

**AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
SPIRIT GULCH**

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**AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR SPIRIT GULCH**

Parker Ridge Development, LLC, a Colorado limited liability company with an office at 8125 W. Belleview Ave., Littleton, Colorado 80123 ("Declarant"), as the successor in interest to Wintergreen Homes VI LLC, of the real property in Douglas County, Colorado shown on Exhibit A attached and incorporated herein, subjects the said property to the provisions of the Colorado Common Interest Ownership Act, Colorado Revised Statute 38-33.3-101 et seq., as amended, for the purpose of creating Spirit Gulch Homeowners Association, Inc. and making the improvements shown in the Plat. Declarant hereby DECLARES that the property described in Exhibit A shall be held and conveyed subject to the following terms, covenants, restrictions and conditions, which shall run with the above described property and be binding on all parties having any right, title, or interest therein or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof. This Amended and Restated Declaration of Covenants, Conditions and Restriction for Spirit Gulch shall amend and supersede in its entirety that particular Declaration of Covenants, Conditions, Restrictions of Parker Ridge Subdivision dated November 3, 1999 and recorded November 4, 1999 at Book 1774, Page 44, Reception Number 99093043 in the offices of the Clerk and Recorder in Douglas County, Colorado.

**ARTICLE I
DEFINITIONS**

Section 1.1. Act: The Colorado Common Interest Ownership Act, as it may be amended.

Section 1.2. Agencies: The Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA) or any other governmental or quasi-governmental agency or any other entity which may perform functions similar to those currently performed by such entities.

Section 1.3. Allocated Interests: The Common Expense liability and votes in the Association which are allocated to Lots. The Common Expense liability for each Lot shall be a fraction, the numerator of which is one and the denominator of which is the total number of Lots then in the Common Interest Community.

Section 1.4. Architectural Review Committee: The committee appointed by the Board of Directors to review and approve or disapprove plans for Improvements submitted by any Owner, as provided in Article IX of this Declaration.

Section 1.5. Articles of Incorporation: The Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.6. Association: Spirit Gulch Homeowners Association, Inc., a nonprofit corporation organized pursuant to Section 38-33.3-220 of the Act.

Section 1.7. Board of Directors or Board: The Board elected pursuant to the Association's Bylaws or appointed by the Declarant; the "Executive Board" as the term is used in the Act.

Section 1.8. Builder or Developer: Any Person who acquires any part of the Property to construct Initial Improvements thereon.

Section 1.9. Bylaws: The Bylaws of the Association, as they may be amended from time to time.

Section 1.10. Common Elements: Any Property within the Common Interest Community owned or leased by the Association or owned or leased by others but maintained by the Association for the benefit of its Members. The Common Elements upon execution of this Declaration by Declarant are described in Exhibit B to this Declaration.

Section 1.11. Common Expenses: The expenses or financial liabilities for the operation of the Common Interest Community. These expenses include:

- A. Expenses of administration, maintenance, repair or replacement of any Common Elements or property owned or maintained (under an easement, license or contract) by the Association;
- B. Expenses declared to be Common Expenses by the Documents or by the Act;
- C. Expenses agreed upon as Common Expenses by the Board;
- D. Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held or maintained (under an easement, license or contract) by the Association; and
- E. The costs and expenses imposed on the Association, benefitting fewer than all the Lots, shall be a Common Expense, when assessed exclusively against those Lots benefitted.

Section 1.12. Common Expense Assessments: The funds required to be paid by each Owner in payment of a Common Expense liability, including Annual Common Expense Assessments, Special Assessments, and Common Expenses attributable to fewer than all Lots.

Section 1.13. Common Interest Community: The real property subject to this Declaration.

Section 1.14. Declarant: Parker Ridge Development, LLC, a Colorado limited liability company, as successor to Wintergreen Homes VI LLC, or its successors as defined in Section 38-33.3-103(12) of the Act.

Section 1.15. Declaration: This document, including any amendments and plats.

Section 1.16. Design Review Committee: The committee formed pursuant to Article VIII to review and approve the design and construction of the Initial Improvements to insure and maintain the quality and architectural harmony of all of the Initial Improvements constructed on any portion of the Common Interest Community.

Section 1.17. Development Property: The real property described in Exhibit C attached hereto and incorporated herein by this reference, which is subject to the provisions of Article V.

Section 1.18. Development Rights: The rights as defined by Section 38-33.3-103(14) of the Act reserved by the Declarant under Article V of this Declaration.

Section 1.19. Director: A member of the Board of Directors.

Section 1.20. Documents: This Declaration, and the Plat, Articles of Incorporation, Bylaws, Design and Architectural Guidelines, and the Rules as they be amended from time to time.

Section 1.21. Dwelling Unit: The residence constructed on each Lot within the Common Interest Community and any replacement thereof, including the patio, deck, basement, garage, and out buildings, if applicable. Dwelling Unit shall include the Lot upon which such Dwelling Unit is constructed.

Section 1.22. First Security Interest: A Security Interest that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 1.23. Improvements: Any exterior construction, structure, fixture, landscaping or facilities existing or to be placed on a Lot.

Section 1.24. Initial Improvements: Except for Improvements defined in Section 1.23 above, any improvements of any nature whatsoever constructed (other than by Declarant) on any part of the Property, including but not limited to: (a) the construction, installation, erection or expansion of any building, structure or other improvements, including utility facilities; (b) the grading, excavation, filling or similar disturbance to the surface of the Property including, without limitation, change of grade, ground level, and drainage pattern; (c) landscaping, planting, clearing or removing of trees, shrubs, grass or perennial plants; and (d) any change, alteration, modification, expansion, or addition to any previously approved Initial Improvement, including any change of exterior appearance, finish material, color or texture.

Section 1.25. Lots: Each platted lot which is a physical portion of the Common Interest Community, other than Common Elements, designated for separate ownership or occupancy, the boundaries of which are described on the Plat. The term "Lot" as used herein is synonymous with the term "Unit" as the latter term is used in the Act.

Section 1.26. Majority of Owners: More than fifty percent (50%) of the votes in the Association.

Section 1.27. Manager: A person, firm or other business entity employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.28. Member: Each Owner, as set forth in Sections 1.30 and 4.1 below.

Section 1.29. Notice and Hearing: The right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon, as provided for herein, or in the Bylaws.

Section 1.30. Owner: Any Person who is the owner of record of the fee simple title to any Lot, but not a Person having an interest in a Lot solely as security for an obligation. The Declarant is the initial owner of any Lot created by this Declaration.

Section 1.31. Period of Declarant Control: That period of time defined in Section 4.4 below.

Section 1.32. Permitted User: (a) Any person who resides with an Owner; (b) an Owner's guest or invitee; or (c) an occupant or tenant of a Dwelling Unit and any member of his or her household, invitee or cohabitant of any such person.

Section 1.33. Person: A natural person, corporation, trust, partnership, association, joint venture, or other legal or commercial entity or combination thereof.

Section 1.34. Plat: The plat for the Common Interest Community (as defined in C.R.S. §38-33.3-103 and §38-33.3-209), filed in the office of the Douglas County Clerk and Recorder, Douglas County, Colorado, on November 4, 1999, at Reception Number 99093042, as it may be amended from time to time.

Section 1.35. Property: The Lots, Common Elements and Improvements subject to this Declaration.

Section 1.36. Rules: Rules and regulations adopted and amended by the Board pursuant to this Declaration.

Section 1.37. Security Interest: 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, assignment of lease or rents intended as security, pledge of an ownership interest, and any other consensual lien or title retention contract intended as security for an obligation. "Security Interest" shall also refer to any executory land sales contract wherein the Administrator of Veterans Affairs, **an Officer of the United States of America, is the seller, whether such contract is recorded or not,** and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land

records in the Office of the Clerk and Recorder of Douglas County, Colorado, show the Administrator as having the record title to the Lot.

Section 1.38. Special Assessments: Those Common Expenses Assessments defined in Subsection D of Section 7.1 below.

Section 1.39. Special Declarant Rights: Rights reserved for the benefit of a Declarant as described in Article V of this Declaration.

ARTICLE II SCOPE OF THE COMMON INTEREST COMMUNITY AND ASSOCIATION

Section 2.1. The Common Interest Community: The name of the Common Interest Community is Spirit Gulch. It is a planned community.

Section 2.2. The Association: The name of the Association is Spirit Gulch Homeowners Association, Inc.

Section 2.3. Maximum Number of Lots: The Declarant reserves the right to create a maximum of 125 Lots.

Section 2.4. Identification of Lots: The identification number of each Lot is shown on the Plat.

Section 2.5. Lot Boundaries: The boundaries of each Lot are located as shown on the Plat.

ARTICLE III THE COMMON ELEMENTS

Section 3.1. Title to the Common Elements: The Declarant hereby covenants that it will convey the Common Elements to the Association by appropriate instrument, suitable for recording in the records of the Douglas County Clerk and Recorder.

Section 3.2. Duty to Accept the Common Elements Transferred by Declarant: The Association shall accept title to the Common Elements conveyed by Declarant and agrees to own and maintain any property, including all Improvements located thereon, and personal property relating thereto, transferred to the Association by Declarant as Common Elements. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association free and clear of all liens and encumbrances (other than the lien of real estate taxes not then due and payable) and Declarant shall furnish and pay for a title insurance policy reflecting same.

Section 3.3. Owners' Easements: Every Owner shall have a nonexclusive right and easement for the purpose of access to his or her Lot and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot. Any

Owner may delegate his or her right of enjoyment to the Common Elements and facilities to his or her Permitted Users.

