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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
DAKOTA RIDGE WEST SUBDIVISION
DAKOTA RIDGE EAST SUBDIVISION**

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
DAKOTA RIDGE WEST SUBDIVISION
AND
DAKOTA RIDGE EAST SUBDIVISION

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PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by McCabe Limited Liability Company, and Richard L. McCabe, hereinafter referred to as "Declarant".

Whereas, Declarant is owner of certain real property located in the County of Boulder, State of Colorado, hereinafter referred to as "Properties" and as more particularly described on Exhibit A attached hereto and incorporated herein by reference; and,

Whereas, Declarant has previously subdivided property within the City of Boulder, County of Boulder, the real property described on Exhibit A as Dakota Ridge West Subdivision and Dakota Ridge East Subdivision and caused a plat of those subdivisions to be recorded, which plats, together with future amendments to such plats, are incorporated herein by reference;

Now Therefore, Declarant hereby declares that the Properties described herein shall be held, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, use and obligations, all of which are to be for the purpose of protecting the value and desirability of the Properties described and which shall be binding upon all persons having any right, title or interest in the described Properties or any part thereof, their heirs, grantees, successors, representatives, and assigns and shall inure to the benefit of each owner thereof and that the common interest community formed hereunder shall be formed as a planned community.

ARTICLE I

Definitions

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.00 "ACT" means the Colorado Common Interest Ownership Act, C.R.S. Sections 38-33.3-101 et seq. as it may be amended from time to time.

1.01 "ASSOCIATION" shall mean DAKOTA RIDGE HOMEOWNERS ASSOCIATION, INC. a Colorado Non-profit Corporation, its successors and assigns.

1.02 "BYLAWS" shall mean any instrument which is adopted by the Association for the regulation and management of the Association, including any amendments to these instruments.

1.03 "COMMON AREAS" shall mean that portion of the Properties described (including all improvements thereon) owned or to be owned by the Association or owned by the city upon which the Association has responsibility for maintenance as more fully described on Exhibit B attached hereto and incorporated herein by reference

or which is included as Common Area in a later amended Declaration for the Association.

1.04 "DECLARANT" shall mean McCabe Limited Liability Company and Richard L. McCabe, their successors or assigns if such successors or assigns shall acquire any portion of the Properties described for the purpose of development and be designated by the Declarant or a successor Declarant, as a Declarant by a duly recorded written instrument. Any such written designation by the Declarant may include the right of redesignation by such successor or further successors.

1.05 "DECLARATION" shall mean this Declaration of Covenants, conditions and Restrictions of Dakota Ridge West Subdivision and Dakota Ridge East Subdivision, as may be amended from time to time.

1.06 "DEVELOPMENT RIGHTS" means any rights or combination of rights reserved by Declarant hereunder including the following:

- a) To add real property to be covered under the terms of this Declaration;
- b) To create additional units, Common Areas within the real property covered under the terms of this Declaration;
- c) To withdraw real estate from being subject to the terms of this Declaration.

1.07 "DWELLING UNIT" shall mean the residential dwelling on a unit.

1.08 "EXECUTIVE BOARD OR BOARD" shall mean the Executive Board of the Association, duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein provided or provided in this Declaration which is authorized, to the extent allowed by law, to act on behalf of the Association except as provided herein.

1.09 "FIRST MORTGAGEE" shall mean any person, corporation, partnership, trust, company, association, or other legal entity which owns, holds, insures or is a governmental guarantor of a mortgage or deed of trust, which mortgage or deed of trust is a first and prior lien encumbering a Lot or Parcel within the Properties described.

1.10 "LOT" shall mean and refer to any plot of land shown upon any recorded subdivision plat as a subdivided lot within the Properties and which is subject to this Declaration, with the exception of the Common Areas, Maintenance Property, public streets or other public property. Lot shall include any dwelling or structure constructed thereon.

1.11 "MAINTENANCE PROPERTY" shall mean and refer to the property and improvements, together with all roads, streets, fences, rights-of-way and easements located within the Properties which are to maintained by the Association. Maintenance property known at the time of execution of this Declaration is described on Exhibit B attached hereto. Additional improvements or property may be added as Maintenance

Property as approved by the Executive Board for the Association and as shown on a recorded map which shows such additional Maintenance Property.

1.12 "MEMBER" shall mean all those who are members of the Association as provided in this Declaration.

1.13 "PROPERTIES" shall the entire real property and the improvements located thereon as more fully described on Exhibit A attached hereto, and any additional property which is made subject to this Declaration as provided herein.

1.14 "SECURITY INTEREST" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

1.15 "SPECIAL DECLARANT RIGHTS" means rights reserved for the benefit of the Declarant to complete improvements indicated on plats and maps filed with the Declaration; to exercise any development right; to maintain sales offices, management offices; signs advertising the common interest community, and models; to use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community; to make the common interest community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.

1.16 "UNIT" means a physical portion of the Properties which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the recorded subdivision plats within the Properties.

1.17 "UNIT OWNER OR OWNER", which may include the Declarant, means the owner of record of the fee simple title to any Unit which is subject to this Declaration, whether one or more persons or entities, including the Declarant, including a contract seller, but excluding a contract purchaser, and excluding those having an interest merely as security for the performance of an obligation.

ARTICLE II

PROPERTY RIGHTS

2.01 Owner's Easements. Every Unit Owner shall have the nonexclusive right and easement of use and enjoyment in and to any Common Areas related to this Declaration (hereinafter referred to as Common Areas) and the benefit from Maintenance Property located within or adjacent to the Properties and improvements thereon, which shall be appurtenant to and shall pass with the title to every Lot subject

to the development right and Special Declarant Rights reserved herein and, subject to the following provisions:

- a) The right of the Association through its Executive Board to make such use of the Common Areas or Maintenance Property as may be necessary or appropriate for the performance of its duties and functions which it is obligated or permitted to perform under this Declaration;
- b) The right of the Executive Board, in its sole discretion, to grant easements and rights of way on, across, under and over the Common Areas or Maintenance Property to any entity providing water, sewer, gas, electricity, telephone, cable television, or other similar service to the Properties;
- c) The right of the Executive Board to make reasonable rules and regulations regarding the use and upkeep of the Common Areas and Maintenance and facilities located thereon;
- d) The right of the Executive Board to dedicate or transfer all or any part of the Common Areas or Maintenance Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members;
- e) The right of the Association to close or limit the use of the Common Areas or Maintenance Property or portions thereof for any reasonable purpose.

2.02 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws and the adopted Rules and Regulations of the Association, his or her right of enjoyment of the Common Areas or Maintenance Property to Members of his family, his tenants, contract purchasers or guests. All owners shall comply strictly with and cause all family members, tenants, purchasers or guests to comply with this Declaration, the Articles of Incorporation, the Bylaws of the Association, and the decisions, rules, regulations and resolutions of the Association. Each Owner shall be fully responsible for the actions of their guests.

2.03. Lease of Property. Any Owner shall have the right to lease his or her property with the condition that any lessee shall be bound by all terms and conditions of this Declaration, the Articles of Incorporation, the Bylaws of the Association and the decisions, rules and regulations of the Association.

2.04. Right to Encumber. There are no restrictions on the right of an Owner to mortgage or otherwise encumber his or her property and there is no requirement for the use of a specific lending institution or particular type of lender or particular type of financing with respect to the Properties.

ARTICLE III**MEMBERSHIP - ASSOCIATION**

3.01 General Purposes and Powers. The Association, through the Executive Board, shall perform management functions as provided in this Declaration. Any Purchaser of a Unit or a parcel within the Properties shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all the power necessary or desirable to effectuate such purposes including such powers as are enumerated in the Act, unless modified herein.

3.02 Articles and Bylaws. The purposes and powers of the Association and its rights and obligations set forth in this Declaration may be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

3.03. Membership. Every record Owner of a fee interest in any Unit which is subject to an Annual Assessment, shall be a Member of the Association, including contract sellers, but excluding contract purchasers; provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. Record ownership of a Unit or Parcel shall be the sole qualification for such Membership. Where more than one person holds interest in any Unit, all such persons shall be Members in proportion to their share of ownership in the Unit. If only one of the multiple Owners is present, such Owner is entitled to cast the entire vote for such Unit.

