

# Canyon Creek Estates

1988 COVENANTS

Recorded at 10:12 o'clock A M. AUG 05 1988  
Reception No. 394314 MILDRED ALSDORF, RECORDER  
GARFIELD COUNTY, COLORADO

BOOK 735 PAGE 930

FIRST AMENDMENT TO  
THE AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CANYON CREEK ESTATES

THIS INSTRUMENT is made and entered into this 20th day of July,  
1988, by Lazier-Sills Partnership, a Colorado general partnership, (hereinafter referred  
to as the "Declarant").

RECITALS

1. Declarant has executed that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Canyon Creek Estates dated September 29, 1986 and recorded September 30, 1986 at Book 696, Page 186, Reception Number 374855 of the records of the Clerk and Recorder of Garfield County, Colorado (the "Declaration").
2. Declarant desires to amend certain provisions within the Declaration.
3. Declarant has the reserve right in the Declaration to amend the Declaration. Specifically, the Declaration provides in pertinent part as follows in Section 10.6:

"10.6 Duration, Revocation, and Amendment.

(a) Each and every provision of this Declaration shall run with and bind the land ("Property") for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as otherwise provided herein, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by an instrument approved in writing by not less than fifty-one percent (51%) of the Owners. Such amendment shall be effective when duly recorded in the County of Garfield, Colorado.

(b) Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S.

Department of Housing and Urban Development, the Government National Mortgage Association, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, then, subject to the following sentence of this Section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners, or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to the expiration of one hundred and twenty (120) days after Declarant and Participating Builders have conveyed seventy-five percent (75%) of the Lots then subject to this Declaration to Owners (other than Declarant or Participating Builders) or five (5) years from the date of recording of this Declaration, whichever occurs first; and each such amendment must contain thereon the written approval of the Veterans Administration or the Federal Housing Administration of the U. S. Department of Housing and Urban Development (if such approval is then required by either of such agencies).

(c) Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration at any time prior to the expiration of one hundred and twenty (120) days after Declarant and Participating Builders have conveyed seventy-five percent (75%) of the Lots then subject to this Declaration to Owners (other than Declarant or Participating Builders) or five (5) years from the date of recording of this Declaration, whichever occurs first, for the purposes of correcting spelling, grammar, dates or as is otherwise necessary to clarify the meaning of the provisions of this Declaration.

4. As of the date hereof, Declarant is the owner of not less than Fifty-One percent (51%) of Lots which are subject to the Declaration, and Declarant comprises, by virtue of such ownership, more than Fifty-One percent (51%) of the Owners.

5. Pursuant to the authority reserved in Section 10.6(a), the Declarant has the right and authority to amend the Declaration.

NOW, THEREFORE, Declarant hereby declares and amends the Declaration as follows:

FIRST: Section 7.3.4 of the Declaration is amended to provide that the minimum habitable floor area of a Residence, exclusive of open porches and garages, shall be not less than 1,200 square feet (as opposed to 1,350 square feet). Accordingly, Section 7.3.4 of the Declaration shall now provide as follows:

7.3.4 Residence Cost; Quality and Size. No Residence shall be permitted on any Lot at any actual builder's construction cost, excluding land costs, of less than \$30,000.00 based on cost levels prevailing on the date this Declaration is recorded, it being the intention and purpose of this provision to assure that all Residences shall be of a quality workmanship and materials substantially the same or better than that which can be procured at the stated minimum cost level on the date that this Declaration is recorded for the minimum permitted Residence size. The habitable floor area of a Residence, exclusive of open porches and garages, shall be not less than 1,200 square feet.

SECOND: Except as amended hereby, all other terms, covenants, conditions and restrictions of the Declaration shall remain unchanged, without modification.

IN WITNESS WHEREOF, Declarant has hereunto set its hand and seal as of the date and year first above written.

"DECLARANT"

LAZIER-SILLS PARTNERSHIP,  
a Colorado general partnership

By *Jimmy M. Sills*  
Jimmy M. Sills, General Partner and  
Authorized Agent

By *Robert T. Lazier*  
Robert T. Lazier, General Partner and  
Authorized Agent

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

Subscribed, sworn to and acknowledged before me this 20th day  
of July, 19 88, by Jimmy M. Sills, General Partner and  
Authorized Agent of Lazier-Sills Partnership, a Colorado general partnership.