Section 3.4. The Association's Rights: The rights of each Owner shall be subject to the Development Rights and Special Declarant Rights reserved herein and the following rights of the Association:

- A. To borrow money to improve the Common Elements and to mortgage said property as security for any such loan; provided, however, the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by eighty percent (80%) of the Owners of Lots not owned by the Declarant.
- B. To transfer, convey or dedicate all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by eighty percent (80%) of the Owners of Lots not owned by the Declarant, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. The granting of permits, licenses and easements for public utilities or for other purposes consistent with the intended use of such Common Elements shall not be deemed a transfer, conveyance or dedication within the meaning of this clause.
- C. To adopt and distribute Rules to Owners with which each Owner and their Permitted Users shall strictly comply.
- D. To suspend the voting rights of a Member for any period during which any Common Expense Assessment remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Declaration, Bylaws or Rules, unless the infraction is ongoing, in which case the suspension shall continue for the duration of the infraction and for a maximum of sixty (60) days thereafter.
- E. To take such steps as are reasonably necessary to protect the Common Elements against foreclosure.
- F. Notwithstanding the provisions of Section 3.4 B. above, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of Common Elements by Owners and Permitted Users for any purpose(s) the Board may deem to be useful, beneficial or otherwise appropriate.
- G. To close or limit the use of the Common Elements temporarily while maintaining, repairing and making replacements in the Common Elements, or permanently if approved by a majority vote of Members present in person or by proxy at a meeting duly held.

Section 3.5. Payment of Taxes, Assessments or Insurance by Holders of First Security Interests:

Holders of First Security Interests shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any First Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE IV
THE ASSOCIATION; DECLARANT CONTROL PERIOD

Section 4.1. Membership: Members of the Association shall be every record Owner of a Lot subject to this Declaration. Membership shall terminate on transfer of a fee simple title by the Owner, but may not be separated from the ownership of a Lot. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration shall be amplified by the Articles of Incorporation, Bylaws, Rules, Design Guidelines and Architectural Guidelines.

Section 4.2. Voting Rights: The Association shall have one class of voting membership. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association. Each Member is entitled to one vote for each Lot owned. If more than one person holds such interest, the vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any Lot.

Section 4.3. Authority of Board: Except as otherwise provided in this Declaration or the Bylaws, the Board may act in all instances on behalf of the Association.

Section 4.4. Declarant Control of the Association:

A. Subject to Subsections 4.4(B) and (C), there shall be a "Declarant Control Period" during which a Declarant, or Persons designated by the Declarant, may appoint and remove the officers and members of the Board. The Declarant Control Period terminates no later than the earlier of:

- (i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than the Declarant; or
- (ii) Two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business to Owners other than Declarant; or
- (iii) Two (2) years after any right to add new Lots was last exercised.

A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Declarant Control Period. In that event,

the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

B. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Owners other than the Declarant.

C. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than a Declarant, not less than thirty-three and one third percent (33-1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant.

D. Not later than the termination of any Declarant Control Period, the Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom shall be Owners other than Declarant. The Board shall elect the officers. The Owners elected to the Board shall take office upon election.

E. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 38-33.3-308 of the Act, the Owners, by a vote of sixty-seven percent (67%) of all persons present and entitled to vote at a meeting of the Owners at which a quorum is present, may remove a member of the Board of Directors with or without cause, other than a member appointed by the Declarant.

Section 4.5. Delivery of Documents by Declarant: Within sixty (60) 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 Association all property of the Owners and of the Association held by or controlled by the Declarant, if any, to the extent required by the Act.

Section 4.6 Management Agreements and Other Contracts: Any agreement for professional management of the Association's business or other contract providing for services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice.

ARTICLE V DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 5.1. Reservation of Development Rights: The Declarant reserves the following withdrawal and Development Rights:

A. The right by amendment to subject all or any part of the Development Property to this

Common Interest Community, to replat it as deemed desirable, and create Lots and Common Elements. The consent of the existing Owners or Security Interest Holders shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

B. For any area developed, Declarant (or if the area is owned by another person or entity, Declarant and such other person or entity as owner) may record one or more Supplemental Declarations with respect to such area which shall refer to this Declaration, and which may supplement this Declaration with such additional covenants, conditions, and restrictions as Declarant (or, as applicable, Declarant and such other owner) may deem appropriate for that area ("Supplemental Declaration"). Such Supplemental Declaration(s) may provide for the establishment of one or more Subassociation(s) to be comprised of Owners within the area subject to such Supplemental Declaration. Any Supplemental Declaration may provide its own procedure for the regulation of the Subassociation area and amendment of any provisions thereof (such as, for example, by a specified vote of only the Owners of some of the Property within the area subject thereto). All lands, Lots, Improvements and uses in each area so developed shall be subject to both this Declaration and the Supplemental Declaration for that area. In the event of conflict, this Declaration and other Association documents shall control over any Supplemental Declaration and organizational documents of any Subassociation.

C. Pursuant to any Supplemental Declaration, a Subassociation may be granted the right to appoint its own architectural control committee or similar committee for the area which is subject to such Supplemental Declaration. If such a right is granted, then such committee of such Subassociation shall have all rights, powers, functions, duties and obligations with respect to the area subject to the Supplemental Declaration as are granted to the Architectural Review Committee by Article IX of this Declaration and the Subassociation shall have all rights, powers, functions, duties and obligations with respect to such Subassociation architectural committee as are granted to the Association with respect to the Architectural Review Committee. Nonetheless, the Subassociation shall continue to be regulated by the Design Review Committee of Article VIII of this Declaration to the extent the Design Review Committee has authority.

D. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property and on the Development Property; notwithstanding anything herein to the contrary, Declarant does not reserve and specifically disclaims any right or easement hereunder to construct underground utility lines, pipes, wires, ducts, conduits and other facilities either above or below ground upon that portion of any Lot where permanent Improvements may be located on said Lot.

E. The right to construct additional Lots and Common Elements, and to subdivide Lots, or convert Lots into Common Elements.

F. The right to withdraw from the Common Interest Community or the Development Property, any portion of the Common Interest Community in accordance with the Act. ("Withdrawn Property").

G. If all or any part of the Development Property is submitted to this Declaration, this right to reserve property for future development shall apply to such property as well. Declarant expressly reserves the right to record an instrument surrendering a development right, or withdrawing all or any portion of the Property or any property reserved for future development in the Declaration or on the Plat from the Common Interest Community by recording a document evidencing such surrender or withdrawal in the office of the Clerk and Recorder of Douglas County; provided, however, that no portion of the Property may be withdrawn after a Lot in that portion of the Property has been conveyed to a Purchaser other than a Declarant.

Section 5.2. Limitations on Development Rights: The Development Rights reserved in Section 5.1 are limited as follows:

A. The Development Rights may be exercised at any time, but not more than fifteen (15) years after the recording of the initial Declaration.

B. All Lots and Common Elements created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent as the Lots created under this Declaration as initially recorded.

Section 5.3. Phasing of Development Rights: No assurances are made by the Declarant regarding the Development Rights reserved as to whether the Declarant will exercise its Development Rights or the order in which such portions, or all of the areas, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions.

Section 5.4. Special Declarant Rights: The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

A. To complete Improvements indicated on Plats;

B. To exercise any Development Right reserved herein;

C. To maintain construction, sales and management offices, signs advertising the Common Interest Community and models in such numbers, of such sizes at such locations within the Common Interest Community as Declarant may determine from time to time. Any real estate used as a sales office, management office or a model shall be a Lot. Declarant also reserves the right for Declarant and any Builder to conduct general sales activities in a

manner which will not unreasonably disturb the rights of Owners;

D. To use and to permit others to use easements through the Common Interest Community for construction, and to discharge Declarant's obligations under the Act and this Declaration;

E. To appoint or remove any officer of the Association or a Board of Directors member during a period of Declarant control subject to the provisions of Section 4.4 of this Declaration;

F. To merge or consolidate the Common Interest Community with another Common Interest Community; or

G. To amend the Declaration and the Plat in connection with the exercise of any development rights;

H. To appoint or remove any Design Review Committee member or Architectural Review Committee member; and

I. To exercise any other Declarant right created by any other provision of this Declaration.

Section 5.5. Rights Transferable: Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Douglas County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 5.6. Limitations on Special Declarant Rights: Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant or any Transferee of Rights pursuant to Section 5.5 until the earlier of the following: as long as the Declarant or Transferee (a) is obligated under any warranty or obligation; (b) holds a Development Right to create additional Lots or Common Elements; (c) owns any Lot; (d) owns any Security Interest in any Lots; or (e) fifteen (15) years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

Section 5.7. Interference with Special Declarant Rights: Neither any Builder, the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

Section 5.8. Construction; Declarant's Easement: The Declarant and each Builder reserve the right to perform warranty work, and repairs and construction work on Lots and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed without the consent or approval of the Board of Directors.

The Declarant and each Builder has an easement through each Lot and the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Development or Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities or metropolitan or special improvement districts, the State, riparian owners or upland owners to fulfill the plan of development.

Section 5.9. Declarant's Personal Property: The Declarant for itself and each Builder reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Common Elements that is owned by them and has not been represented as property of the Association. The Declarant for itself and each Builder reserves the right to remove from the property (promptly after the sale of the last Lot) any and all goods and improvements owned by them and used in development, marketing and construction, whether or not they have become fixtures.

Section 5.10. Reciprocal Easements: If all or part of the Development Property is not submitted to this Declaration, or if property is withdrawn from the Common Interest Community ("Withdrawn Property"):

- A. The owner(s) of the Development Property and/or Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Common Interest Community; and
- B. The Owner(s) in the Common Interest Community shall have whatever easements are necessary or desirable, if any, consistent with development and improvement of any Development Property or Withdrawn Property, for access, utility service, repair, maintenance and emergencies over and across the Development Property and Withdrawn Property.

Within a reasonable time after exercise of any such easement, Declarant shall prepare and record in the office of the Clerk and Recorder of the County where the Property is located whatever documents are necessary to evidence such easements and shall amend Exhibit D to the Declaration to include reference to the recorded easement(s). Such recorded easement(s) shall specify that the Owners of the Development Property and the Withdrawn Property and the Owners in the Common Interest Community shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall exclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

ARTICLE VI
MAINTENANCE

Section 6.1. Common Elements: The Association shall manage, operate, insure, maintain, repair and replace all of the Common Elements, and improvements located therein, and any drainage structure or facility or other public improvements required by local governmental entities under Section 38-33.3-307(1.5) of the Act. The Association shall have the right, without any obligation, in the discretion of the Board, to undertake maintenance, repair or replacement of any Improvements on the Lots, so long as the exercise of such right is done in a nondiscriminatory manner.