3.04 Voting Interest. The Association shall have one class of voting membership. Members shall be all Owners and shall be entitled to one vote for each Unit owned. The vote for each Unit, the ownership of which is held by more than one Owner, shall be exercised as they determine between themselves. Should the joint owners be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and the right to vote on such issue will be lost. In no event shall more than one vote be cast with respect to any one Unit. Each Unit shall have allocated to it a percentage of the expenses of the Association and voting interest equivalent to one Unit in relation to the total number of Units in existence at such time of assessment or vote. Units owned by Declarant shall not receive any special benefit relating to assessments or voting rights. As additional Units are added so as to be covered by this Declaration, each Unit's obligation for assessments and related to voting rights shall be proportionately reduced.

3.05 Reservation of Rights to Declarant. Notwithstanding the foregoing voting rights, Declarant reserves the right to appoint the Executive Board of the Association until the occurrence of one following:

- a) Within sixty days (60) days after conveyance to Unit owners other than Declarant, of twenty-five percent (25%) of the Units that may be created, at least one Member and not less than twenty-five (25%) of the of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

b) Within sixty (60) days after conveyance to Unit Owners other than Declarant of fifty percent (50%) of units that may be created, not less than thirty-three and one-third percent (33-1/3%) of the Members of the Executive Board must be elected by Unit Owners other than the Declarant.

c) Within sixty (60) days after conveyance to Unit Owners other than a Declarant, of seventy-five percent (75%) of the Units which may be created; within two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or within two (2) years after any right to add new units was last exercised; the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom must be Unit Owners other than the Declarant or designated representatives of Unit Owners other than the Declarant. The Executive Board shall elect the officers of the Association. The Executive Board members and officers shall take office upon election.

In addition, Declarant may voluntarily surrender the right to appoint members of the Executive Board, but in such event, may continue to require Declarant's approval for certain specified actions as described in a recorded instrument executed by Declarant at such time.

For purposes of this Declaration, the maximum number of Units which shall be subject to the provisions hereunder and which the Declarant reserves the right to create shall be 124. Declarant reserves the right at any time within fifteen (15) years from the date this Declaration is recorded, to add additional real property to this common interest community. Said additional real property is not described hereunder but shall not exceed ten percent (10%) of the total area described on Exhibit A attached hereto.

3.06 Indemnification. The Association shall indemnify every director, officer, agent or employee and any former director, officer, agent or employee against loss, costs, and expense, including reasonably attorney fees incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such director, officer agent or employee of the Association or Executive Board. This indemnification shall not apply to acts where such person is liable for gross negligence or fraud. Any such indemnification may only be only paid out of the insurance coverage which furnishes Officers and Directors of the Association errors and omissions insurance coverage or similar coverage. All payments or settlements of this indemnification shall be limited to the actual to the actual proceeds of insurance policies received by the Association, however, any deductible shall be paid by the Association. Said indemnification shall not apply to any managing agent hired by the Association as an independent contractor.

3.07 Rights of the Association.

a) Association as Attorney-in-Fact for Owners: The Executive Board is hereby irrevocable appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner so as to permit the Association to fulfill all of its duties and obligations hereunder. The Executive

Board is granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate in order to accomplish all duties required of it. The acceptance of any person of any interest in any Unit shall constitute an appointment of the Executive Board as attorney-in-fact as provided herein.

b) **Contracts, Licenses and Other Agreements:** The Executive Board shall have the right, without the consent or joinder of Owners or first Mortgagees, to enter into or grant contracts, easements, licenses, leases and agreements, concerning the use of the Common Areas and Maintenance Property and any improvements located thereon.

c) **Implied rights:** The Executive Board shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably implied from the provisions of this Declaration, or given or implied by law, including those established by the Colorado Common Interest Ownership, (Article 33.3, Title 38 of the Colorado Revised Statutes) or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

3.08 Removal of Members of Executive Board. Notwithstanding any provision of the Declaration of Bylaws to the contrary, the Unit Owners, by a vote of sixty-seven percent of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.

3.09 Delivery of Documents by Declarant. Within sixty days after the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Board all property of the Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following items:

(a) The original or a certified copy of the recorded Declaration, as amended, the Association's Article of Incorporation, together with a Certificate of Good Standing, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends in accordance with Section 38-33.3-303(9) (b) of the Act;

(c) The Association funds or control thereof;

(d) All of the tangible personal property that has been represented by the Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the Common Elements, a copy of any plans and specifications used in the construction of improvements in the Properties, and inventories of these properties;

(e) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;

(f) Any other permits issued by governmental bodies applicable to the Association or the Properties and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

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

(h) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(i) Employment contracts in which the Association is a contracting party; and

(j) Any service contract in which the Association is a contracting party or in which the Association of the Owners have an obligation to pay a fee to the persons performing the services.

3.10 Meetings. The meetings of the Association shall be held at least once a year. Special meetings of the Association may be called by the president, by a majority of the Executive Board, or by the Owners having twenty percent (20%), or a lower percentage if specified in the Bylaws, of the votes of the Association. Not less than ten (10) nor more than fifty (50) days in advance of any meeting, the secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by the United States mail to the mailing address of each Unit Owner or to any other address designated in writing by the Unit Owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Executive Board.

3.11 Quorums. (1) Unless the Bylaws provide otherwise, a quorum is deemed present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the Executive Board are present, in person or by proxy at the beginning of the meeting. (2) Unless the Bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the Executive Board if persons entitled to cast fifty percent of the votes on that Board are present at the beginning of the meeting.

ARTICLE IV

Assessments

4.01 Creation of the Lien and Personal Obligation of the Assessment.

The Declarant for each Unit owned, within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association an Annual Assessment, Special Assessment and other assessments to be established and collected as provided hereinafter. The Annual and Special Assessments and other

assessments, created and defined in this Declaration, together with late fees, individual assessments, interests, costs, and reasonable attorney fees shall be a charge on the Unit they are levied against and shall be a continuing lien upon the property against which each such Assessment is levied until such Assessment or charge, together with any late fees, costs of collection, attorneys fees are fully paid. Each such Assessment, together with late fees, interest, costs and reasonable attorneys fees shall also be a personal obligation of the person who was the Owner of such Unit or of the persons jointly and severally, who were the Owners of such Unit at the time of Assessment became due and payable. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by them.

4.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare or the residents of the Properties and the Members of the Association. In addition, said Assessments may be used for the maintenance, repair and improvement of the Common Area and landscaping thereon, for the maintenance and repair of any fencing installed or Maintenance Property located on or adjacent to the Properties which is the responsibility of the Association, for payment of management fees, payment of insurance premiums, payment of legal, accounting and other professional services provided for the benefit of the Association, maintenance of an adequate reserve fund for repair and maintenance of Common Areas and Maintenance Property, for payment of utility charges of the Association, for the maintenance and repair of entry features constructed by Declarant, and for other expenses incurred by the Executive Board for the benefit of the Association and its members. Also, the Assessments may be used for any other purpose reasonably necessary to implement the purposes described herein.

4.03 Annual Assessments.

a) Annual Assessment for Common Expenses. An Assessment for the common expenses shall be levied and assessed not less than annually by the Executive Board against each owner of a Unit within the Subdivision, based upon a budget adopted by the Association. Said Assessment may include the establishment and maintenance of a reserve fund for the maintenance, replacement, reconstruction and repair of those portions of the Common Areas and Maintenance Property which the Association has a duty to replace, repair, maintain and/or reconstruct on a periodic basis. Such Assessment shall be paid in the proportion which the number of Units owned by a particular Owner bears to the total number of Units which have been established by the recording of a subdivision plat or plats. The determination of said assessments is not based upon the total number of Units which may be created, as set forth in Section 3.05, but only Units which are shown on the recorded subdivision plats within the properties.

b) Levy of Assessments. At least thirty days prior to the close of the Association's fiscal year, the Executive Board shall determine, subject to the provisions of this Declaration, the Annual Assessment which is payable by each Unit. The Annual Assessment may be later adjusted upon a finding of necessity by the Executive Board, but no more than twice in any one year. Written notice of any such Assessment or adjustment shall be sent to every Owner as such

Owners are listed in the records of the Association. The omission or failure of the Board to levy any Assessment or failure to send notice shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the Assessment.

c) Non-exemption. No Owner or any person obligated to pay an Assessment may waive or otherwise escape liability for any Assessments provided for herein by non-use of the Common Areas and Maintenance Property, abandonment of his or her Unit, or by any other action.

