bear Mountain Subassociation. All members of the Bear Mountain Subassociation within the Bear Mountain Townhouses shall be subject to all Governing Documents of the Association. The Governing Documents for the Association shall govern and take precedence over any governing documents of the Bear Mountain Subassociation.

Section 2.3 Property. The Planned Community is located in Boulder County, State of Colorado. The Property of the Planned Community is described in *Exhibit A* of this Declaration, in the Original Declaration, in the Plat, and/or is consistent with the common scheme and plan for the creation and operation of the Community. The number of Lots currently included in the Community is 265. Easements for utilities and other purposes over and across the Lots and any Common Area may be as shown upon a recorded Plat and on any recorded Map of the Planned Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.4 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to any Common Area 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 their tenants, invitees, licensees and guests shall strictly comply;
- (b) the right of the Association, to suspend the voting rights and the right to use of any Common Area and recreational facilities for a period not to exceed 60 days or during any period of violation of any other provision of the Governing Documents, whichever is greater; provided that suspension of voting and use rights shall be automatic during any period that an Owner is in default in payment of any Common Expense Assessment;
- (c) the right of the Association, upon approval of at least 60% of the total Association vote, to mortgage the Common Area as security for that purpose, provided, that the rights of such mortgagee shall be subordinate to the rights of the homeowners;
- (d) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Area;



(e) the right of the Association to transfer or convey ownership of any Common Area to any public agency, authority or utility (specifically excluding private entities), provided that any transfer or conveyance of any Common Area shall be subject to the prior approval of at least 67% of the votes in the Association at a special or annual meeting of the Members;

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

(g) the right of the Association to change use of, add or remove improvements to the Common Area.

Section 2.5 Delegation of Use. Owners may delegate their right of enjoyment to any Common Area and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot. If the Owner delegates rights to use the Common Area and facilities to members of their family, tenants, guests, or contract purchasers who reside at their Lot, the Owner shall not be entitled to use the Common Area and facilities. The Board of Directors shall have the express right to limit Owners' ability to delegate their right to use the recreational amenities of the Community through Rules and Regulations and/or to charge reasonable fees charged for such use.

Section 2.6 Easements for the Association. Each Lot shall be subject to an easement in favor of the Association, acting through the Board of Directors (including its agents, employees and contractors) to allow for their performance of obligations in this Declaration, provided that the easement granted and the use thereof shall not unreasonably interfere with or impair the use of any improvements constructed on a Lot and shall be exercised only after reasonable notice to the Owner of the Lot.

Section 2.7 Utility, Map and Map Easements. Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon the Plat or Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot shall be allocated one vote which shall be cast as a single vote and shall not be subject to fractional voting.



Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Devil's Thumb Community as provided in this Declaration so as to protect the value and desirability of the Devil's Thumb Community and the Lots. The Association shall be responsible for the maintenance, repair, replacement and improvement of any Common Area; provided, however, the Association shall have no such obligations with respect to any Property located within the Bear Mountain Townhouses community. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Plat or Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

Section 3.4 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.5 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.



Section 3.6 Education and Training. As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

ARTICLE 4
COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES

Section 4.1 Creation of Association Lien and Personal Obligation to Pay Assessments for Common Expenses. Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments for Common Expenses, insurance Assessments, utility Assessments (which may be assessed based on benefit or use between the Association and the Bear Mountain Subassociation as determined in the sole discretion of the Board), and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Assessments for Common Expenses and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessments for Common Expenses are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Assessments for Common Expenses shall be assessed against all Lots equally.

Section 4.2 Basis of Assessments. Common Expense Assessments will be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year, and should include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis.



Section 4.3 Budget and Annual Assessment. The Board shall approve a budget for annual Assessments, which shall be submitted to the Members for approval. The budget is approved if a majority of the Members present, in person or by proxy, vote in favor of the budget at a regular or special meeting of the Members at which a quorum is present. Notice of the meeting and a copy of the budget shall be sent to the Membership no less than 15 nor more than 50 days prior to the meeting. Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 4.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Members for approval in the same manner as the budget. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 4.5 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- (a) Those amounts expended by the Association for the benefit of any individual Lot or any occupant thereof, including but not limited to: improvement, repair, replacement or maintenance specific to a Lot;
- (b) Improvement, repair, replacement or maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- (c) All fines and costs assessed against an Owner pursuant to the Governing Documents; and
- (d) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

Section 4.6 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for annual operating expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be paid to the Owners in proportion to their Assessment liability or credited to them to reduce their future Assessments.