Section 6.2. Lots: Except as specified in Section 6.1 above, each Owner shall maintain, repair and replace, at their own expense, all portions of their Lot.

Section 6.3. Right of Access: Any person authorized by the Board of Directors shall have the right of access to all portions of any Lot for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Common Interest Community, for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing and replacing utility meters and related pipes, valves, wires and equipment, provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Owner. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

Section 6.4. Repairs Resulting From Negligence: Each Owner will reimburse the Association for the costs, expenses and fees for maintenance, repair or replacement to the Common Elements caused intentionally, negligently or by the failure to properly maintain, repair or make replacements to a Lot (including drainage): If such expense is caused by misconduct, it will be assessed following Notice and Hearing. If damage is inflicted on any Lot as a result of entry thereon by the Association, through maintenance access under Section 6.3, the Association will be responsible to repair such damage.

ARTICLE VII
ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 7.1. Apportionment of Common Expenses: Except as provided in Section 1.10, Section 6.4 and Section 7.2, all Common Expenses shall be assessed against all Lots in accord with the Allocated Interests. If additional Lots are added to the Common Interest Community, then the Common Expense liability shall be reallocated and any Common Expense Assessment not yet due shall be recalculated.

A. Initial Annual Common Expense Assessment. Until the effective date of an Association budget ratified by the Owners with a different amount for the Common Expense

Assessments, the amount of the annual Common Expense Assessment against each Lot shall not exceed One Thousand and no/100 Dollars (\$1,000.00) per Lot per annum. Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses.

B. Annual Common Expense Assessment. Annual Common Expense Assessments shall be sufficient to meet the expected needs of the Association. The Annual Common Expense Assessments shall include an adequate reserve fund for replacement of those items that must be maintained, repaired or replaced on a non-annual basis.

C. Levy of Assessments. The Annual Common Expense Assessment shall be levied on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments may be collected in monthly, quarterly, biannual or annual installments, or in any other manner as determined by the Board of Directors. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Lot to an Owner other than the Declarant occurs. The assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Documents, or by law; provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

Special Assessments shall be levied in accordance with Subsection D of this Section 7.1.

The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. No assessment may be levied retroactively.

Common Expenses attributable to fewer than all Lots may be levied at any time, shall be due and payable as established by the Board, and are exempt from any voting requirements by the membership required for Special Assessments called for under the Declaration.

D. Special Assessments. In addition to the Annual Common Expense Assessments authorized in this Article, but subject to the limitations set forth herein, the Association, with the approval of the votes of sixty-seven percent (67%) of the Members voting in person or by proxy at a meeting duly called for this purpose, may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of: (1) defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of the Common Elements, including fixtures and personal property related thereto; or (2) for repair or reconstruction of any damaged or destroyed Improvements located on said Common Elements; or (3) for the funding of any operating deficit incurred

by the Association. Any Special Assessment shall be levied against each Lot in a uniform and equal manner. A meeting of the Members called for the purpose of considering the establishment of a Special Assessment shall be held in conformance with Subsection E of this Section 7.1.

E. Notice and Quorum for any Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Subsection D of this Section 7.1 shall be sent to all Members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Membership votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7.2. Common Expenses Attributable to Fewer than all Lots:

A. Any insurance premium increase attributable to a particular Lot by virtue of activities in or construction of the Lot shall be assessed against that Lot.

B. Each Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently or by the failure to properly maintain, repair or make replacements to a Lot including drainage. Such expense will be assessed following Notice and Hearing. If a Common Expense is caused by the misconduct of an Owner or Permitted User, the Association may assess that expense exclusively against that Owner's Lot.

C. Fees, charges, late charges, attorney fees, taxes, impositions, fines, collection costs and interest charged against an Owner pursuant to the Documents and the Act may be assessed against that Lot as Common Expense Assessments.

D. Any common expense benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitted.

Section 7.3. Lien:

A. The Association has a lien on a Lot for a Common Expense Assessment levied against the Lot pursuant to this Declaration from the time the Common Expense Assessment or fine becomes due. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to the Documents or as allowed by the Act are enforceable as assessments under this Article VII. If a Common Expense Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid acceleration of installment obligations.

B. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a Security Interest on the Lot which has priority over all other Security Interests on the Lot and recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. A lien under this Section is also prior to all Security Interests described in Subdivision (2) above of this Subsection B to the extent of an amount equal to the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to Section 7.4 which would have become due, in the absence of acceleration, during the six (6) months immediately preceding institution by either the Association or the holder of a First Security Interest of an action or a nonjudicial foreclosure either to enforce or extinguish either the Association's lien or a Security Interest described in Subdivision (2) of this Subsection B. This Subsection B does not affect the priority of mechanics' or materialmen's liens or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provision of Section 38-41-201 or 15-11-201, C.R.S. The Association's lien on a Lot for any assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

C. Recording of this Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense Assessment is not required. However, the Board of Directors or Manager of the Association may prepare and record in Douglas County a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a notice of lien is filed, the costs and expenses thereof shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof.

D. A lien for an unpaid Common Expense Assessment is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of the Common Expense Assessment becomes due. This Section does not prohibit an action to recover sums for which Subsection (A) of this Section creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure. The Association's lien may be foreclosed by the same procedure by which a mortgage or deed of trust on real estate is foreclosed. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same.

E. A judgment or decree in any action brought under this Section shall entitle the Association to costs and reasonable attorney fees, which shall be additional Common Expense Assessments; and is enforceable by execution. Any payments received by the Association in the discharge of an Owner's obligation may be applied to attorney fees and costs first, then late fees, penalties and interest, and then the oldest balance due.

F. In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid Common Expense Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from that Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments.

G. If a holder of a first or second Security Interest in a Lot forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense Assessments against that Lot which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection B of this Section of the Declaration. Any unpaid Common Expense Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser.

H. Sale or transfer of any Lot shall not affect the lien for said assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any First Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture, shall only extinguish the lien of assessment charges as provided by applicable Colorado law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 7.4. Budget Adoption and Ratification: Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Board of Directors shall mail first class or deliver a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) or more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting at least sixty-seven percent (67%) of all Owners vote to reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners continues until the Owners ratify a new budget proposed by the Board. In lieu of a budget-ratification meeting, action may be taken by written ballot in accord with C.R.S. Section 7-127-109 within the above-stated timetable.

Section 7.5. Certificate of Payment of Common Expense Assessments: The Association, upon written request, shall furnish an Owner or their designee, or a holder of a Security Interest or its designee, a written statement setting out the amount of unpaid Common Expense Assessments against the Lot. Said request shall be delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent. The statement shall be furnished within fourteen (14) calendar days after receipt of the request, delivered personally or by certified mail, first class postage prepaid, return receipt requested, and is binding on the Association, the Board of Directors and each Owner, or the Association shall have no right to assert a lien upon

the Lot for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such statement.

Section 7.6. Effect of Nonpayment of Assessments; Remedies of the Association: Any assessment not paid within ten (10) days after the due date thereof shall be delinquent, subject to fees authorized by Section 7.2, including (a) interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors and (b) a default charge in a reasonable amount. Fees, including attorney fees, charges, late charges, fines and interest may be charged pursuant to the Act and the Documents due to late payment of assessments under this Section. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Lot. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include interest on the assessment and attorney's fees, together with the costs of the action, and other fees.

Section 7.7. Acceleration of Common Expense Assessments: If any Owner does not make the payment of any Common Expense Assessment levied against their Lot within ten (10) days of the date due, the Board of Directors shall have the right to declare all unpaid Common Expense Assessments for the pertinent fiscal year immediately due and payable for that Lot.

Section 7.8. No Waiver of Liability for Common Expenses: No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements, by abandonment of the Lot against which the Common Expense Assessments are made, or because of dissatisfaction with the Association's performance.

Section 7.9. Personal Liability of Owners: Each Owner of a Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is personally liable for Common Expense Assessments made against such Owner's Lot during the period of ownership of such Lot, at the time a Common Expense Assessment or portion of the assessment is due and payable. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, including fees described in Section 7.2. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without setoff or deduction.

Section 7.10. Surplus Funds: Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves need not be paid to the Owners in proportion to their Common Expense Liability but shall be credited to them to reduce their future Common Expense Assessments.

ARTICLE VIII
DESIGN REVIEW OF INITIAL IMPROVEMENTS

Section 8.1. Written Approval of Plans and Design Required: Approval in writing by the Design Review Committee shall be required prior to the commencement of the construction of any Initial Improvement on any portion of the Common Interest Community. A purchase of any Lot within the Common Interest Community does not grant any implied guarantee of approval of the Initial Improvement to be located thereon by the Design Review Committee. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Design Review Committee established hereunder.

Section 8.2. Membership of the Committee: The Design Review Committee shall consist of three (3) members, all of whom shall be appointed by the Declarant. The Declarant shall have the continuing right to appoint and reappoint the members of the Design Review Committee, which right shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event shall terminate without further act or deed upon completion of Initial Improvements on all Lots. Members of the Design Review Committee do not need to be Members of the Association. Members of the Design Review Committee may be removed at any time by the Declarant and shall serve until resignation or removal by the Declarant.

Section 8.3. Submission of Plans: Prior to commencement of work to accomplish any proposed Initial Improvement, the Builder proposing to make such Initial Improvement ("Applicant") shall submit to the Design Review Committee at the address for the Committee, such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Design Review Committee shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Initial Improvement. The Design Review Committee may, at its discretion: Set guidelines for approval of Initial Improvements by classification of models to be erected by a Builder; charge a reasonable fee for the review process; and require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Initial Improvement. Until receipt by the Design Review Committee of all required materials in connection with the proposed Initial Improvement, the Design Review Committee may postpone review of any materials submitted for approval by a particular Applicant. No Initial Improvement of any kind shall be erected, altered, placed, or maintained within the Common Interest Community unless and until the final plans, elevations, and specifications therefor have received written approval by the Design Review Committee as herein provided.