4.04 Maximum Annual Assessment.

a) Until the second annual assessment period, the maximum Annual Assessment shall be \$ 50.00 per Unit.

b) From and after the second annual assessment period, the maximum Annual Assessment may be increased each year not more than twenty percent (20%) above the maximum Assessment for the previous year. In the event the Consumer Price Index for the Denver, Colorado area published by the United States Department of Labor reflects an increase for the previous year of greater than twenty percent (20%) than the Annual Assessment may be increased by such amount.

c) On an annual basis, after consideration of current maintenance costs, the current financial situation and future needs of the Association, the Executive Board shall fix the Annual Assessment at any amount not in excess of the maximum Assessment allowed under this section without any voting or approval requirements of the Members.

d) The maximum Annual Assessment may be increased above that allowed in paragraph "b" of this section by a vote of at least sixty-seven percent "67%" of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

4.05 Special Assessments. In addition to the Annual Assessments authorized above, the Executive Board may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any of the Common Areas and Maintenance Property or other capital improvements of the Association, provided that any such Assessment shall have the assent of at least sixty-seven percent (67%) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. This requirement shall not apply to expenditures made by the Executive Board for repairs in the event of damage or destruction as set forth in Article VII of this Declaration.

4.06 Notice to Increase the Maximum Assessments or Assess a Special Assessment. Written notice of any meeting of Members called for the purpose of taking action authorized under paragraphs 4.04 and 4.05 (increase of maximum Annual Assessment and Levy of Special Assessment) shall be sent to all Members not less than ten days nor more than fifty days in advance of the meeting.

4.07 Uniform Manner of Assessment. All Annual Assessments and Special Assessments must be fixed at a uniform rate of all Units. In addition, at the option of the Executive Board, any Assessment, either Annual or Special, may be collected on a monthly or quarterly basis.

4.08 Date of Commencement of Assessments; Prorations; Due Date. The Annual Assessment provided herein shall commence as to all Units the first day of the month following the conveyance of the first Unit by Declarant to a third party after a subdivision has occurred within the Properties or at such time as established by the Executive Board. The Annual Assessment shall be prorated according to the number of months remaining in the Association's fiscal year at the time of said assessment.

The Annual Assessment shall be due and payable on an installment basis as determined by the Executive Board. Special Assessments shall be due and payable in a manner as established by the Executive Board but may not be payable on an installment basis, as so determined by the Executive Board. Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the Assessments on a Unit have been paid or the amount of Assessment currently owing with respect to a Unit. The statement shall be provided within 14 calendar days after receipt of the request and is binding on the Association, the Executive Board and every Unit Owner. The Association, the Executive Board, The Officers and the Members shall have no liability for any inaccurate information supplied under this paragraph other than as specifically set forth in C.R.S. 38-33.3-317(8).

4.09 Non-payment, Remedies of the Association.

a) All types of Assessments shall become delinquent unless paid by the due date. If any such Assessment is not paid by the due date, the Owner obligated to pay such Assessment may be required to pay a reasonable late fee, as determined by the Executive Board. Any Assessment not paid within thirty (30) days after the due date, shall bear interest from the due date at the rate of 18% per annum. The failure to make payment within sixty days of the due date thereof shall cause the total amount of such Owner's Annual Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Executive Board, without further notice.

b) The Association may bring an action at law or equity against the Owner obligated to pay the Assessment or undertake any other remedies allowed by law. In the event it shall become necessary for the Executive Board to collect any delinquent Assessments in any manner, the delinquent Owner shall pay, in addition to the Assessment, interest and late fees as herein provided, all costs of collection including reasonable attorneys fees and costs incurred by the Association.

c) The Association is hereby granted a continuing lien against an Owner's Unit for payment of an Assessment which the Owner fails to make as required by this Declaration. Such lien shall attach at the time of levy of the Assessment and continue until such Assessment, together with all late fees, interest and costs of collection, including reasonable attorneys fees are paid in full. The lien hereby given shall also be a lien upon all of the rent and profits of the encumbered unit.

The lien hereunder may be foreclosed upon by the Association as provided by the laws of the State of Colorado for foreclosure of mortgages and deeds of trusts on real property or as provided by the Colorado Common Interest Ownership Act. The Association shall have all rights in this regard as provided by the Colorado Revised Statutes.

Subject to the rights of the first mortgagee, except as such rights are modified by the Colorado Common Interest Ownership Act, if a foreclosure is filed action to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her dwelling Unit, the Executive Board may take possession and rent said dwelling Unit or apply for the appointment of a receiver for the dwelling Unit without prior notice to the Owner.

In the event an Owner is in default on any obligation secured by an encumbrance on a Unit in the subdivision, the Executive Board, at its option, may pay the amount due on said obligation and shall have a lien for said amount against the Unit which lien shall attach in the manner as provided for unpaid Assessments.

d) The lien for all Assessments created and defined by the Declaration shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot or Unit subject to this Declaration shall constitute a waiver of the homestead exemption as against such lien described hereunder. The lien shall be a first lien on the Unit, to the extent and in the amount allowed under the Act, and otherwise shall have such priority as provided elsewhere by law.

e) In the event any lien is required to be filed and released to enforce collection hereunder, all costs of preparation, filing and release shall be paid by the Owner as a cost of collection.

4.10 Capital Fund. The Association may establish a Capital Fund with each Unit being obligated to make a contribution to said fund of \$50.00 at the time of payment with respect to said Unit. If the fund is established, each such nonrefundable contribution shall be collected and the amount established at the closing of the initial sale of such Unit and be maintained for the use and benefit of the Association and shall not be considered a payment of the Annual Assessment. Said Fund shall be utilized at the discretion of the Executive Board to meet unforeseen expenses, to acquire capital equipment or provide any additional services to benefit the Association including payment of costs and expenses incurred in the enforcement of provisions of this Declaration.

4.11 Specific Approval Required. In the event prior approval of a Special Assessment, fine or increased maximum Assessment is required by the Federal Housing Authority, the Veterans Administration or similar agency because sale of portions of the Properties are financed by such agencies, written consent of such agency is also required.

4.12 Reconstruction Assessments. In accordance with Article VII of this Declaration, the Association shall have the authority to impose and levy a Reconstruction Assessment against all Units for reconstruction of Common Areas or Maintenance Properties and for payment of insurance premiums. Said Assessment shall be prorated among Owners in the same manner and proportion as the Annual Assessment.

4.13 Individual Assessment and Fines. An Individual Assessment may be assessed by the Executive Board as allowed in this Declaration against any Owner or Owners. Said Assessment shall be made only after twenty (20) days written notice to the Owner or Owners to be assessed, the opportunity to the Owner for a hearing before the Executive Board, and a vote of two-thirds of a quorum of the Board levying said assessment.

A fine may be assessed by the Executive Board against an Owner of Owners for each violation of the Declaration, the Articles, the Bylaws and the Rules and Regulations. Said fine shall be assessed by complying with the procedure for Individual Assessment set forth above.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

5.01 Approval of Improvements Required. No Improvements shall be constructed, erected or maintained upon the Properties, other than construction performed by Declarant, without the specific approval of the Architectural Control Committee, hereinafter known as the ACC.

Improvements requiring approval or the ACC shall include the construction, reconstruction, remodeling, addition to or alteration of the exterior of any Dwelling Unit or any exterior structure located upon the Properties; the demolition or destruction, by voluntary action, of any Dwelling Unit, structure or other improvement located upon the Properties; the grading, excavation, filling or similar disturbance of the surface of the land including the removing of trees, retaining walls and any change or alteration of any previously approved improvement, including any change of exterior appearance, color or texture. Landscaping and fences shall be controlled by the provisions of this Declaration and variances to said provisions will not be granted except as specifically allowed under the terms of this Declaration.

5.02 Members of ACC. The ACC shall consist of three persons. Declarant shall have the right to appoint and reappoint the members who need not be Owners, until the completion of all of the improvements to the Properties or five years

from the date of recording of this Declaration, whichever shall first occur. In addition, Declarant may terminate its right of appointment by providing written notice to the Executive Board or the Secretary of the Association. Thereafter members shall be appointed by the Executive Board for three year terms except terms for the initial ACC appointed by the Executive Board shall be one year for one member, two years for the one member and three years for one member. All members appointed by the Board to the ACC must be Owners and shall be entitled to reasonable compensation for their services as approved by the Executive Board.