My Commission Expires



My Commission Expires  
September 24, 1988  
505 N. Frontage Rd. 14-A  
Vail, CO 81657

*K. C. Williams*  
Notary Public



CONSENT AND SUBORDINATION

Columbia Savings, a Federal Savings and Loan Association, as the holder of the beneficial interest in and under that certain deed of trust dated July 25, 1983 recorded August 18, 1983, in Book 633, Page 302, of the records of the Clerk and Recorder of Garfield County, Colorado (the "Deed of Trust"), which Deed of Trust is by and between Lazier-Sills Partnership, a Colorado General Partnership, and Robert T. Lazier, and Jimmy M. Sills, individually, as grantors, the Public Trustee of Garfield County, Colorado, as trustee, and Columbia Savings, a Federal Savings and Loan Association, as beneficiary, hereby expressly consents and subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Canyon Creek Estates.

IN WITNESS WHEREOF, the undersigned has caused this Consent and Subordination to be executed by its authorized agents.

COLUMBIA SAVINGS, A Federal Savings and Loan Association



By: Marsha A. Hymes  
Title: Assistant Vice President

By: Ann Wesch  
Title: Assistant Secretary

Date: July 15, 1988

STATE OF COLORADO )  
COUNTY OF Arapahoe ) ss.

Subscribed, sworn to and acknowledged before me this 15th day of July, 1988, by Marsha A. Hymes as Assistant Vice President and by Ann Wesch as Assistant Secretary of Columbia Savings, a Federal Savings and Loan Association.

My Commission Expires: June 24, 1990



Karen Gutjahr  
Notary Public

CONSENT AND RATIFICATION

Canyon Creek Estates Homeowners Association, a Colorado non-profit corporation, being the owner of Certain Common Property as defined in the Declaration, does hereby expressly consent to, ratify, confirm, adopt and approve the provisions of the foregoing First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Canyon Creek Estates.

IN WITNESS WHEREOF, the undersigned have caused this Consent and Ratification to be executed by its authorized agents.

CANYON CREEK ESTATES  
HOMEOWNERS ASSOCIATION,  
a Colorado non-profit corporation

By: [Signature]  
Jimmy M. Sills, President

By: [Signature]  
Robert T. Lazier, Assistant Secretary

Dated: July 20, 1988

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

Subscribed, sworn to and acknowledged before me this 20th day of July, 1988, by Jimmy M. Sills, as President, and Robert T. Lazier as Assistant Secretary of Canyon Creek Estates Homeowners Association, a Colorado non-profit corporation.

My Commission Expires:

(SEAL)

My Commission Expires  
September 24, 1988  
605 N. Frontage Rd. 14-A  
Vtd, CO 81657

[Signature]  
Notary Public



# Canyon Creek Estates

1986 COVENANTS



842  
832

Recorded at 3:02 o'clock P. M. SEP 30 1986  
Reception No. 374955 MILDRED ALSDORF, RECORDER  
GARFIELD COUNTY, COLORADO

**AMENDED AND RESTATED**

**DECLARATION**

**OF**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**CANYON CREEK ESTATES**

**AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CANYON CREEK ESTATES**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CANYON CREEK ESTATES**

THIS DECLARATION, made and entered into this 29 day of Sept., 1986, by Lazier-Sills Partnership, a Colorado general partnership, hereinafter referred to as "Declarant."

**RECITALS**

(A) Declarant and the Association are owners of certain real property located in the County of Garfield, State of Colorado, which is described on Exhibit "A" attached hereto and incorporated herein by this reference, herein referred to as the "Property".

(B) Declarant has previously executed and recorded in the office of the Clerk and Recorder of Garfield County, Colorado, that certain (i) Declaration of Protective Covenants for Canyon Creek Estates, a Planned Unit Development recorded May 1, 1984 at Reception No. 351946 in Book 649 at Page 71, and (ii) an Amendment to the Declaration of Protective Covenants for the Canyon Creek Estates, a Planned Unit Development, recorded November 23, 1984 at Reception No. 357526 in Book 660 at Page 443, which are herein collectively referred to as the "Prior Declaration".

(C) Declarant desires to completely revoke and supersede the Prior Declaration with this Declaration.

(D) Declarant desires to subject the Property to certain covenants, conditions and restrictions.

(E) Declarant is desirous of causing the Property to be maintained as a first class residential community.

(F) Declarant has the reserved right, pursuant to certain provisions hereof, to add or subject additional real property to this Declaration, and has the further reserved right to subject such additional real property to additional and/or different covenants, conditions and restrictions.