Section 8.4. Delegation/Waiver: The Design Review Committee may delegate to the Board of Directors any of its powers granted to it by this Article, subject to the Board's acceptance of such powers, by written notice to the Board of Directors indicating what powers and authority are granted to the Board. Such delegation shall be effective from the date such notice is accepted by the Board.

The Design Review Committee may waive any provision of this Article VIII in the event there is a practical difficulty or unnecessary hardship, subject to the provisions of Article XV.

Section 8.5. Criteria for Approval: The Design Review Committee shall have the right to disapprove any proposed Initial Improvement which is not in accordance with the Design Guidelines or is not suitable or desirable in the Design Review Committee's opinion for aesthetic or other reasons. In passing upon the Initial Improvement the Design Review Committee shall have the right to take into consideration the suitability of the proposed Initial Improvement and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the Initial Improvement as planned on the outlook from the adjacent or neighboring property, and if it is in accordance with all of the provisions of this Declaration. The Design Review Committee may disapprove the proposed Initial Improvement if the plans and specifications submitted are incomplete, or if the Design Review Committee deems the materials submitted are contrary to the spirit or intent of the Declaration. The Design Review Committee may condition its approval of any proposed Initial Improvement upon the making of such changes thereon as the Design Review Committee may deem appropriate.

Section 8.6. Decision of the Design Review Committee: The decision of the Design Review Committee shall be made within sixty (60) days after receipt by the Design Review Committee of all materials required by the Design Review Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Initial Improvement, the reasons therefor shall be stated. The decision of the Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Design Review Committee.

Section 8.7. Failure of Committee to Act on Plans: Any request for approval of a proposed Initial Improvement shall be deemed approved, unless written denial or a request for additional information or materials is transmitted to the Applicant by the Design Review Committee within sixty (60) days after the date of receipt by the Design Review Committee of all necessary materials as determined by the Design Review Committee.

Section 8.8. Prosecution of Work After Approval: After approval of any proposed Initial Improvement, the proposed Initial Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the description of: the proposed Initial Improvement; any materials submitted to the Design Review Committee in connection with the proposed Initial Improvement; and any conditions imposed by the Design Review Committee. All approved Initial Improvements must be completed within twelve (12) months from the date construction began, or within such lesser period of time specified by the Design Review Committee, except Initial Improvement landscaping shall be completed and suitably landscaped (with grass, shrubs and trees) at the time of or as soon as reasonably possible following construction of the residential structure but no later than one year after sale of the Lot by a Builder to an Owner other than a Builder. Failure to timely complete an Initial Improvement in accordance with the description and materials furnished

to, and the conditions imposed by, the Design Review Committee, shall constitute a violation of this Article.

Section 8.9. Notice of Completion: Upon completion of the Initial Improvement, the Applicant shall give written Notice of Completion to the Design Review Committee. Until the date of receipt of a Notice of Completion, the Design Review Committee shall not be deemed to have Notice of Completion of any Initial Improvement.

Section 8.10. Inspection of Work: The Design Review Committee or its duly authorized representative shall have the right to inspect any Initial Improvement prior to, during or after completion.

Section 8.11. Notice of Noncompliance: If, as a result of inspections or otherwise, the Design Review Committee finds that any Initial Improvement has been done without obtaining the approval of the Design Review Committee, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Design Review Committee, or was not completed within twelve (12) months from the date that construction began, or within such lesser period of time specified by the Design Review Committee, the Design Review Committee shall notify the Applicant in writing of the noncompliance. The Notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance, subject to applicable statutes of limitation.

Section 8.12. Correction of Noncompliance: If the Design Review Committee determines that a noncompliance exists, the Applicant shall, subject to applicable statutes of limitation, remedy or remove the same within a period of not more than thirty (30) days from the date of receipt by the Applicant of the Notice of Noncompliance from the Design Review Committee. If the Applicant does not comply with the Design Review Committee's ruling within such period, the Board may bring an action at law or in equity against the Applicant and may levy Common Expense Assessments in accordance with Section 7.2 against the Owner of such Lot for fees, costs and expenses incurred.

Section 8.13. Meetings of the Design Review Committee: The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder.

Section 8.14. No Implied Waiver or Estoppel: No action or failure to act by the Design Review Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Design Review Committee or the Board of Directors. Specifically, the approval by the Design Review Committee of any Initial Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Initial Improvement or similar proposals, plans, specifications or other materials submitted with respect to any other Initial Improvement.

Section 8.15. Estoppel Certificates: The Board of Directors shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Design Review Committee,

furnish a certificate with respect to the approval or disapproval of any Initial Improvement or with respect to whether any Initial Improvement was made in compliance herewith and charge a reasonable fee therefor. Any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

Section 8.16. No Liability for Design Review Committee Action: There shall be no liability imposed on the Design Review Committee, any member of the Design Review Committee, any authorized Design Review Committee representative, the Association, any member of the Board of Directors, or Declarant, for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee, if such party acted in good faith and without malice. In reviewing any matter, the Design Review Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Initial Improvement be deemed approval of such matters. No Member or person shall be a third party beneficiary of any obligations imposed upon, or rights accruing to the Design Review Committee.

Section 8.17. Design Guidelines: The Design Review Committee may promulgate and amend rules and regulations to interpret and implement the provisions of this Article. These rules and regulations shall be known as the "Design Guidelines for Spirit Gulch" and shall contain, among other things, guidelines which will clarify the types of designs and materials that will be considered in design approval.

ARTICLE IX ARCHITECTURAL REVIEW COMMITTEE

Section 9.1. Written Approval of Plans Required: No Improvements (other than Initial Improvements) shall be constructed, erected, placed, planted, applied or installed upon any Lot unless plans and specifications therefor shall have been first submitted to and approved in writing by the Architectural Review Committee. Said plans and specifications shall show exterior design, height, materials, color, and location of the Improvements, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information that may be required by the Architectural Review Committee. However, the Declarant, and any Builder shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's or Builder's construction on, or sales of, any Initial Improvements on any Lot; Builder shall, in lieu thereof, obtain Design Review Committee approval in accordance with Article VIII. The Architectural Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the Architectural Review Committee may require that the applicant(s) reimburse the Architectural Review Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the Common Expense Assessment against the Lot for which the request for Architectural Review Committee approval was made, but shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection

of such assessments, as more fully provided in this Declaration. All work authorized by the Architectural Review Committee shall be completed within the time limits established therefor, if any, but in any event, not later than one year after the approval was granted.

Section 9.2. Guidelines, Standards, Rules, Regulations and Procedures: The Board of Directors or the Architectural Review Committee may, from time to time, adopt, promulgate, amend or otherwise revise guidelines, standards, rules and regulations and procedures governing Architectural Review for the purposes of:

- A. Further enhancing, defining, or interpreting what items or improvements are covered by this Article IX; and
- B. Providing for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws or ordinances, or for any other reason that the Board of Directors or Architectural Review Committee, deem to be proper, necessary or in the best interests of the community; provided that the Architectural Review Committee shall not, in its review or approval of any application, be deemed to be giving any opinion, warranty or representation as to compliance with any of the foregoing.

In determining what is in the best interests of the community, the Board of Directors or Architectural Review Committee may, but shall not be required to, solicit input from: (1) Owners whose Lots are near a proposed improvement or item to be placed on a Lot; or (2) From the entire community. The Board of Directors or Architectural Review Committee shall not be bound by said input but shall use its best judgment in approving or disapproving the proposed improvement or item.

Any guidelines, standards, rules and regulations, procedure or amendment thereto, shall apply to construction, additions, modifications, installations or items placed on a Lot occurring after the date such guidelines, standards, rules and regulations, procedures or amendments are published or otherwise made available to all Owners.

Section 9.3. Membership of Committee: The Architectural Review Committee shall consist of three (3) or more persons, who need not be Members, appointed by the Board of Directors; provided, however, that until all of the Lots have had a Dwelling Unit constructed thereon and have been conveyed to the first Owner thereof (other than Declarant or a Builder), Declarant may at its option appoint the Architectural Review Committee. The power to appoint shall include the power to fill any vacancy and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Board.

Section 9.4. Procedures: The Architectural Review Committee shall approve or disapprove all requests for approval within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the Committee may require in conjunction

therewith. If the Architectural Review Committee fails to approve or disapprove any request within thirty (30) days after the complete submission of the plans, specifications, materials and other information with respect thereto, the request shall be deemed to have been disapproved by the Architectural Control Committee. However, applicant may resubmit the application.

Section 9.5. Vote and Appeal: A majority vote of the Architectural Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. If a representative acting on behalf of the Architectural Review Committee approves or denies a request for architectural approval, any Owner shall have the right to an appeal of such decision to the full Architectural Review Committee, upon a request therefor submitted to the Architectural Review Committee within thirty (30) days after such approval or denial by the Committee's representative. If an application for architectural approval is approved or denied by the Architectural Review Committee, whether pursuant to an original request for approval or on appeal from a decision of a representative of the Architectural Review Committee, any Owner shall have the right to appeal such decision to the Board of Directors, if a written request for a hearing on an appeal of the same shall be submitted to the Board within thirty (30) days after such approval or denial by the Architectural Review Committee.

Section 9.6. Records: The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken by it, and such records shall be available to Members for inspection at reasonable hours.

Section 9.7. Liability: The Architectural Review Committee and the members thereof, as well as the Declarant, the Association, the Board of Directors, or any representative of the Architectural Review Committee appointed to act on its behalf, shall not be liable for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Review Committee for any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder, if such action was in good faith or without malice. In reviewing any matter, the Architectural Review Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters.