5.03 Procedure for Approval. Prior to commencement of work on an improvement as defined in this Article, the applicant desiring such improvement shall submit to the ACC, plans showing the location of the structures and improvements, and showing all aspects of the proposed improvements together with the proposed colors and materials for fences, roofs and exteriors; and any additional plans or information requested by the ACC. In addition, the Applicant shall pay any review fee established by the Executive Board. The ACC shall have the right to inspect the premises prior to approval and during and after completion of construction. Until receipt by the ACC of all required materials and the review fee in connection with the proposed improvement, the ACC may postpone review of the request. No improvement defined under this Article shall be constructed, erected, altered or maintained within the Properties until the final plans and specifications therefore have received written approval by the ACC as herein provided.

5.04 Decision of ACC. The decision of the ACC shall be made within thirty days after receipt of all materials and plans required to be submitted to the ACC. The decision shall be in writing and, if the decision is not to approve a proposed improvement, the reasons therefore shall be stated. The decision shall be promptly mailed to the applicant at the address furnished by the applicant. A majority vote of the ACC shall constitute action by the ACC. In the event of a tie vote, the request shall be treated as having been denied.

5.05 Criteria for Approval. The ACC shall have the right to disapprove any application which is not suitable or desirable for aesthetic or other reasons, and the ACC shall have the right to take into consideration the suitability of the proposed improvement, the materials of which it is to be built, the color, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land, the effect of the proposed improvement on adjacent or neighboring property, and if the improvement is in accordance with all of the provisions and intent of this Declaration including design specifications and any design guidelines adopted under Section 5.11 hereinafter set forth. The application may be rejected if the plans and specifications submitted are incomplete. The ACC may condition its approval of any application upon such terms, conditions and changes as the ACC may deem appropriate.

5.06 Appeal to the Executive Board. If the ACC denies approval of a proposed improvement, the applicant may appeal to the Executive Board by giving written notice of such appeal to the Executive Board within ten days after such denial. The Executive Board shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the applicant and the ACC and shall decide, with reasonable

promptness, whether or not the proposed improvement shall be approved. The decision of the Executive Board shall be final and binding upon all parties.

In the event the ACC is not properly formed or ceases to exist, all functions of the ACC shall be taken over by the Executive Board.

5.07 Failure of ACC to Act on Plans. Any request for approval of a proposed improvement shall be deemed approved, unless written disapproval is mailed to the applicant within thirty (30) days after the date of receipt by the ACC of all necessary materials as determined by the ACC. This manner of approval may be appealed to the Executive Board by any Owner in the same manner as set forth in term 5.06 above. Any failure of the ACC to act under this Section shall not be deemed a waiver of any right to withhold approval of consent for a similar proposal submitted in the future.

5.08 Noncompliance. If the Board of ACC finds that any improvement has been made without obtaining the necessary approval under this Article, or was not done in compliance with the plans and specifications furnished by the applicant, the applicant shall be notified in writing of the noncompliance. Upon receipt of said notice, the applicant remedy or remove the improvement or portion which is in noncompliance within fifteen (15) days of the date the written notice of noncompliance was mailed.

The applicant may appeal a notice of noncompliance within ten (10) days of the mailing of the notice by filing a written request for review with the Executive Board. Upon receipt of said written notice of review, the Board shall decide as soon as reasonably possible whether there has been noncompliance, within the decision of the Board being binding on all parties. In reviewing the matter, the Board may review any information it deems pertinent and request that any additional materials be supplied for its review.

In the event the applicant or any owner fails to remedy any noncompliance, the Board may take any and all steps it deems necessary to effectuate such a remedy or to remove the noncompliance including all rights under law, which may include an action for specific performance or injunction. The Board may remove the noncomplying improvement from the property and assess the costs of removal against the owner. In addition, the Board may, at its discretion, levy a fine or individual Assessment against said owner for all costs and expenses occurred, including reasonable attorney fees in the matter or in the removal of any noncomplying improvement.

5.09 No Implied Waiver. No action by the ACC or by the Executive Board shall constitute a waiver or be binding with respect to future action by the ACC or the Executive Board under this Article. Specifically, no approval or failure to act by the ACC or the Executive Board with respect to any improvement shall be deemed a waiver of any right to withhold approval or consent for any other proposed improvement or for any other similar proposals.

5.10 Nonliability for Committee Action. No member of the ACC, nor any member of the Executive Board or the Declarant shall be liable for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the ACC or Executive Board unless it be due to the willful misconduct or bad faith of the

party to be held liable. In reviewing any matter, the ACC shall not be responsible for reviewing, nor shall its reviewing, nor shall its approval of an improvement or plan be deemed approval from the standpoint of safety, or imply that said improvement is in conformance with building codes or other governmental laws or regulations.

5.11 Architectural Standards/Design Guidelines . The ACC or Executive Board has the authority to promulgate rules and regulations to interpret and implement the provisions of this Article. The rules and regulations may contain guidelines which will clarify the types of designs and materials that will be considered in design approval. All improvements proposed to be constructed as defined and described in this Article shall be constructed in accordance with any Design Guidelines adopted and also in accordance with the procedures set forth in this Article.

ARTICLE VI

Restrictive Covenants

6.01 Use of Properties. Each and every Lot or Unit within the Properties shall be used for residential purposes only, together with such accessory uses as are allowed by law, unless a later recorded Declaration for a subdivision approved after the recording of this Declaration within the Properties allows for a different use. All buildings or structures erected upon the Properties shall be constructed on site, and no buildings or structures shall be moved from other locations onto said premises. No temporary building or other temporary structures, trailers, basements, tents, shacks, barns, or outbuildings shall be erected, used or permitted to be kept or stored on any portion of the Properties for any period of time, except as specifically allowed in this Declaration, or except as utilized by Declarant or the assigns or lessees of Declarant.

6.02 General Restriction . None of the Properties shall be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or any resident thereof and no billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Properties except as allowed under Section 6.03 hereafter.

6.03 Signs . Except as otherwise provided hereafter, no advertising signs, (except one "For Rent" or "For Sale" sign per Unit of not more than six square feet), shall be erected, placed or permitted to remain on the Properties. Signs identifying the development of the subdivisions may be placed in such locations and in such sizes as Declarant deems appropriate. The foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings and improvements, if any, of Declarant, its agents, contractors, and assigns during the construction, sale and rental period. Any house numbers or other signs identifying Units and their occupants shall be a maximum of one square foot in area per character. Signs shall be defined under this section as defined by the ordinances of the City of Boulder.

6.04 Storage. All Clotheslines, garbage cans, service yards, storage piles or similar stored items shall be kept screened by adequate vegetation or fencing so as to conceal them from view of neighboring residences and streets and all wood piles shall

be stacked in an orderly fashion. All rubbish, trash or garbage shall be kept in a container, shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. No trash, litter, junk containers, bottles or cans shall be permitted to remain exposed on the Properties so as to be visible from neighboring Lots or Units or from the street. No outside storage of vehicle shells, junk vehicles, tractors, implements, other heavy machinery, shall be allowed on the Properties. Storage tanks of any type shall not be erected or permitted on the Properties. These restrictions shall not apply to portions of the Properties utilized for agricultural purposes.

6.05 Antennae. No satellite dishes and no exterior television or radio antennae of any sort shall be placed, allowed or maintained upon any portion or the improvements or land anywhere on the Properties.

6.06 Storage of Vehicles. All cars, trailers, detached campers, boats or mobile homes and other vehicles which are parked or stored on any Unit shall be kept inside an enclosed garage.

6.07 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Properties except that dogs, cats or other household pets may be kept, subject to full compliance with the ordinances of the City of Boulder. No animals, including household pets, shall ever be kept for any commercial purpose. Dogs and other household pets shall not be allowed to run at large within the Properties or Common Areas but must be kept on a leash or within a Dwelling Unit or within an Owner's fenced area. In the event an Owner or other person allows an animal to cause a nuisance to other residents, then the Board shall have the right, at its option, to declare a violation of these covenants and to take any appropriate steps allowed under this Declaration to remedy the situation.

6.08 Nuisances and Hazards. No nuisance shall be allowed on the Properties, nor any use or practice which interferes with the peaceful enjoyment or possession of the Properties. All of the Properties shall be kept clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be permitted to exist. No owner shall permit any use of his property which will increase the rate of insurance for any of the surrounding areas.