Section 4.7 Application of Payments. All sums collected on a delinquent account referred to an attorney shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 4.8 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 30 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

(b) For the first delinquency within a 12 month period, failure to make payment within 90 days of the due date shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. For the second and subsequent delinquencies within a 12 month period, failure to make payment within 60 days of the due date shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Member's annual Assessment.

(c) Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in



its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 4.9 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 4.10 Borrowing. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Assessments for Common Expenses, without Owner approval.

**ARTICLE 5
COVENANTS AND RESTRICTIONS ON USE,
ALIENATION AND OCCUPANCY**

Section 5.1 Flexible Application of the Subsequent Covenants and Restrictions. All Lots within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. 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 Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

Section 5.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.



(c) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.

(d) All fines imposed are collectable as Assessments.

Section 5.3 Use/Occupancy. All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation, and permitted by this Declaration, subject to any Rules and Regulations adopted by the Association. Lots shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupations shall be allowed so long as the home occupations are incidental and secondary to the use of the Lot and do not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

Section 5.4 Leasing. Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to the following: All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations of the Association. All occupancies, leases and rental agreements of Lots shall state that the tenant, lessee, or their guests shall comply with the terms of the Governing Documents. Failure of the tenant, lessee, or their guests to comply with the terms of the Governing Documents shall constitute a violation of this Declaration, and shall be enforceable against the Owner of the Lot by any means pursuant to the Governing Documents and as allowed under Colorado law.

Section 5.5 Maintenance of Lots and Improvements. Owners are responsible for the maintenance, repair and replacement of all property and improvements located within their Lot boundaries, including Residences. The Association, and its agents, shall have the authority, after giving the Owner 30 days written notice, to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Owner thereof all reasonable costs related thereto as an Assessment hereunder.



Section 5.6 Landscaping Requirements and Restrictions.

(a) General. The landscaping of each Lot shall be maintained by the Owner in a good, neat, attractive and well-kept condition, whether xeriscaped or with turf, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, and removal of weeds and debris.

(b) During Construction/Remodeling. During any construction/remodel project, the Owner of the Lot shall keep the Lot weed free and as neat as possible. Following any remodeling project that destroys all or some part of the structure and/or landscaping of a Lot, the Owner of such Lot shall have 12 months following written notice from the Board (or such other time frame as stated in such notice) to return the landscaping and grounds to a neat and attractive condition, after which time the Association may, at the Board's option and through its agents and employees, and after giving the Owner an additional 30 days written notice (or such other time frame as stated in such notice) sent to his or her last known address, arrange to have landscaping installed and maintained as it deems necessary to bring the appearance of the Lot within minimum acceptable standards for the Community, as further set forth in this Declaration.

Section 5.7 Restrictions on Pets. Pets may be kept on a Lot, if the Pet is not a nuisance to other residents. The Association shall have the authority to adopt Rules and Regulations further restricting Pets in the Community, including but not limited to dangerous breeds of animals. Owners shall hold the Association harmless from any claim resulting from any action of their Pets or the Pets of their tenants, guests or other invitees.

Section 5.8 Antennae. "Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be



erected, installed or maintained on a Lot.

Section 5.9 Tanks. No tanks of any kind (either elevated or buried), except for small portable tanks associated with an outdoor gas grill shall be erected, placed or permitted upon any Lot without the prior written approval of the Association.

Section 5.10 Nuisances. No nuisance shall be permitted within the Devil's Thumb Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Devil's Thumb Community by residents. Further, no improper, offensive or unlawful use shall be permitted within the Devil's Thumb Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Devil's Thumb Community or a portion thereof shall be observed.

Section 5.11 Vehicular Parking, Storage, and Repairs.