Section 9.8. Variance: The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments (1) shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood; (2) shall not militate against the general intent and purpose hereof; and (3) shall not set a precedent for any other applicant.

Section 9.9. Waivers: The approval or consent of the Architectural Review Committee, any representative thereof, or the Board of Directors, to any application for architectural approval shall

not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Architectural Review Committee, any representative thereof, or the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

ARTICLE X
RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 10.1. Restrictions Imposed: All of the Lots shall be held, conveyed, used, improved, occupied, owned, resided upon and secured, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Board shall have the power and duty to adopt, amend, repeal and enforce more specific and restrictive design and architectural guidelines and rules and regulations (herein "Design Guidelines", "Architectural Guidelines" and "Rules") as the Board deems to be reasonable and necessary to carry out the intent of this Declaration.

Section 10.2. No Nuisance or Annoyance: No noxious, offensive, dangerous or unsafe activity shall be conducted in or on any Lot, nor shall anything be done, either willfully or negligently, which is an annoyance or nuisance to the other Owners or Permitted Users. No Owner or Permitted User shall make or permit any disturbing noises nor do or permit anything to be done by others that will interfere with the rights, comforts or convenience of other Owners or Permitted Users. Habitually barking, howling or yelping dogs shall be deemed a nuisance. The use of exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices on any Lot may be regulated or prohibited by the Architectural Guidelines and Rules. The terms "annoyance" and "nuisance" shall not include any activities of Declarant or a Builder reasonably necessary to the development and construction of, and sales activities on, the Lots, provided such activities of the Declarant or a Builder shall not unreasonably interfere with any reasonable use and enjoyment of a Lot, or with any ingress and egress to or from a Lot and a public way.

Section 10.3. Business and Occupancy Use Restrictions: Subject to the Special Declarant Rights reserved under Article V, the Board shall have the power to promulgate and enforce "Design Guidelines", "Architectural Guidelines" and "Rules" regarding business and occupancy use restrictions, provided, however, that business, trade, professional or commercial Improvement or building devoted to business, trade, professional, commercial or public enterprises may be erected or used on any Lot only if the existence or operation of such activity or use is not apparent or detectable by sight, sound, or smell from the exterior of the Lot, does not increase traffic or increase the insurance obligation or premium of the Association, and does not violate zoning resolutions.

Section 10.4. Animals: No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owner of each Lot may keep no more than two each of dogs, cats, or other domestic animals which are bona fide household pets, so long as such animals are not kept for any commercial purposes and are not kept in such a manner as to create a nuisance to any resident of any Lot. In no event may horses, cattle

llamas, sheep, goats, pigs, other livestock, poultry, or fowl be raised, bred, kept or boarded on the Lots. Owners may be required to remove any animal causing or creating a nuisance or unreasonable disturbance or noise from the Lot upon five (5) days' written notice following Notice and Hearing from the Board of Directors. Owners and Permitted Users shall hold the Association harmless from any claim resulting from any action of their pets. The right to keep pets may be further regulated by Rules issued by the Board, and shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in this Declaration.

Section 10.5. Restrictions on Trash and Refuse: No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot unless placed in a suitable container with attached lid, or in a dumpster located in a screened, designated garbage area solely for the purpose of garbage pickup or composting. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. Each Owner must utilize a competent provider of trash collection and disposal service. The Board may require all Lots to be served by one trash collection and disposal company.

Section 10.6. Vehicular Parking, Storage, Use and Repairs:

A. No recreational vehicle, including but not limited to, trailers of any kind, campers (including camper shells and motor homes), buses, vans, boats or boat accessories, and trucks larger than three-quarter (3/4) ton, self contained and other motorized recreational vehicles, all terrain vehicles, any other vehicle clearly designed or designated by the manufacturer or the owner thereof (through signage or accessories) to be a recreational vehicle, even though it may be licensed by a state as a passenger vehicle, shall be parked, placed, stored or maintained anywhere within the Common Interest Community unless such parking or storage is within an enclosure such that they are not visible from any other Lot or from the Common Elements or from any street within the Common Interest Community, except in emergencies or as a temporary expedience for loading or unloading, unless in conformance with the Rules adopted by the Board. The provisions of this Section 10.6 A shall not restrict trucks or other commercial vehicles which are necessary for construction of for the maintenance of the Lots or Improvements located thereon.

B. No abandoned or inoperable vehicle of any kind shall be stored or parked on any Lot unless it cannot be seen from any other Lot, the Common Elements or any street within the Common Interest Community. An "abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not be deemed to be abandoned.

C. If the Association shall determine that a vehicle is parked, stored or used in violation of this Section 10.6 or in violation of any County or State regulation, then a written notice describing said vehicle shall be delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained) and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to give notice that the vehicle will be towed if it is not removed within twenty-four (24) hours, at the sole expense of the owner of the vehicle or the Lot.

D. No motorcycles, all terrain vehicles or other motorized vehicles of any kind may be operated on the Lots or Common Elements other than on driveways on the Lots or on public streets and roadways. All vehicles must be licensed to operate on public streets and roadways.

E. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer or boat, may be performed or conducted on any Lot unless it is done in a manner and location that screens the sight and sound of the activity from the street and from any other Property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

Section 10.7. Restrictions on Leasing: Upon leasing a Lot, the Owner shall advise the Association of the name and phone number of the tenant, and whether the tenant has the right to use the Common Elements. All leases shall include a provision that the lease is subject to the terms of the Documents. Failure of the tenant to comply with the terms of the Documents shall constitute a default enforceable by either the Association or Owner, or by both of them. The tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the Owner notice of its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

Section 10.8. ISDS Systems. All Owners must inspect and maintain proper operation of their individual sewage disposal systems ("ISDS") located on their respective Lots. Such inspection shall be performed at least annually. The Association shall have the right to inspect each Lot's ISDS at any time and from time to time. If at any time any ISDS is not operating properly, the Association shall notify the owner of such Lot and if such Lot's ISDS is not put in proper operating order within thirty (30) days after the date of such notice, the Association shall have the right to enter upon such Lot to institute such maintenance, repair or replacement as is required for proper operation of such ISDS and any sums so expended by the Association shall be an assessment against the Owner of such Lot in accordance with the provisions of Section 7.2.

Section 10.9. Weed Control: All Owners and Permitted Users shall comply with Douglas County and state requirements for noxious weed control. Weeds shall not be permitted to overgrow at any time. Any disturbed soil area shall be re-seeded with native grasses or other appropriate ground cover in compliance with the requirements of Article IX hereof.

Section 10.10. Wildfire Hazard: Much of the Common Interest Community will be maintained as native grass areas. Such areas can be highly combustible. Each Owner must be cognizant of the possibility of wildfires and must act responsibly to prevent wildfires and to protect property and the environment. Failure to do so shall constitute a nuisance.

Section 10.11. Living With Wildlife: It is likely that wildlife will continue to live on or visit the Property. Drainage ways in particular provide habitat for large and small wildlife. Care must be taken to avoid undesirable or inappropriate contact with wildlife. Owners must act responsibly when living with wildlife. Owners and their Permitted Users must manage appropriate storage and disposal of garbage and trash to prevent animal intrusions. Pets shall be restrained by their Owners from interfering with wildlife and wildlife habitats.

Section 10.12. No Unlawful Use of Property: No unlawful use may be made of the Property. Owners and Permitted Users shall comply with and conform to all applicable laws and regulations of the United States, the State of Colorado and all other governmental ordinances, rules and regulations; violations thereof shall be a breach of this Declaration, subject to enforcement by the Association. Determination of whether an activity violates this covenant shall be at the sole discretion of the Board of Directors or other committees and shall be subject to the Rules.

Section 10.13 Penalties for Infractions: The Board may establish and enforce penalties for the infraction of these restrictions, Rules or Design/Architectural Guidelines, including, without limitation, the levying and collecting of fines for the violation of any of such Rules in compliance with the Act.

ARTICLE XI INSURANCE

Section 11.1. Coverage: To the extent reasonably available, the Board of Directors shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, or if any policy is canceled, or not renewed, without a replacement policy having been obtained, the Association shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners at their respective last known addresses.

Section 11.2. Property Insurance Coverage: The Association shall obtain property insurance on the Common Elements for broad form covered causes of loss and on all personal property owned by the Association. The property insurance will be for an amount equal to one hundred percent (100%) of the full insurable replacement cost of the insured property less applicable deductibles, exclusive of land, foundations, excavations and other items normally excluded from property policies. The Board

of Directors is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the property, and the cost of such appraisals shall be a Common Expense.

Section 11.3. Liability Insurance: Commercial General Liability insurance, as set forth in Section 38-33.3-313(b) of the Act, will be maintained in an amount determined by the Board of Directors, but in no event shall it be less than \$1,000,000. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained. This insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, existence, or maintenance of the Common Elements and the activities of the Association; and may also include, if applicable, comprehensive automobile liability insurance, garage keeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, and such other risks as shall customarily be required by private institutional mortgage investors with respect to projects similar in construction, location and use, but not less than any amount specified in the association documents.

Section 11.4 Mandatory Provisions. The insurance policies carried pursuant to Sections 11.2 and 11.3 shall provide that:

- A. Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;
- B. The insurer waives the right to subrogation under the policy against an Owner or member of the household of an Owner;
- C. No act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;
- D. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and
- E. The insurer shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a Security Interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 11.5. Fidelity Bonds: The Association shall obtain and maintain, to the extent reasonably available, fidelity bond insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The bond or insurance shall name the Association as obligee, and shall contain waivers of any defense based upon the

exclusion of persons who serve without compensation from any definition of "employee" or similar expression. If reasonably available, the bond or coverage shall be the sum of two (2) month's assessments for all Lots plus up to one hundred percent (100%) of the reserve funds as calculated from the current budget of the Association. The bond or coverage shall include a provision that calls for ten (10) day's written notice to the Association before the bond can be cancelled or substantially modified for any reason. The Association shall also require any independent contractor who manages the Association to obtain and maintain fidelity bond insurance coverage in the amount required by law or to the extent that it is reasonably available, unless they are covered under the Association's fidelity bond insurance coverage.