6.09 Prohibited Uses. No unlawful use shall be permitted or made of the Properties or any part thereof. Any laws, ordinances and regulations of all government bodies having jurisdiction shall be complied with.

6.10 Construction Facilities. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its agents, employees and contractors to maintain during the period of construction and sale of the Lots and Units, upon such portion of the Properties as Declarant may choose, such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale or rental of Lots and Units including, without limitation, a business office, storage area, construction yard, signs, model units, sales office, construction office, parking area and lighting.

6.11 Utilities. All utility lines shall be placed underground and all refrigeration, heating, cooling or other utility units shall be concealed from view utilizing the same type and color of materials as used in the structure which is serviced by such utility unit.

6.12 Design Specifications. The following specifications shall be required for all structures located on the Properties and must be met in addition to obtaining any required approvals from the ACC and conforming with design guidelines adopted under Section 5.11.

A. Exterior materials. Exterior materials shall be limited to materials used in initial construction of units or compatible materials as approved by the ACC.

B. Roof Pitches. Roof pitches must be between 6/12 and 12/12. Porches and shed elements may have roof pitches as low as 1/12.

C. Colors. Exterior and trim colors shall be limited to the colors originally used by Declarant or originally approved by the Executive Board or ACC and any deviation must be specifically approved by the ACC.

D. Fences.

1. All fencing must meet the specifications as shown on Exhibit "C" and be compatible with fencing installed by the Declarant.

2. All fencing must meet City of Boulder's ordinances and specifications, and a building permit must be obtained prior to construction. Fences adjacent to a pedestrian or bike path must also conform to the requirements contained in the Subdivision Agreement with the City of Boulder.

E. Courtyards, Decks, Patios, Walls and Trellises.

1. Front entry courtyard walls must match the siding already used on the residence, and may not exceed 6 feet in height.

2. Patios constructed out of brick, stone, concrete, wood, or other materials will be permitted anywhere on a lot as long as they are within fenced yards as established in Section D above and are at or below natural grade level. In addition, all landscape requirements of these Covenants must be met in conjunction with a patio.

3. Trellises will be allowed over the front yard courtyards as specifically approved by the ACC.

F. Landscaping. All landscape plans for fenced yards and/or courtyards must meet the specifications, as shown on the attached Exhibit "C", and must be approved by the ACC. Landscaping must be completely installed on a lot within one year from the date the certificate of occupancy is issued for said lot. All ground cover and landscaping shall comply with all regulations and ordinances of the City of Boulder with respect to height, location and maintenance. Plant

material which requires irrigation are not recommended within five (5) feet of the foundation.

G. Additions. Lanais, trellises, hot tubs, gazebos, solar collectors, greenhouses, and other major structural improvements shall match and be compatible with materials used in construction of the original residence. Any addition must be within required building setbacks and must be attached to the residential Unit by decks or walls. In addition, all such features must be specifically approved by the ACC under the procedure set forth in this Declaration.

H. Storage sheds. Detached storage sheds shall not be permitted on any Lot within the Subdivision. Attached storage sheds will be permitted if they match design materials and colors of the residence and are specifically approved by the ACC as to design and location.

I. Mailboxes. Only one mailbox per Lot may be installed and all mailboxes must match the design pre-approved by the ACC or the Executive Board.

6.13 Illumination of Buildings and Grounds. Exterior illumination of houses, yards, garages, driveways and streets shall be limited to that reasonably necessary for security and safety, and lighting shall be oriented so as not to shine on any other property.

6.14 Solar Easements and Solar Collectors.

(a) Solar Collectors Installed by the Declarant. Certain original structures located on lots within the Properties are locations for Solar collector panels installed by the Declarant. Direct unobstructed access to sunlight is necessary for these solar energy systems.

No building or structure of any nature, landscaping, vegetation nor other object of any type except original first built structures and deciduous trees may be erected, maintained, planted or cultivated on any Lot within the Properties in such a manner as to cause shade on a Solar Collector located on a Lot between the hours of 9:30 A.M. and 2:30 P.M., Mountain Standard Time on any day of the year. In addition, no original first built structures shall be altered, so as to cause shade on a Solar Collector in accordance with the above.

The Declarant hereby reserves unto himself his heirs, personal representatives, successors and assigns, the right, without the consent of the Owners of Lots to be subjected to these Solar Easements, upon the substantial completion of an original structure on a Lot to grant a more definitely described Solar Easement for the benefit of such Lot and burdening the Lots as are necessary. Such Easement shall be recorded and that description shall be deemed definite.

(b) Solar Collectors Installed by Owners Other Than the Declarant. It is possible that certain Lots within the Properties will be locations for Solar Collector panels installed not by the Declarant, but by the Owner of the Lot to enable the improvements constructed thereon to utilize solar energy. To encourage the use of

such solar energy, the Board is hereby irrevocably is hereby appointed attorney-in-fact for the Owners and each of them to grant Solar Easements over any portion of the Properties. The acceptance by any person of any interest in any Lot shall constitute an appointment of the Board as attorney-in-fact as provided above. The Board shall be granted all of the powers necessary to grant such easements.

Any Owner of a Lot within the Properties who wishes to install a Solar Collector shall submit his or her plans and specifications describing the new construction to the Board in accordance with Article Six hereof, together with a request that he or she be granted a Solar Easement for his or her Solar Collector. The Board, after due notice to the Owners of all the Lots within The Properties which shall be burdened by such Solar Easement , and after having giving them an opportunity to be heard, may grant the Solar Easement requested, so long as such request is found by the Board to be reasonable and is not an undue burden on adjoining Lots.

The Owner requesting such Solar Easement shall be entitled to have his or her Solar Collector protected from shade in the same manner as the shade existed on the date the Board granted the Easement; i.e., if no shade existed on his or her proposed Solar Collector at the time the easement was granted, his or her easement would entitle such Owner to no shade, but if shade existed from existed from existing structures or existing landscaping, then the easement would be granted subject to such shade. Landscaping planted at the time the easement was granted would be allowed to grow into the easement without being an encroachment. Original structures, deciduous trees, other structures and landscaping existing at the time the Solar Easement is granted shall not be considered or deemed to be encroachments for title and other purposes.

Upon approval of the easements the Board shall promptly prepare, execute and record the Solar Easement reflecting the Lots benefited and burdened. The Easement will be similar in dimensions to the easements granted in subparagraph (a) except that said dimensions shall be such as are necessary for the operation of that particular solar equipment involved. Such easement must be granted within twenty years of the recording of this Declaration.

(c) Compliance/Enforcement. Each Solar Easement shall at all times comply with the provisions of Colo. Rev. Stat. Ann. (38-32.5-100). Each Solar Easement is an interest in land and shall run with the land benefited and burdened. Each Solar Easement shall be recorded, and that description shall be definitive. Each Solar Easement may be enforced by the Owner of any affected Lot, the Board, any affected First Mortgagee and/or the Declarant by proceeding at law or in equity against any person or persons violating any of the restrictions and limitations of this Article, either to restrain such violation or attempted violation or to recover such damages as may ensue because of such violation or any combination thereof, including costs of suit and reasonable attorney's fees

Failure to enforce any covenant or restriction contained within this paragraph shall in no event be deemed a waiver or the right to do so thereafter.

d) It is the intent of these covenants to encourage solar power generation, but not at the expense of another's view or of the aesthetics of the neighborhood. Frame colors of the solar collectors are to conform to the materials permitted in the development and collectors must be integrated into the design of the residence so as to fit flush with the wall or roof surface of the structure.

6.15 Lot Size. No Lot may be further subdivided from that existing at the time this Declaration is recorded, except by Declarant. However, boundaries between adjoining Units, may be relocated by the Association or by Owners, upon application to the Association as provided in the Act.

6.16 Evaporative Coolers. It is the intent of these covenants to encourage the use of coolers which consume lower amounts of energy, but not at the expense of aesthetics of the surrounding area. Therefore, rooftop coolers will be permitted only if they fit within a screened or louvered enclosure four foot by four foot by four foot which is painted to match the roof color. In addition, the enclosure shall be located behind and below the major roof peak so that it is not visible from the street located in front of the residence.