(a) Parking upon any Common Area shall be regulated by the Association.

(b) The following may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, is authorized in writing by the Association, or is allowed by the Act as an "emergency vehicle": oversized vehicles, trucks over one ton capacity, commercial vehicles, vehicles with commercial writing on their exteriors, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. The foregoing may be parked as a temporary expedience for up to 72 consecutive hours for loading or delivery of goods or services. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Area, Lots, or any improvement located thereon.

(c) No abandoned, unlicensed, or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association.

(d) Parking in a side yard or flagstone area is prohibited, unless on an approved concrete parking pad.

(e) No parked vehicle may impede the safe and efficient use of the streets by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway, Community streets or guest parking, if any.



(f) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages. This provision shall not be deemed to prevent washing and polishing of a vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water. Minor repairs may be performed, provided they may be completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(g) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(h) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(i) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(j) If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.



Section 5.12 Use of Common Area. There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association.

Section 5.13 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Devil's Thumb Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Devil's Thumb Community which would reasonably be found by others to be noxious or offensive.

Section 5.14 No Hazardous Activities. No activity shall be conducted on and no improvement shall be constructed on any Property within the Community which 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. 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 dispersal of burning embers unless otherwise prohibited by governmental ordinances. No Owner or Owners shall permit any condition on his Lot or Lots which creates a fire hazard or is in violation of applicable fire prevention regulations.

Section 5.15 Restrictions on Clotheslines and Storage. No drying areas or yards, service yards, shops, equipment, storage or storage areas visible from a street, neighboring Lot, or Common Area shall be installed, allowed, kept, maintained or permitted on any Lot unless the same, in each instance, is expressly permitted in writing by the Committee or is permitted in the Rules and Regulations. Retractable clotheslines are permitted subject to reasonable aesthetic regulations adopted by the Committee. Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

Section 5.16 Restriction on Signs and Advertising Devices. (a) Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Lot except such sign or signs as may be approved in writing by the Association. (b) Signs intended to impact the outcome of an election must be displayed in accordance with the Association's Rules and Regulations. (c) One professionally lettered "For Sale" or "For Rent" sign not to exceed three feet by two feet and one professionally lettered security or alarm system sign not exceeding one square foot may be displayed on a Lot.

Section 5.17 Outbuildings and Temporary Structures. An "outbuilding" shall mean an enclosed or covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, playhouses, swing sets, PODS or similar storage units, trailers, mobile homes, tents, shacks, barns, or detached garages or carports, shall be allowed on any Lot unless approved in writing by the Board of Directors or the Architectural Review Committee. Further, no outbuilding or temporary structure shall be used on any Lot at any time for residential



purposes, either temporarily or permanently.

Section 5.18 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner. If trash removal is a service ever offered by the Association to Owners, then the Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners.

Section 5.19 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 5.20 Compliance With Other Laws. No improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

Section 5.21 Restriction on Mining and Drilling. No Property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 5.22 No Combination of Lots. No Lot within the Community shall be combined with another Lot unless approved in writing by the Association.

Section 5.23 Use of the Words Devil's Thumb and Devil's Thumb Homeowners' Association. No Owner or resident shall use the words Devil's Thumb or Devil's Thumb Homeowners' Association or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

ARTICLE 6 ARCHITECTURAL REVIEW

Section 6.1 Required Approval. No structures, including residences, outbuildings, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles (except as otherwise permitted by the Act), fences, walls, exterior lighting, landscaping, or any other improvements shall be constructed, erected, relocated, removed or installed on a Lot, nor shall any painting, alteration or change to the exterior of the improvements, the exterior of a residence, to a Lot or to any structure or any attachment to the exterior of a residence (including



paint, patios, or decks) be commenced unless complete plans and specifications shall have been first submitted to and approved in writing by the Architectural Review Committee ("Committee") as may be outlined in the Rules and Regulations. Awnings, shutters, solar panels, and any other devices or structures that are considered Renewable Energy Generation Devices or Energy Efficiency Measures, as defined by Colorado law, are permitted subject to reasonable aesthetic regulations adopted by the Committee. Only house numbers and mail boxes that conform with the Architectural Guidelines shall be used and maintained on any Lot within the Community. The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee.