Section 11.6. Owner Policies: An insurance policy issued to the Association does not preclude Owners from obtaining insurance for their own benefit.

Section 11.7. Workers Compensation Insurance: The Board of Directors shall obtain and maintain Workers Compensation Insurance if required to meet the requirements of the laws of the State of Colorado.

Section 11.8. Directors' and Officers' Liability Insurance: The Board of Directors shall obtain and maintain directors' and officers' liability insurance, if reasonably available, covering all of the directors, officers, employees and committee members of the Association. This insurance will have limits determined by the Board of Directors.

Section 11.9. Other Insurance: The Association may carry other insurance which the Board of Directors considers appropriate to protect the Association. If any parcels of real property which the Association has an obligation to repair or reconstruct is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then the Board may obtain a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

- A. The maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or
- B. One hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

Section 11.10. Premiums: Insurance premiums for insurance carried by the Association shall be a Common Expense.

Section 11.11. Procedures: The Board of Directors may adopt written nondiscriminatory policies and procedures for claims adjustment and responsibility for deductibles. To the extent the Association settles claims for damages to real property owned by the Association, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration

all deductibles paid by the Association. If more than one (1) Lot is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

Section 11.12. General Provisions: All Association insurance shall be carried in blanket policy form naming the Association as insured, or naming its designee as trustee and attorney-in-fact for the Association. The policies shall contain:

A. A standard noncontributory Security Interest Holder's clause in favor of each holder of a First Security Interest, and shall provide that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice is given to the insured.

B. Waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association. Upon request, the Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question to any party in interest, including Security Interest Holders of First Security Interests.

Section 11.13. Insurance Proceeds: Any loss covered by the property insurance policy described in Section 11.2 above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any Security Interest Holder. The Association shall hold any insurance proceeds in trust for the Association, Owners and lienholders as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged property, and the Owners, Association and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored. If hazard insurance proceeds are distributed to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record, and pursuant to the Act. The Association may designate a Trustee for the receipt, administration and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses and other sources.

Section 11.14. Damage to Property: Any portion of the Common Interest Community for which insurance is required under Section 38-33.3-313 of the Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed, shall be repaired or replaced by the Association in accordance with Section 38-33.3-313(9) of the Act.

ARTICLE XII EASEMENTS AND LICENSES

Section 12.1. Easements and Licenses: Easements or licenses to which the Lots and the Common Interest Community are presently subject are recited in Exhibit D and on the Plat. In addition, the

Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article V of this Declaration.

Section 12.2. Easements for the Board of Directors: Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.

Section 12.3. Declarant's and Builder's Easements: Anything to the contrary herein notwithstanding, the Declarant hereby reserves for itself, and for Builders, agents, employees, business invitees, successors or assigns, reasonable easements and rights-of-ways over all Lots for the sole purpose of constructing improvements to the Common Interest Community and making repairs pursuant to contracts of sale made with Purchasers of Lots, but only if access thereto is otherwise not reasonably available, including the right to erect temporary buildings to store any and all materials. Such easements and rights-of-way, however, shall not unreasonably inhibit the use of Lots by Owners and Permitted Users. The Declarant and any Builder shall be fully responsible for any damage to Lots caused by its use of such easements and rights-of-way. Such reservations shall terminate at the option of the Declarant by its written notice to the Secretary of the Board of Directors, but in any event such reservations shall terminate without further act or deed not later than the completion of all of the Initial Improvements.

Section 12.4. Emergency Easements: A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Property, to enter upon any part of the Common Interest Community in the performance of their duties.

Section 12.5. Easement for Encroachments: If any Lot or Common Element encroaches on any other Lot or Common Element, a valid easement for the encroachment exists. The easement does not relieve an Owner of liability in case of willful misconduct nor relieve a Declarant or any other Person of liability for failure to adhere to the plans.

Section 12.6. Easements for Drainage and Utilities: Easements for the installation and maintenance of utilities, drainage facilities, Association, public or private improvements and access thereto are reserved as shown on the recorded plats and other documents affecting the Lots and any amendments to such plats and documents or as established by any other instrument of record. Declarant hereby reserves, to itself and to the Association, easements for drainage or drainage facilities as noted on the recorded Plats. No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such front, rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each front, rear and side yard drainage easement and at any time to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time.

Section 12.7. Easements Deemed Created: All conveyances of any Lot hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

ARTICLE XIII
DURATION, ANNEXATION, AMENDMENTS AND MERGER

Section 13.1. Duration: This Declaration shall run with and bind the land perpetually, unless terminated as set forth in Article XIV below.

Section 13.2. Declarant Annexation and Amendment:

A. Annexation: Declarant may annex additional property described on Exhibit C attached and made a part hereof, to this Declaration, in whatever increments deemed desirable by Declarant, without consent of Owners but with the consent of any person or entity that owns said property if other than Declarant, as set forth in Section 5.1A above. Said right also includes the right to add additional real estate to the Common Interest Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed pursuant to this sentence and not described in the attached Exhibits A and C, does not exceed ten percent (10%) of the total area described in the attached Exhibits A and C. This annexation right (1) shall run for a period of fifteen (15) years from the date this Declaration is recorded by the Clerk and Recorder of Douglas County, Colorado; and (2) shall be exercised by recording a Declaration of Annexation and new plats in the office of the Clerk and Recorder of Douglas County, Colorado, describing therein the land being annexed; and all rights, duties and covenants of this Declaration shall be binding upon said annexed land from the moment a Declaration of Annexation is recorded. The Declaration of Annexation may be combined with a Supplemental Declaration provided for in Section 5.1 above.

B. Amendment: Declarant declares and reserves the right to amend without the consent of Owners this Declaration, or the Plat, Articles of Incorporation or Bylaws, any time within fifteen (15) years from the date this Declaration is recorded, or before Declarant conveys the last Lot to a purchaser other than Declarant or a successor Declarant, whichever first occurs, as follows:

- (1) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
- (2) To comply with any requirements of the Act or amendments thereto, or any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Security Interests.

(3) To add additional real estate to the Common Interest Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Common Interest Community pursuant to this sentence, and not described in the attached Exhibit A, does not exceed ten percent (10%) of the total area described in the attached Exhibit A (as amended).

Section 13.3. Owner Annexation and Amendment:

A. Annexation: Owners may annex additional real estate to this Declaration, by Amendment of this Declaration under the terms of Section 13.3(B) below.

B. Amendment: Owners may amend the covenants and restrictions of this Declaration at any time, as follows:

(1) By an instrument signed by not less than sixty-seven percent (67%) of the Owners of Lots recorded with the Clerk and Recorder of Douglas County, Colorado.

(2) Any amendment shall be effective on the tenth (10th) day after it is properly recorded in the records of the Clerk and Recorder of Douglas County, Colorado.

(3) Upon instruction from the Board of Directors, the President and Secretary of the Association may certify in a notarized affidavit attesting to their receipt and review of the necessary number of signatures and that the appropriate number of Owners executed the amendment, in lieu of recording each individual signature.

(4) Where a Lot is owned by more than one (1) person, the execution of any amendment or revocation shall be valid if executed by any one (1) Owner. Where a Lot is owned by a general or limited partnership, or by a corporation, trust, limited liability company or other type of business entity, the entity may, through action by the proper rule making persons, designate a person to sign for the entity. Signatures need not be notarized. The signature need not be identical to the name of the recorded Owner, but shall be sufficiently close as to be identified as a proper signature of such person. The originals of all signatures shall be retained for a period of three (3) years from the date of recording.

(5) No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one (1) year from the effective date of said amendment, unless fraud or willful negligence is asserted and proven.

(6) All signatures shall be irrevocable even upon death or conveyance of the Lot, except that if an amendment is not recorded within three (3) years of the date of signature, then the executing Owner or their successor or assigns may revoke their

signature by a written and notarized document delivered to the Secretary of the Association.

(7) Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

Section 13.4. Mergers: The Common Interest Community may be merged or consolidated with another Common Interest Community of the same form of ownership by complying with Section 38-33.3-221 of the Act, including, following approval of the same number of Owners as is required to terminate each community, an agreement providing for the merger or consolidation and specifying which community is the legal successor and the reallocation of the Allocated Interests.

Section 13.5. Recordation of Amendments: Each amendment to the Declaration must be recorded in accordance with Section 38-33.217(3) of the Act as it may be amended.

Section 13.6. Owner Consent: Except to the extent expressly permitted or required by other provisions of this Declaration, an amendment may not create or increase Special Declarant Rights, increase the number of Lots or boundaries of any Lot, change the Allocated Interests of a Lot or the uses to which a Lot is restricted, except by consent of sixty-seven percent (67%) of the Owners.

Section 13.7. Special Declarant Rights: Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 13.8. Expenses: All expenses associated with preparing and recording an amendment shall be allocated in accordance with Section 38-33.3-217(6) of the Act.

ARTICLE XIV TERMINATION

Termination of the Common Interest Community may be accomplished only in accordance with Section 38-33.3-218 of the Act, upon agreement of Owners to which at least sixty-seven percent (67%) of the votes are allocated.

ARTICLE XV RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense Assessments, only by the affirmative vote of Owners of Lots to which at least eighty percent (80%) of the votes in the Association are allocated, at a meeting called for that purpose.

ARTICLE XVI
CONDEMNATION

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 38-33.3-107 of the Act.

ARTICLE XVII
MANDATORY DISPUTE RESOLUTION

Section 17.1 Statement of Clarification. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a "Claim" as defined herein, that the Mandatory Dispute Resolution provisions contained in this Article are activated.

Section 17.2 Alternative Method for Resolving Disputes. Declarant, the Association, its officers and directors, all Owners, design professionals, Builders including any of their subcontractors and suppliers, and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party"), agree to encourage the amicable resolution of disputes involving the Common Interest Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit all Claims each may have to the procedures set forth in this Article XVII and not to a court of law.