6.17 Garages to be available for Vehicle Storage. The garage on each Lot may be used for limited storage of items other than vehicles, provided that it shall be kept sufficiently clear to provide storage of the number of vehicles for which the garage was designed.

ARTICLE VII

Insurance

7.01 Coverage. The Executive Board shall obtain and maintain at all times to the extent obtainable, insurance policies relating to the Common Areas and Maintenance Property. Said policies shall be written with companies licensed to do business in the State of Colorado. The Executive Board and the Declarant shall not be liable for failure to obtain any coverages required if such failure is due to the unavailability of such coverages or if such coverages are available only at unreasonable cost. If requested in writing by an Owner or a first mortgagee, the Executive Board shall furnish a certificate of insurance or notices of termination of coverage or changes in coverage.

A. Each such policy shall provide:

1) Such policy shall not be canceled, invalidated or suspended because of the conduct of any Owner (including said Owner's guests, tenants, or agents) or of any officer, agent or employee of the Association without a prior demand in writing to the Association that the conduct or defect be cured and the Association shall not have so cured within sixty (60) days of said demand.

2) The Declarant, so long as Declarant shall continue to own any Unit or portion of the Properties, shall be protected by all such policies;

3) That, notwithstanding any provisions thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercised without prior approval of the Association.

4) Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in Common Areas or membership in the Association.

5) No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

6) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

B. Said policy shall not provide that:

1) Under the terms of the insurance company's charter, bylaws or rules, contributions or Assessments may be made against the Association, the Owner, a first mortgagee or said mortgagee's designee or assignee;

2) Under the term of the insurance company's charter, bylaws, or rules any loss payments are contingent upon action by the insurance company's board of directors, shareholders, policy holders or members.

3) Any limiting clauses which could prevent first mortgagees or said mortgagee's designee or assignee, from collecting proceeds paid.

C. All policies, to the extent obtainable, shall contain waivers of subrogation against the Declarant, the Association, the Executive Board, Members, Owners, their guests and assignees. The named insured under the policies shall be the Association for the use and benefit of the individual Owners. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Executive Board and the insurance proceeds for that loss shall be payable to the Association as attorney-in-fact for each Owner and such Owner's First Mortgagee. Said insurance policies shall contain the standard mortgagee clause or equivalent

endorsement in which the First Mortgagee, its successors and assigns is named additional insured, if applicable.

7.02 Physical Damage Insurance. The Executive Board shall obtain and maintain "all-risk" form policy of fire and hazard insurance with extended coverage for vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring all of the insurable improvements located on the Common Areas or Maintenance Property, including fixtures, machinery, equipment, fences and supplies and any other personal property belonging to the Association.

Such insurance shall provide coverage equal to the current replacement cost based on the most recent appraisal of the insurable improvements, exclusive of land, excavations and other items normally excluded. The Executive Board shall review at least annually, its insurance policies in order to insure that the coverages contained in the policies are sufficient.

Such policies shall also provide as follows:

A. A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made by the Executive Board pursuant to this Declaration not to do so.

B. The Executive Board may require that said policies shall contain endorsements such as the following:

No control; Contingent liability from operation of building codes; Cost of demolition; increased cost of construction; Inflation guard.

A duplicate original of the policy of hazard insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer.

Any deductible on such insurance policy shall be determined in the discretion of the Executive Board as consistent with good business practice and shall be consistent with the requirements of the First Mortgagees. Any loss falling within the deductible portion of a policy may be paid by the Association.

7.03 Rebuilding of Damaged Areas. In the event of repair and/or reconstruction, the proceeds of any insurance collected shall be available to the Association for the purpose of repair and/or construction. If the insurance proceeds are insufficient to properly repair and/or reconstruct the damaged area, such excess cost shall be assessed as an Individual Assessment against all Owners in accordance with this Declaration and not as a Special Assessment and such Assessment shall be exempt from any special voting requirements of

the Owners. Such Individual Assessment shall be Assessed in the same proportion as the Annual Assessment is assessed.

If any portion of the damaged areas is not repaired or replaced, the insurance proceeds shall be used to restore the damaged areas to a condition compatible with the adjacent area and the remainder of the proceeds shall be retained by the Association for the benefit of the Members.

7.04 Liability Insurance. The Executive Board shall obtain and maintain comprehensive general liability (including libel, slander, false arrest, invasion of privacy, and property damage) insurance with such limits as the Association determines appropriate with respect to Property of the Association and insuring each Officer, Director, Member, and each Owner including the Declarant in its capacity as an Owner, against any liability to the public or to owners and their invitees, agents and employees arising out of, or incident to, ownership and use of such Property or Maintenance Area. Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be acquired to include protection against such other risks including, but not limited to, Host Liquor Liability, Contractual and All-Written Contract Insurance, Workmen's Compensation and Employer's Liability insurance, Comprehensive Automobile Liability Insurance and other coverages as the Board deems necessary. The Executive Board shall review such coverages and the policy limits thereunder once each year, but in no event shall such insurance coverage be less than one million dollars (\$1,000,000.00) covering all claims for bodily injury or death and property damage out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained at the discretion of the Executive Board.

7.05 Other Insurance.

A. The Association shall obtain and maintain adequate fidelity insurance, coverage, to protect against dishonest acts on the part of the Directors, Officers, Trustees, Employees or Volunteers of the Association and all others who handle or are responsible for handling funds. Such Fidelity coverage shall name the Association as the named insured and be written in an amount sufficient to cover the maximum funds that will be in the custody of the Association at the time while the insurance is in force, but in no event less in aggregate than two month's current assessments plus reserves, as calculated from the current budget of the Association. In addition, the fidelity insurance coverage must contain waivers of any defense based upon the exclusion of persons who serve without compensation.

B. If required by a governmental or quasi-governmental agency, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, the Association shall obtain flood insurance in accordance with said requirements.

C. The Association may obtain Workman's Compensation and Employer's Liability Insurance and other similar insurance with respect to employees of the Association in the amount and in the forms now of hereafter required by law.

D. The Association may obtain such other insurance of a similar or dissimilar nature, as the Executive Board shall deem appropriate.

E. If it is reasonably determined by a First Mortgagee that the existing coverages do not adequately protect the Properties, the Executive Board shall obtain such additional coverages. In addition, in the event any additional coverage is required by the Colorado Common Interest Ownership Act, the Executive Board shall seek to obtain such coverage, if available.

7.06 Payment of Insurance Premiums. The cost of the insurance obtained by the Association in accordance with this Article, shall be paid from Association funds and shall be collected from the Owners as part of the Annual Assessment as provided for in this Declaration. In the event there are not sufficient funds generated from the Annual Assessment to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment and not as a Special Assessment and such Assessment shall be exempt from any voting requirements of the membership.

7.07 Coverage on Owners Units. Insurance coverage on any property owned by an Owner, Owner's invitees, employers or assigns shall be the sole responsibility of the Owner. The Declarant, the Association and the Executive Board shall have no responsibility therefore.

ARTICLE VIII

Rights of the First Mortgagees

8.01 Entitlement. A First Mortgagee, upon written request to the Association, shall be entitled to receive any of the following:

- a) Budgets, notices of Assessments, or any other notices provided for under this Declaration by the Association to an Owner in which a First Mortgagee has a security interest;
- b) Financial statements of the Association which are distributed to its Members;
- c) Notices of meetings of the membership and the right to be represented at any meeting by a designated representative;
- d) Notice of any default in the performance of any obligations under this Declaration, the Articles of Incorporation and/or Bylaws of the Association

by an Owner of a Unit in which a First Mortgagee has a security interest, which remains uncured for a period of thirty (30) days;

e) Notice of the decision of the members to make any material amendment to this Declaration, the Bylaws, and/or the Articles of Incorporation of the Association;

f) Notice of any lapse, cancellation or material modification of any hazard or liability insurance policy or fidelity bond maintained by the Association;

g) Notice of any condemnation action or any casualty loss which effects a material portion of the properties or any Unit in which a First Mortgagee has a security interest;

h) Notice of any proposed action in which this Declaration requires notice and consent of First Mortgagee.

8.02 Payment of Charges. First Mortgagees may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage because of a lapse of a policy and may also pay taxes and other charges which are in default or which may or have become a charge against the Common Area or Maintenance Property. If such payment is made reimbursement from the Association shall be due and owing immediately.