Section 6.2 Acknowledgment of Owners. Owners acknowledge, accept and agree to the following:

- (a) Owners will not commence construction or installation of an improvement until they have submitted improvement plans and specifications and received written approval from the Committee;
- (b) Owners shall immediately comply with any request by the Association for additional information relating to an improvement prior to the Committee's approval of a request and/or prior to the completion of an improvement. Failure to comply with such a request by an Owner shall result in the withdrawal of Committee approval, if previously granted;
- (c) Committee approval does not constitute approval of the local building or zoning department, drainage design or structural soundness;
- (d) Owners shall notify the Committee of completion of the improvement's installation or construction within five days of such completion;
- (e) Upon completion of an improvement, Owners authorize the Committee or its representative(s) to enter onto the Lot for exterior inspection;
- (f) Failure of an Owner to notify the Committee of completion of an approved improvement and to allow inspection, may result in the withdrawal of the Committee's approval;
- (g) If the improvement as built does not conform to the improvement as approved by the Committee, the Committee's approval will be deemed withdrawn, and upon written request of the Committee, Owners shall, at their own expense and cost, promptly bring the improvement into compliance with the submitted and approved plans and specifications;



(h) In the event of withdrawal of Committee approval for any reason(s) cited in this Section, and upon written request from the Committee, the Owner, at his or her expense and cost, shall promptly restore the Lot to substantially the same condition as it existed prior to commencement of the improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the improvement is brought into compliance.

Section 6.3 Failure to Act. In the event that an improvement is completed without Committee approval and no suit or arbitration to enjoin the improvement has been commenced within 365 days from the original notification to the Owner or within 365 days after completion of the improvement, whichever is earlier, then approval will not be required and the improvement will be deemed to be in compliance with this Declaration. The Board shall establish the effective date of completion after consultation with the affected Owner, the manager, the Committee, and neighbors.

Section 6.4 Architectural Criteria. The Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration. The approval or consent of the Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of the exterior appearance of structures with neighboring structures, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration. The Committee may, in its sole discretion, solicit input from: (1) Owners whose Lots are near a proposed improvement;(2) the entire Community, as appropriate; and/or (3) all Owners within the Bear Mountain Subassociation.

Section 6.5 Establishment of the Committee. The Board of Directors is authorized to determine the number of Committee members. The Board shall have the authority to determine terms for all Committee members and to remove any members of the Committee at their sole discretion.

Section 6.6 Architectural Guidelines. The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association. The Committee may propose and the Board shall have the authority to adopt guidelines specific to Bear Mountain Townhouses, in its sole discretion, after notice to and consultation with the Bear Mountain Subassociation.

Section 6.7 Reply and Communication. The Committee shall reply to all submittals of plans made in accordance herewith in writing after two regularly scheduled meetings of the Committee after receipt. In the event the Committee fails to take any action on submitted plans and specifications after two regularly scheduled meetings of the Committee after the Committee has received the plans and specifications, approval shall be deemed to be granted; provided, however, nothing in this Section shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of this Declaration, the Rules and Regulations or any architectural



guidelines adopted by the Board. All communications and submittals shall be addressed to the Committee in care of the Association.

Section 6.8 Conditions of Approval. In the discretion of the Board or the Committee, an Owner may be required to enter into a written agreement establishing the approval of the application in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, affirms and shall assume, unless otherwise agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

Section 6.9 Commencement and Completion of Construction. All improvements approved by the Committee must be commenced within 12 months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Committee, unless the Committee gives a written extension for commencing the work. Additionally, except with written Committee approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the Committee shall be completed within 18 months of commencement.

Section 6.10 Variances. The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines.