Section 17.3 Claims. Except as specifically excluded in this Section 17.3, all claims, disputes and other controversies arising out of or relating to the

- (a) interpretation, application or enforcement of this Declaration,
- (b) design or construction of improvements within the Common Interest Community or any alleged defect therein,
- (c) rights, obligations and duties of any Bound Party under this Declaration, and/or
- (d) breach thereof (all of which are hereinafter referred to as "Claim(s)")

shall be subject to and resolved in accordance with the terms and provisions of this Article XVII.

Unless Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this Article XVII:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VII(Assessments);
- (b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of Articles VIII and IX (Architectural Approval/Design Review), or Article X (Land Use and Other Restrictions);
- (c) any suit by an Owner to challenge the actions of Declarant, the Association, the Design Review Committee, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of Articles VIII and IX (Architectural Approval/Design Review);
- (d) any suit between or among Owners, which does not include Declarant or the Association as a party; and
- (e) any suit in which any indispensable party is not a Bound Party.

Section 17.4 Notice of Claim. Any Bound Party having a Claim ("Claimant") against any other bound Party ("Respondent") shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (b) the legal or contractual basis of the Claim (i.e., the specific authority out of which the claim arises); and
- (c) the specific relief and/or proposed remedy sought.

Section 17.5 Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations or repose.

Section 17.6 Right to be Heard. Upon receipt of a Claim and prior to asserting the Claim commencing any arbitration or judicial or administrative proceeding which may fall within the scope of this Article XVII, the Respondent shall have the right to be heard in an effort to resolve the Claim.

The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may appoint a representative to assist such Party in negotiations.

Section 17.7 Right to Inspect. If the Claim is asserted against Declarant and is based on a defect in the design or the construction of the Improvements within the Common Interest Community, subject to Owner's prior written approval, which shall not be unreasonably withheld, Declarant shall have the right to access the affected area for purposes of inspecting the condition complained of, and the correction thereof, including any necessary redesign. This shall include, but not be limited to, notice prior to conducting any investigative or restrictive testing. All Claimants shall meet with Declarant to discuss, in good faith, ways to resolve the Claim.

The Association shall have the same right to inspect for any claims by Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the Inspecting Party shall be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party. The party exercising the rights contained herein ("Inspecting Party") shall use best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected ("Property") and minimize any disruption or inconvenience to any person who occupies the Property; shall remove all debris located on the Property on a daily basis; and in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove equipment and materials from the Property and repair, replace and restore the Property to the condition of the Property as of the date of the inspection right. The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the use of its rights to accrue against or attach to the Property.

The repair, replacement and restoration work includes, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Property that were damaged, removed or destroyed by Inspecting Party.

The Inspecting Party shall indemnify, defend and hold harmless the owners, tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorney's fees, resulting from or in performance of this Agreement, or as a result of any Inspecting Party's breach of this Article.

Section 17.8 Mediation. If the Parties do not resolve the Claim through negotiations within thirty days after the date of submission of the Claim to Respondent(s), as may be extended upon agreement of all affected Parties, Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service acceptable to all parties. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and all Respondent(s) shall be released and discharged from any and all liability to Claimant on account of such Claim.

- (a) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties.
- (b) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.
- (c) Within ten days after issuance of a Termination of Mediation, the Claimant shall make a final written Settlement Demand to the Respondent(s), and the Respondent(s) shall make a final written Settlement Offer to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Claim shall constitute the Settlement Demand. If the Respondent(s) fail to make a Settlement Offer, Respondent(s) shall be deemed to have made a "zero" or "take nothing" Settlement Offer.
- (d) Each Party shall bear its own costs, including attorney's fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.
- (e) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Article XVII and any Party thereafter fails to abide by the terms of such agreement, then any other Affected Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article XVII. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

Section 17.9 Consensus for Association Arbitration or Litigation. Except as provided in this Article XVII, the Association shall not commence any arbitration or a judicial administrative proceeding unless Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated agree to such proceedings.

This Section 17.9 shall not apply, however, to:

- (a) actions brought by the Association or Declarant to enforce the terms of this Declaration (including, without limitation, the foreclosure of liens);
- (b) the imposition and collection of Assessments, fines, costs and attorney fees, or other specific amounts due under the Declaration; or

- (c) counterclaims brought by the Association in proceedings instituted against it.

Section 17.10 Arbitration. If the Parties do not reach a settlement of the Claim within 15 days after issuance of any Termination of Mediation and reduce the same to writing, the Claimant shall have 15 additional days to submit the Claim to binding arbitration in accordance with the Arbitration Procedures contained in Exhibit E hereof and deliver an Arbitration Notice to all Respondent(s).

- (a) The parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Bound Party may have liability with respect thereto, all parties including any third parties agree that the third parties may be joined as additional parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all arbitrations. It is the intent of the parties to resolve all rights and obligations of all interested parties at one time in one forum rather than in multiple proceedings.
- (b) If the Claim(s) are not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claims shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims.
- (c) The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with applicable law and judgment obtained thereon, and execution may issue. The party seeking enforcement shall be entitled to all reasonable attorney's fees and costs incurred in the enforcement of the award.
- (d) The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.
- (e) The Association or the Owner shall notify the Declarant (if the Declarant is a Respondent) prior to retaining any person or entity as an expert witness for purposes of any arbitration or authorized litigation.

Section 17.11 Binding Effect. This Article XVII and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

Section 17.12 Amendment. This Article XVII shall not be amended unless such amendment is approved by the same sixty-seven percent of the votes of the Association as stated above, and for a period of eight years after the final Initial Improvements are completed, by obtaining the consent of Declarant.

ARTICLE XVIII
MISCELLANEOUS

Section 18.1. Captions: The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents or the intent of any provision thereof.

Section 18.2. Gender: The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

Section 18.3. Waiver: No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 18.4. Invalidity: The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.

Section 18.5. Conflict: The Documents are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act. If there is any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

Section 18.6. Severability: All provisions of the Documents of the Association are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 18.7. Registration of Mailing Address: Each Owner shall, and each Security Interest Holder, insurer or guarantor of a Security Interest may register their mailing address with the Association, and except for assessment statements and other routing notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be either delivered to them or sent by first class mail, postage prepaid, addressed in the name of such person or entity at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board or the Association shall be sent by registered or certified mail, postage prepaid, to the Association's Manager or Registered Agent.

Section 18.8. Enforcement: Subject to the provisions of Article XVII, Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws, Architectural and

Design Guidelines, or Rules of the Association, as amended, may be by any proceeding at law or in equity against any person or persons (including, without limitation, the Association) violating or attempting to violate any such provision. Subject to the provisions of Article XVII, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines and enforce other established penalties for the violation of any provision of any of the aforesaid documents. In any action instituted or maintained for enforcement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

Section 18.9. Indemnification: The Association shall indemnify every present and former Director, officer, committee member, agent or employee against loss, costs, and expense, including attorneys' fees reasonably 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, committee member, agent or employee of the Association, except for wanton or willful acts or omissions or if such person shall be finally adjudged to be liable for: any breach of the Director's duty of loyalty to the Association or its members; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; acts specified in Section 7-24-111, as now in effect or hereafter amended; or any transaction from which the Director derived an improper personal benefit. Any such indemnification may be limited to and paid out of the insurance proceeds provided by an insurer furnishing Directors and Officers liability coverage, Errors and Omissions coverage, or similar protection and any other insurance protecting the Association from liability because of the negligent acts of its servants, including insurance covering motor vehicles or public liability, property damage, medical and other similar coverage. In the event of an insurance settlement, the settlement shall be approved by the Board of Directors and paid for by the insurance carrier out of the insurance proceeds.

Section 18.10. Conflict with Act: If any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

The Declarant has caused this Declaration to be executed this 21st day of November, 2000.

Signed, Sealed and Delivered
in the Presence of:

Parker Ridge Development, LLC a Colorado
limited liability company

By: [Signature] MANAGER
Title

STATE OF COLORADO)
) ss.
COUNTY OF Jefferson)

The foregoing Declaration of Spirit Gulch Homeowners Association was acknowledged before me this 21st day of November, 2000, by David L. Gertz, as Manager of Parker Ridge Development, LLC, a Colorado limited liability company.

Witness my hand and official seal.



[Signature]
Notary Public

**EXHIBIT A
TO
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SPIRIT GULCH**

**LEGAL DESCRIPTION OF
SPIRIT GULCH COMMON INTEREST COMMUNITY**

LEGAL DESCRIPTION

Lots 1 through 40, inclusive,
and Tracts A and B,
Parker Ridge Subdivision Filing No. 1,
Douglas County,
Colorado

**EXHIBIT B
TO
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SPIRIT GULCH**

**DESCRIPTION OF COMMON ELEMENTS
(INCLUDING IMPROVEMENTS)**

Tracts A and B,
Parker Ridge Subdivision Filing No. 1,
Douglas County,
Colorado

Improvements within Tracts A and B, including, but not limited to, check structures and trails