8.03 Restrictions. The consent of the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of those First Mortgagees holding mortgages on Units which have at least sixty-seven percent (67%) of the votes of the Units subject to first mortgages within the Properties shall be required to add or amend any material provisions of the Declaration, Bylaws, and/or Articles of Incorporation which establish, provide for, govern or regulate any of the following:

a) Assessments, the manner of Assessment liens or the subordination of such Assessment liens;

b) Reserves for the maintenance, repair and replacement of the Common Areas or Maintenance Property;

c) Insurance or Fidelity bond;

d) Right to use of the Common Areas;

e) Responsibility for maintenance and repair of the Common Areas or Maintenance Property;

f) Leasing of a Dwelling Unit and uses to which a Dwelling Unit is restricted;

- g) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey a Unit;
- h) Any provisions of this Declaration, the Articles of Incorporation or Bylaws which specifically grants rights to First Mortgagees thereunder.

Nothing in this Section shall be deemed to deny or delegate control over the general administration affairs of the Association by the Unit Owners of Executive Board or prevent the Executive Board from commencing, intervening in, or settling any solicitation or proceeding.

8.04 Special FHLMC Provisions. If required by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, Federal Housing Authority, the Veterans Administration or similar agency, the following requirements apply. Unless sixty-seven percent (67%) of the First Mortgages (based upon one vote for each first mortgage owned) or Owners (other than the Declarant) give their prior written approval, the Association shall not be entitled to:

- a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer property owned directly or indirectly by the Association, except as specifically allowed in this Declaration;
- b) fail to maintain hazard and extended coverage insurance on Common Areas or Maintenance Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the Insurable value.
- c) use hazard insurance proceeds received for losses to any part of the Common Areas or Maintenance Properties for other than repair, replacement or reconstruction of each property.
- d) change the method of determining the Assessments which may be levied against an Owner;
- e) by act or omission change, waive or abandon any scheme of regulation, or the enforcement thereof, pertaining to the architectural design or exterior appearance of the Dwelling Units, the maintenance of the Common Areas or Maintenance Properties.

Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, the Federal Housing Authority, the Veterans Administration, or other similar agency, subsequently delete any of their respective requirements which necessitate the provisions of this paragraph or make such requirements less stringent, the Executive Board, without approval of the Owners or First Mortgages, may cause amendment to the paragraph to be recorded to reflect such changes.

ARTICLE IX**Property Ownership and use**

9.01 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plat. No action shall be taken or use made of the easement area which damages or interferes with the installation and maintenance of utilities or which obstructs or interferes with the flow of water through drainage easements. Each Unit shall be subject to an easement for the benefit of the Association for the purpose of maintenance and repair and to meet any other purposes and requirements set forth in this Declaration. In addition, an easement is granted to all police, fire and other emergency agencies to enter onto any portion or the Properties in the performance of their duties.

All easements created herein shall be deemed appurtenant to the Unit they affect and all conveyances or other instruments affecting title shall be deemed to grant and reserve the easements provided herein even if no reference to such easement is made in said conveyance or instrument.

9.02 Encroachments. If any part of the Common Areas encroaches or shall thereafter encroach upon any Lot or Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Unit encroaches or shall hereafter encroach upon the Common Areas, or upon another Lot or Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of the same. Such easements shall extend for whatever period of time the encroachment shall exist. Such encroachments shall not be considered to be encumbrances either upon either of the Common Areas or upon a Unit. The easement does not relieve a Unit Owner from liability in case of willful misconduct nor relieve the Declarant or any other person of liability for failure to adhere to the subdivision plats for the Properties.

9.03 Declarant's Easements. Anything to the contrary herein notwithstanding, the Declarant and/or its agents hereby reserve reasonable easements and rights-of-way over all Common Areas and Lots or Units not yet conveyed for the sole use of constructing improvements to the Properties and Units therein. This reservation shall terminate upon the completion of all the improvements to the Properties.

9.04 Condemnation. In the event of a proceeding in condemnation of any Common Area by any authorized governmental authority then the proceeds from such condemnation attributable to said Common Area shall be distributed to the Executive Board for repair of the common Areas after condemnation and at the discretion of the Board, the balance remaining shall be distributed to all Owners in the same proportion as the Annual Assessments are assessed. When condemnation occurs, either to a Common Area or to other areas within the Properties and such area is subject to a mortgage or deed of trust, the

proceeds payable hereunder shall be distributed by checks made jointly payable to Owners and holders of first deeds of trusts on the Units.

9.05 Fences Along Property Lines. In the event a fence is constructed along a property line by Declarant each adjacent Owner shall possess that portion of the fence lying within his or her Unit. Said Owner is hereby granted a mutual reciprocal easement for repair or replacement of said fence. No Owner shall commit or omit any act, the result of which is infringement of the adjoining Owner's rights in said fence. In the event that any portion of any structure originally constructed by Declarant, including any fence, shall protrude over an adjoining Unit, such structure shall not be deemed to be an encroachment upon the adjoining Unit nor shall any action be maintained for the removal of, or for damage because of such protrusion. The foregoing shall also apply to any replacements of any fence if the fence is replaced substantially in conformity with the original fence constructed by Declarant.

If said fence is in need of repair or is destroyed or damaged by any casualty, the owners of the Units abutting such fence jointly shall repair, restore or reconstruct it substantially to its original form, and they contribute equally to the cost of repair and reconstruction.

All claims, demands, disputes, controversies and misunderstandings arising concerning such a fence, or under the provisions of this section, shall be submitted to and be determined and settled by arbitration. As established hereunder, each party shall select one arbitrator and the two arbitrators so selected shall jointly select a third arbitrator. The three arbitrators shall meet and give the opportunity to each party to present his or her case in the presence of the other party and shall then make their decision. The cost of arbitration shall be shared between the parties unless the arbitrators determine that a different manner of Assessment of costs is appropriate. The award of a majority of the arbitrators shall be final and binding upon the parties and judgment may be entered thereon in any court having jurisdiction.

ARTICLE X

Maintenance

10.01 Maintenance of the Common Areas and Maintenance Property. The Association shall provide for the repair, maintenance and replacement of the Common Areas and Maintenance Property. In the event such repair, maintenance and replacement is resulting from the act or negligence of an Owner or an Owner's guest, the Executive Board shall have the right, after notice and hearing, to charge the costs of such repair, maintenance and replacement to such Owner by an Individual assessment in accordance with this Declaration with such decision of the Executive Board being final. Said repair, maintenance and replacement shall be at the sole discretion of the Executive Board. In the Event additional area within the Properties becomes Common Area is added because of annexation to the Properties, the Association shall

also provide for the repair, maintenance and replacement of any such Common Area.

10.02 Failure to Properly Maintain. In the event any Owner shall fail to maintain his or her Unit or structures thereon, the Executive Board shall have the right, after notice and hearing and upon approval by a vote of the Board, to enter upon said Unit and repair, maintain, replace or restore the Unit or structure. The cost of such maintenance, repair and restoration shall be chargeable to such Owner by Individual Assessment in accordance with this Declaration.

ARTICLE XI

General Provisions

11.01 Enforcement. The covenants, conditions and restrictions herein contained and amendments made hereunder shall run with the land and be binding upon and inure to the benefit of the Association, the Declarant and property Owners and be enforced as provided hereinafter. Violation of these protective covenants shall give the Association, the Declarant or the Owners, or any of them, the right to bring proceedings in law or equity against the party or parties violating or attempting to violate any terms of this Declaration, the Articles of Incorporation and Bylaws of the Association, to enjoin them from so doing, to cause any such violation to cease or to recover damages resulting from such violation. In any legal or equitable proceeding to enforce the provisions hereof or to enjoin any violation, the party or parties against whom judgment is entered shall pay the attorney's fees of the party or parties for whom judgment is entered. Such remedies shall be cumulative and not exclusive.

Notwithstanding the foregoing, except as specifically modified by the Act, it is understood that the breach of any of this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith and for value, provided, however, the covenants, conditions and restrictions shall at all times remain in full force and effect against said premises or any part thereof notwithstanding any foreclosure of any mortgage. No assent, expressed or implied, to any breach of any one or more of the covenants, conditions and restrictions shall be deemed to be a waiver of any succeeding or other breach.

11.02 Damages. An Owner shall be liable and responsible for payment of any loss or damage to any person or property caused by the act or negligence of the Owner or such Owner's guests which occurs within the Properties or any common area. Any such loss or damages together with reasonable attorney fees and costs of collection may be recovered from the Owner by means of a fine, an Individual Assessment or any other legal means.