Section 6.11 Right to Appeal. If the Board of Directors is not acting as the Committee, an Owner whose plans have been denied or conditionally approved, or an affected neighbor, may appeal any decision of the Committee to the Board of Directors pursuant to the procedures set forth in the Resolution of the Devil's Thumb Homeowners' Association Adopting Policy and Procedure for Board Review of Decisions Made by the Architectural Review Committee, as may be amended ("Appeal Policy"). The Board of Directors shall review the decision of the Committee pursuant to the criteria set forth in this Article and/or the architectural guidelines, and in accordance with the procedures set forth in the Appeal Policy. Any decision of the Committee may be overruled and reversed by a majority of the directors pursuant to the Appeal Policy.

Section 6.12 Waivers. The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.



Section 6.13 Liability. The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the Committee shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

Section 6.14 Records. The Association shall maintain written records of all architectural approval applications submitted and all actions taken and decisions made with respect thereto. Such records shall be open and available for inspection and copying by any Owner and such Owner's designated agent(s) during reasonable hours of the business day according to any policy adopted by the Board.

Section 6.15 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

**ARTICLE 7
INSURANCE/CONDEMNATION**

Section 7.1 Insurance on the Lots. Each Owner has the responsibility to obtain hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to their Lot, Residence, or other property of that Owner located on such Lot, and liability insurance covering any injuries occurring to persons or property damages on a Lot.

Section 7.2 Insurance to be Carried by the Association. 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 in this Declaration and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Section 7.3 Hazard Insurance on Common Area. The Association shall obtain hazard insurance covering loss, damage or destruction by fire or other casualty to any insurable improvements installed or made to any Common Area and the other property of the Association.



Section 7.4 Association Liability Insurance. The Association shall obtain public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, 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 7.5 Association Fidelity Insurance. The Association shall obtain 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 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 7.6 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 employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 7.7 Directors' and Officers' Personal Liability Insurance. The Association shall obtain directors' and officers' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 7.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.

(c) 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 prior written notice to all of the Owners as provided by Colorado law and to the Association.

(d) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least 10 days prior to the expiration of the then-current policies.



(e) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.

(f) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Area and any improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In the event the Association obtains casualty insurance on the Lots, then in no event shall that casualty insurance policy contain a co-insurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner.

Section 7.9 Other Association 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 7.10 Insurance Premium. Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 7.11 Annual Insurance Review. The 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 7.12 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 holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is 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 7.13 Duty to Repair. Any portion of the Community for which the Association is required to insure under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 7.14 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 7.15 Responsibility for Payment of Deductible Amount.

(a) Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

(b) Any Owner who receives the proceeds of any Association insurance shall be responsible for the payment of the deductible in proportion to the percentage of insurance proceeds received. Such deductible shall be due within 10 days of notification and shall be considered a Common Expense Assessment allocated directly to the Lot and shall be collected as provided in this Declaration.

Section 7.16 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Insurance Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

Section 7.17 Damage to or Destruction on Lots. In the event of damage to or destruction of structures or improvements on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure and improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.



ARTICLE 8 GENERAL PROVISIONS

Section 8.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot;

(ii) suspending the right to vote and the right to use Common Area;

(iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.



(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 8.2 Attorney Fees. If an Owner fails to pay any Assessment as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner shall be charged as an Assessment and shall constitute a lien against the Lot.

Section 8.3 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 8.4 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 8.5 Amendment of Declaration by Owners. Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least more than 50% of the total votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the



EXHIBIT A

Boulder County Clerk, CO AMD PRO CVNT R 161.00

To the Devil's Thumb Homeowners' Association Amended and Restated Declaration of Covenants and Restrictions

PROPERTY DESCRIPTION

That part of the South 1/2 of Section 7, and that part of the Northeast 1/4 of Section 18, all in Township 1 South, Range 70 West of the 6th P.M., described as follows:

Beginning at the Southeast corner of Section 7, Township 1 South, Range 70 West of the 6th P.M.; thence South 89°51'57", West 680.00 feet along the South line of said Section 7; thence North 0°03'06" West, 660.00 feet parallel to the East line of said Section 7; thence North 0°03'06" West, 619.04 feet; thence South 89°51'57" West, 270.00 feet; thence North 48°40'00" West, 240.00 feet; thence North 00°02'10" West, 118.00 feet; thence North 88°52'47" West, 64.22 feet; thence North 00°02'10" West, 123.47 feet; thence North 64°54'43" East, 313.91 feet; thence North 00°02'10" East, 170.00 feet; thence South 89°15'09" West, 411.81 feet along the North line of the SE 1/4 of the SE 1/4 of said Section 7 to the Northwest corner thereof; thence North 0°00'42" East, 1319.:37 feet along the East line of the NW 1/4 of the SE 1/4 of said Section 7 the Northeast corner thereof; thence South 88°38'17" West, 720.24 feet along the East-West centerline of said Section 7 to a point on the East line of that tract of land described in Deed recorded in Book 1290 at Page 301 of the Boulder County Records, Boulder County, Colorado; thence along the Easterly and Southerly line of that tract of land described in said Book 1290 at Page 501 the following courses and distances: Thence South 0°04'35" West, 1480.28 feet parallel to the North-South centerline of said Section 7; thence South 54°20' West, 162.00 feet; thence South 54°20' West, 193.00 feet; thence North 85°45' West, 105.00 feet; thence South 62°10' West, 106.00 feet; thence South 23°30' West, 130.00 feet; thence South 45°35' West, 126.00 feet; thence South 86°40' West, 139.00 feet; thence South 63°20' West, 108.00 feet; thence North 61°30' West', 226.00 feet; thence South 82°30' West, 141.00 feet; thence South 51°05' West, 128.38 feet; thence leaving the Easterly and Southerly line of that tract of land described in said Book 1290 at Page 301, South 665°30' East, 727.16 feet; thence South 42°00' East, 410.00 feet to a point on the South line of said Section 7; thence North 89°51'57" East, 507.00 feet along the South line of said Section 7; thence South 44°00' East, 2108.32 feet; thence North 89°51'57" East, 395.00 feet parallel to the South line of said Section 7 to the East line of Section 18, Township 1 South, Range 70 West of the 6th P.M.; thence North 0°05' East, 1520.00 feet along, the East line of said Section 18 to the point of beginning, County of Boulder, State, of Colorado.



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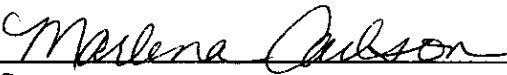
Boulder County Clerk, CO AMD PRO CVNT R 161.00 D 0.00

The undersigned, being the president and the Secretary of Devil's Thumb Homeowners' Association., hereby certify that the Association has obtained the assent of a majority of all Members entitled to vote, via secret ballot, in person or by proxy, at a meeting duly called for such purpose after 30 days written notice of such meeting and its purpose was provided to all Members; or alternatively, a court order entered by the District Court for Boulder County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration. Approvals obtained shall remain in effect until this Declaration is approved unless approval is expressly revoked in writing.

DEVIL'S THUMB HOMEOWNERS' ASSOCIATION,
a Colorado nonprofit corporation,

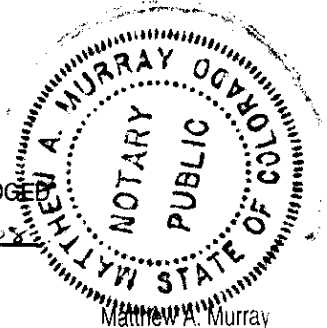
By: 
President

ATTEST:


Secretary

STATE OF COLORADO
COUNTY OF BOULDER
THE ABOVE INSTRUMENT WAS ACKNOWLEDGED
BEFORE ME THIS 2 DAY OF December, 2008
WITNESS MY HAND AND OFFICIAL SEAL.

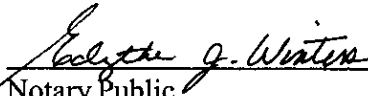

NOTARY PUBLIC



Matthew A. Murray
My Commission Expires 11/15/2010
3600 Table Mesa Drive
Boulder CO 80305

STATE OF COLORADO)
COUNTY OF Boulder) ss.

The foregoing Declaration was acknowledged before me by David Reed, as President and by Marlene Carlson, as Secretary, of Devil's Thumb Homeowners' Association, a Colorado nonprofit corporation, on this 1st day of December, 2008.


Notary Public

My commission expires: 7/17/2009