**EXHIBIT C
TO
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SPIRIT GULCH**

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

A PARCEL OF LAND LOCATED IN THE EAST HALF OF THE WEST HALF OF SECTION 30 AND THE EAST HALF OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 30, ALSO BEING THE NORTHEAST CORNER OF THE ROADWAY PARCEL, RECORDED IN BOOK 179 AT PAGE 365 IN THE OFFICE OF THE DOUGLAS COUNTY CLERK AND RECORDER; THENCE SOUTH 00°25'28" WEST, ALONG THE EAST LINE OF SAID SECTION 30, ALSO BEING THE EAST LINE OF SAID ROADWAY PARCEL AND THE WEST LINE OF PARKER EAST UNIT 2 AMENDED, AS RECORDED UNDER RECEPTION NUMBER 142589 IN SAID OFFICE AND THE EASTERN LINE OF SAID ROADWAY PARCEL, A DISTANCE OF 25.00 FEET, TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00°25'28" WEST, CONTINUING ALONG SAID LINE, A DISTANCE OF 111.47 FEET, TO A POINT ON A CURVE; THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 10°28'36", A RADIUS OF 265.00 FEET, A CHORD LENGTH OF 48.39 FEET, A CHORD BEARING OF SOUTH 37°34'34" WEST, AN ARC LENGTH OF 48.46 FEET, TO A POINT OF TANGENCY; THENCE SOUTH 42°48'57" WEST, A DISTANCE OF 92.93 FEET, TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 08°05'59", A RADIUS OF 185.00 FEET, A CHORD LENGTH OF 26.13 FEET, A CHORD BEARING OF SOUTH 38°45'58" WEST, AN ARC LENGTH OF 26.15 FEET, TO A POINT OF TANGENCY; THENCE SOUTH 34°42'58" WEST, A DISTANCE OF 380.86 FEET, TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 38°39'03", A RADIUS OF 740.00 FEET, A CHORD LENGTH OF 489.78 FEET, A CHORD BEARING OF SOUTH 54°02'30" WEST AN ARC LENGTH OF 499.19 FEET, TO A POINT OF TANGENCY; THENCE SOUTH 73°22'01" WEST, A DISTANCE OF 100.00 FEET, TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 56°29'32", A RADIUS OF 660.00 FEET, A CHORD LENGTH OF 624.70 FEET, A CHORD BEARING OF SOUTH 45°07'15" WEST, AN ARC LENGTH OF 650.74 FEET, TO A POINT OF TANGENCY; THENCE SOUTH 16°52'29" WEST, A DISTANCE OF 556.06 FEET, TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 80°38'36", A RADIUS OF 440.00 FEET, A CHORD LENGTH OF 569.43 FEET, A CHORD BEARING OF SOUTH 57°11'47" WEST, AN ARC LENGTH OF 619.30 FEET, TO A POINT OF TANGENCY; THENCE NORTH 82°28'55" WEST, A DISTANCE OF

148.31 FEET, TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 61°12'47", A RADIUS OF 757.41 FEET, A CHORD LENGTH OF 771.25 FEET, A CHORD BEARING OF SOUTH 66°54'42" WEST, AN ARC LENGTH OF 809.19 FEET, TO A POINT; THENCE NORTH 53°41'42" WEST, A DISTANCE OF 80.00 FEET; THENCE NORTH 39°17'11" WEST, A DISTANCE OF 287.65 FEET; THENCE SOUTH 46°21'31" WEST, A DISTANCE OF 52.64 FEET; THENCE SOUTH 88°06'25" WEST, A DISTANCE OF 300.17 FEET; THENCE SOUTH 89°59'00" WEST, A DISTANCE OF 173.64 FEET; THENCE NORTH 89°27'03" WEST, A DISTANCE OF 453.94 FEET, TO A POINT ON THE WEST LINE OF THE EAST HALF OF THE WEST HALF OF SAID SECTION 30; THENCE NORTH 00°32'57" EAST, A DISTANCE OF 2292.21 FEET, TO THE WEST 1/16 CORNER COMMON TO SECTIONS 19 & 30; THENCE SOUTH 89°04'38" EAST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 30, A DISTANCE OF 1316.83 FEET, TO THE NORTH ONE-QUARTER CORNER OF SAID SECTION 30; THENCE SOUTH 89°05'19" EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 2602.43 FEET, TO A POINT ON THE WEST RIGHT OF WAY LINE OF TOMAHAWK ROAD, ALSO BEING THE NORTHWEST CORNER OF SAID ROADWAY PARCEL; THENCE SOUTH 49°27'21" EAST, ALONG THE SOUTHWESTERLY LINE OF SAID ROADWAY PARCEL, A DISTANCE OF 39.19 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 6,949,489 SQUARE FEET OR 159.54 ACRES, MORE OR LESS.

EXCEPT THAT PROPERTY DESCRIBED IN EXHIBIT A HERETO

**EXHIBIT D
TO
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SPIRIT GULCH**

**EASEMENTS AND LICENSES BURDENING AND SERVING THE
SPIRIT GULCH COMMON INTEREST COMMUNITY**

1. ORDER OF INCLUSION REGARDING PARKER WATER & SANITATION DISTRICT RECORDED NOVEMBER 16, 1998 IN BOOK 1626 AT PAGE 958
2. AN UNDIVIDED 1/2 INTEREST IN AND TO ALL COAL, OIL, GAS AND ALL OTHER MINERAL RIGHTS APPERTAINING TO AN APPURTENANT TO SAID LANDS AS RESERVED IN WARRANTY DEED RECORDED OCTOBER 3, 1960 IN BOOK 134 AT PAGE 12, AND SUBSEQUENT ASSIGNMENTS THEREOF
3. RIGHT OF WAY AND EASEMENT TO COLORADO INTERSTATE GAS COMPANY AS SET FORTH IN INSTRUMENT RECORDED MARCH 2, 1966 IN BOOK 168 AT PAGE 292.
4. RIGHT OF A PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED AUGUST 28, 1908 IN BOOK 12 AT PAGE 315.
5. RIGHT OF A PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED OCTOBER 2, 1877 IN BOOK H AT PAGE 407.
6. FINDINGS AND DECREE OF WATER COURT RECORDED APRIL 10, 1989 IN BOOK 848 AT PAGE 916.
7. ANY TAX, LIEN, FEE OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE CHERRY CREEK BASIN AUTHORITY, AS EVIDENCED BY INSTRUMENT RECORDED MAY 6, 1988, IN BOOK 790 AT PAGE 718.
8. TERMS, CONDITIONS AND PROVISIONS AND OBLIGATIONS OF EASEMENT AGREEMENT BY AND BETWEEN WINTERGREEN HOMES VI LLC, A COLORADO LIMITED LIABILITY COMPANY AND SVEIN A. SELJESETH AND MARCELLE M. SELJESETH RECORDED OCTOBER 17, 1997 IN BOOK 1475 AT PAGE 1305.

9. TERMS, CONDITIONS AND PROVISIONS AND OBLIGATIONS OF EASEMENT AGREEMENT BY AND BETWEEN WINTERGREEN HOMES VI LLC, A COLORADO LIMITED LIABILITY COMPANY AND PARKER LAND ASSOCIATES LIMITED PARTNERSHIP, A COLORADO LIMITED PARTNERSHIP RECORDED JANUARY 2, 1998 IN BOOK 1498 AT PAGE 2142.
10. TERMS, CONDITIONS AND PROVISIONS OF PARKER WATER AND SANITATION DISTRICT REAL PROPERTY INCLUSION AGREEMENT RECORDED APRIL 5, 1999 IN BOOK 1690 AT PAGE 367.
11. TERMS, CONDITIONS AND PROVISIONS OF NON-TRIBUTARY GROUNDWATER CONSENT LAND OWNERSHIP STATEMENT RECORDED APRIL 5, 1999 IN BOOK 1690 AT PAGE 376.
12. THE FOLLOWING ITEMS DISCLOSED ON ALTA/ACSM SURVEY BY INTER-MOUNTAIN ENGINEERING LTD. DATED JUNE 15, 1999 JOB NO. 99-9021:
 1. LOCATION OF FENCE LINES
 2. UNPAVED ROADS TRAVERSING SUBJECT PROPERTY, AND ANY RIGHTS OF OTHERS THERETO.
 3. UNDERGROUND TELEPHONE LINES
 4. GAS PIPELINE MARKERS
 5. DRAINAGE WAYS
 6. RAW WATER LINE
 7. ELECTRIC LINE
13. NOTES AND EASEMENTS AS SHOWN ON THE RECORDED PLAT FOR PARKER RIDGE FILING NO. 1 RECORDED 11/4/99 UNDER RECEPTION NO. 99093042
14. SUBDIVISION IMPROVEMENT AGREEMENT FOR PARKER RIDGE FILING NO. 1 RECORDED DECEMBER 8, 1999 IN BOOK 1786 AT PAGE 1155.
15. TERMS, CONDITIONS AND PROVISIONS, BURDENS AND OBLIGATIONS OF AGREEMENT FOR DRAINAGE MATTERS RECORDED JANUARY 5, 2000 IN BOOK 1797 AT PAGE 290, AND AMENDMENT THERETO RECORDED JANUARY 5, 2000 IN BOOK 1797 AT PAGE 302.
16. TEMPORARY GRADING EASEMENT AS GRANTED IN INSTRUMENT RECORDED JANUARY 5, 2000 IN BOOK 1797 AT PAGE 279.

**EXHIBIT E
TO
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SPIRIT GULCH**

ARBITRATION PROCEDURES

1. All Claims subject to arbitration shall be decided by a single private party arbitrator to be appointed by the parties.
2. If the parties are unable to agree upon an arbitrator within thirty (30) days from the date of the Arbitration Notice, the presiding judge of the District Court in Douglas County shall appoint a qualified arbitrator upon application of a party.
3. No person shall serve as the arbitrator who may have any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator's Disclosure"). If any party objects to the service of any arbitrator within 14 days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as provided in paragraph 2 above.
4. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in Douglas County, unless otherwise agreed by the parties.
5. Subject to the provisions of these procedures, the arbitration shall be conducted in accordance with rules and procedures determined by the arbitrator.
6. No formal discovery shall be conducted in the absence of an order of the arbitrator or express written agreement of the parties.
7. Unless directed by the arbitrator, there shall be no post-hearing briefs.
8. The arbitration award shall address each claim to be resolved in the arbitration, provide a summary of the reasons therefor and the relief granted, and be rendered promptly after the close of the hearing and no later than 14 days from the close of the hearing, unless otherwise agreed by the parties. The award shall be in writing and shall be signed by the arbitrator.
9. The arbitrator shall have the authority, in the exercise of sound discretion, and as may be required by Colorado law, to award the prevailing party such party's costs and expenses, including reasonable attorneys fees.