11.03 Duration. The covenants, restrictions and reservations set forth in this Declaration, unless terminated as provided in the Act properly amended shall run with and bind the entire described Properties, for a term of twenty (20) years from the date this Declaration is recorded, after which time

they shall be automatically extended for successive periods of ten (10) years. In the event any of these covenants, restrictions and reservations would be held to be void because they are in violation of the rule against perpetuities or similar rule of law, these covenants shall then continue to be in effect for a period of twenty-one (21) years after the death of the last surviving descendant of Richard L. McCabe.

11.04 Amendments. Except for amendments by Declarant as allowed herein, or by the Association, as permitted by the Act, this Declaration may be amended only by execution of a written document by the Owners of not less than sixty-seven percent (67%) of the Units actually in existence at the time of such amendment. Said requirement shall be satisfied by the recording of a certificate signed by the Secretary of the Association certifying that the required percentage of Unit Owners have given notarized consent to the amendment. In the event prior approval of an amendment is required by the Federal Housing Authority, the Veterans Administration or similar agency, said approval shall also be required. The expenses associated with such amendment shall be paid as required in the Act.

11.05 Scope of this Declaration. The undersigned Declarant, as Owner of fee simple title to the Properties, expressly intends to subject the Properties to the provisions of this Declaration upon recording of this document. Each Owner shall own their Unit thereof, subject to the provisions of this Declaration. Any instrument recorded subsequent to this Declaration purporting to affect an interest in the Properties shall be subject to the terms of this Declaration despite failure to make reference thereto.

11.06 No Representation. Except as expressly set forth herein, Declarant makes no representation regarding use of any Unit or Units. Declarant makes no representations regarding use of any Unit or Unit. Declarant makes no representations as to the existence, preservation or permanence of any view from any Unit of Unit.

11.07 Annexation - Additional Property. Additional land may be annexed by the Declarant to the Properties and placed under the control of the Association without the consent of the members, provided FHA and VA determine that the annexation is in accord with the general plans approved by said agencies. Such property shall be annexed to the Property described on Exhibit A as long as such addition occurs within fifteen (15) years from the date of the recording of this Declaration. Any such addition shall be shown by an amendment to the Declaration and the recording of a map which shows the area added.

11.08 Books and Records. Any Owner or Mortgage Holder on a Unit shall have the right to examine the books and records of the Association at any reasonable time upon reasonable notice.

11.09 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant and each Owner and to the

EXHIBIT A

Property Description

Lots 1 to 23 Dakota Ridge East Subdivision, County of Boulder
State of Colorado

Lots 1 to 14 Dakota Ridge West Subdivision, County of Boulder
State of Colorado

EXHIBIT B
DESCRIPTION OF
COMMON AREAS
AND
MAINTENANCE PROPERTY
OF DAKOTA RIDGE WEST SUBDIVISION
AND
DAKOTA RIDGE EAST SUBDIVISION

COMMON AREAS:

None

MAINTENANCE PROPERTY:

- 1) Landscaping, irrigation systems, trees and groundcover in the medians in Dakota Boulevard.
- 2) Sidewalk on Lot 6 and on Lot 9, Dakota ridge West Subdivision.
- 3) Landscaping, irrigation systems, trees and ground care on Lots 1,2,9,10, and 11 in Dakota Ridge East Subdivision, and Lot 6 Dakota Ridge West Subdivision.

EXHIBIT C

Dakota Ridge Landscape Guidelines

AREA

- The area required to be landscaped by the buyer includes all of the front yard from the curb to the house facade and along the side yards to 3' - 0" behind the front face of the house, and from side property line to side property line.
- The area required to meet fencing, grading and soil guidelines includes the entire site including easements.

FENCES

- Fences are not required.
- Any front yard fences must be post and rail only.
- Front Yards: any fences within 10' of property line cannot be over 4' height.
- Back Yards: fences may be up to 5' height- Metal fabric fences must be vinyl coated, painted or galvanized welded wire All posts and rails on all fences must be wood.
- All fences must have a horizontal cap.
- Front yard facing fences cannot join the house within 3' of the corner of the house and must match the style and height of attached adjacent fences. First use dictates.
- Solid fences must be set back same distance as their height south of any public walk.
- All fences must conform to the guidelines and to standard subdivision details.

SOIL

- Prior to excavation, all lots must stockpile and protect topsoil from the top 4" of the site.
- All lots must respread evenly the original stock-piled topsoil.
- At the time of landscaping 1" min. of cow/peat, commercial compost, or organic topsoil must be added prior to planting.
- All final grades must be 1 1/2" lower than adjacent pavement.

GRASS

- Lawns (except Buffalo Grass) cannot be planted within 3 feet of foundations.
- Blue or Ryegrass is limited to 75% of the front yard landscape area.
- Tall Fescue or Buffalo Grass lawns are not limited.
- For at least 30% of their perimeter, lawns must attach to walls, walks, drives, property lines or fences.
- Top of grade prior to seeding, sodding or mulching must be at least 1 1/2" lower than adjacent pavement or edger.

EXHIBIT C, CONT.PRIVACY SCREENS

- Privacy screens may be built to and on the property lines behind 3' forward of the rear house corners, to a maximum of 6' height and 25' length.
- Privacy screens must be faced and trimmed to matchhouse.
- All privacy screens must conform to the guidelines and standard subdivision details.

MULCH

- Mulch consists of a 3-4" depth of rock, cobble, stone, wood or bark chips over geotextile fabric. Plastic is prohibited. All areas not covered with grass must be mulched.
- Mulch cannot exceed 50% of landscaped area.
- Use of any single type of graded rock under 2" cannot exceed 50% of the mulched area.
- Use of any type of wood or bark chips cannot exceed 70% of the mulched area.

BORDERS

- Within two feet of lot lines, adjacent sites must utilize the same groundcover material (except where there is a solid fence). First use dictates.
- Planting strip between curb and walk must be at least 80% grass. Any other plantings cannot exceed 12" height, except street trees.

SHRUBS/GROUNDCOVERS

- Each lawn must have at least three #5 shrubs over 5' height at maturity, five #5 shrubs under 5' height at maturity and twenty #1 shrubs, groundcovers or perennial flowers under 12" height.
- Shrubs cannot be planted closer than three feet to any adjacent wall, walk, or curb. Shrubs include woody groundcover shrubs.
- At least 40% but not over 60% of all shrubs must be deciduous.
- At least 25% of all front yard shrubs and groundcovers should be planted in a bed not attached to the house.

TREES

- The front yard of each house must have at least two 1 1/2" cal. ornamental trees limited to Crabapples and Hawthornes of any species variety, Ginnala Maples, Chokecherries, or 5' Ponderosa Pines, or substitutions from the approved City of Boulder tree list.
- Do not plant ornamental or evergreen trees within 8' of walks, walls, or paved areas.
- Do not plant ornamental or evergreens closer than 10' O.C.
- Do not plant Hawthornes in juniper beds.
- Do not plant shade trees closer than 15' O.C.

EXHIBIT C, CONT.

- Plant quantity exceptions for tree quantities due to corner or narrow lots as shown on the development plan.

DESIGN

- Each house must submit to architectural control committee for approval a landscape front yard design developed at a 1" = 10' scale or larger. Each must include:
 - Location, type and size of all plant material.
 - Location and type of seed and sod.
 - Location and type of mulch beds.
 - Planting details.
 - Fence detail and location.
 - Soil improvement type.
 - Location and type of edger.
 - Irrigation plan (if applicable).

IRRIGATION

- Zoned automatic irrigation systems are highly encouraged as an option on all homesites.

TIMING

- All front yard landscaping will be completed within 120 days from the time of issuance of C.O., except for completions between November 15 and April 15 which will be landscaped by the following May 15.

GRADING PLAN

- Landscape must conform to grading and drainage plans. All swales must maintain free flow from adjacent uphill sites and onto adjacent downhill sites. Use percentage of flow as indicated on drainage plan with the flowline elevation interpolated precisely to the property lines.

In addition there will be a 2" street tree every 40 feet of street frontage (+/- 10' to avoid drives and water meters). Trees shall start 20' back from property corner on corner lots which will start the 40' interval sequencing for the rest of the block.