NOW, THEREFORE, Declarant hereby declares that the Prior Declaration is completely revoked and superseded by this Declaration, and that all of the Property shall hereafter be held, sold, and conveyed subject to the following easements, reservations, restrictions, covenants, and conditions which are for the purposes of promoting the common recreation of the Owners of the Property and to promote the health, safety and welfare of the Owners and which shall run with the Property and be binding on all parties

having any right, title, or interest in the Property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

**1. DEFINITIONS**

1.1 "Architectural Control Committee" or "Committee" shall mean and refer to the committee appointed by Declarant or by the Board of Directors of the Association for the purposes provided herein, and which shall be a subcommittee of the Association.

1.2 "Articles" means the Articles of Incorporation of the Association.

1.3 "Association" shall mean and refer to the Canyon Creek Estates Homeowners Association, a Colorado non-profit corporation, its successors and assigns.

1.4 "Bylaws" means the bylaws of the Association.

1.5 "Common Property" shall mean and refer to all property (including the Improvements thereon) owned by the Association for the common use and enjoyment of the Owners, together with any private roads, streets, rights-of-way and easements (if any) located within or adjacent to the Property which are to be maintained by the Association. The Common Property to be owned by the Association at the time of the commencement of assessments hereunder is described on Exhibit "B" attached hereto and incorporated herein by this reference. Common Property shall further include certain water augmentation plans and other rights conveyed to the Association by deed dated October 31, 1984 and recorded November 23, 1984 in Book 680, Page 440 of the Garfield County Records as Reception No. 357525.

1.6 "Declarant" shall mean and refer to Lazier-Sills Partnership, a Colorado general partnership, its successors and assigns, if such successors and assigns are specifically assigned any of Declarant's rights hereunder by written instrument duly recorded in the land records for Garfield County, Colorado.

1.7 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, including all subsequent amendments or supplements hereto recorded in the land records of the County of Garfield, State of Colorado.

1.8 "First Mortgage" shall mean and refer to any unpaid and outstanding, mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Garfield, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage" shall also mean and 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 said 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 the County of Garfield, Colorado, show the said Administrator as having the record title to the Lot.

1.9 "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage (including the Administrator of

Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records in the Office of the Clerk and Recorder of the County of Garfield, Colorado show the said Administrator as having the record title to the Lot), or any successor to the interest of any such person under such First Mortgage.

1.10 "Improvements" shall mean all structures and appurtenances thereto of every kind and type, including buildings, parking areas, storage areas, signs, fences, walls, hedges, landscaping, plantings, outbuildings, walkways, roads, driveways, exterior surfaces of any visible structure, balconies, decks, air conditioning equipment, poles or structures of any and every type.

1.11 "Lot" shall mean and refer to any plot of land shown upon any recorded plat or subdivision map of the Property or any portion thereof, upon which a Residence has been or is to be constructed (with the exception of the Common Property and public streets), but together with all appurtenances and improvements now or hereafter constructed or placed thereon.

1.12 "Managing Agent" means the Person, if any, employed by the Association to perform management and operational functions at the Property.

1.13 "Member" shall mean and refer to each Owner of a Lot that is subject to assessment hereunder. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

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

1.15 "Participating Builder" shall mean an Owner other than Declarant which acquires one or more Lots from Declarant for the purpose of reselling or leasing such Lot(s) to a third party, and to whom Declarant specifically assigns the rights of a Participating Builder hereunder by written instrument duly recorded in Garfield County, Colorado land records.

1.16 "Person" means a natural individual or individuals, corporation(s), partnership(s), association(s), trustee(s), or other legal entity.

1.17 "Prior Declaration" shall mean that certain (i) Declaration of Protective Covenants for Canyon Creek Estates, a Planned Unit Development recorded November 23, 1984 at Reception No. 357526 in Book 660 at Page 443 and (ii) an Amendment to the Declaration of Protective Covenants for the Canyon Creek Estates, a Planned Unit Development November 23, 1984 at Reception No. 357526 in Book 660 at Page 443, both of which Declarant has previously executed and recorded in the office of the Clerk and Recorder of Garfield County, Colorado.

1.18 "Property" shall mean and refer to that certain real property described on Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association made subject to this Declaration.



1.19 "Residence" shall mean and refer to a detached, non-cluster, single-family residential dwelling unit constructed upon any Lot.

1.20 "Superintendent" shall mean and refer to the Person appointed by the Board of Directors to manage the Association's water and sewer system.

## 2. RIGHTS OF OWNERS IN THE COMMON PROPERTY

2.1 Owner's Easements of Enjoyment. Subject to the provisions hereof, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Property and the Improvements located thereon, and such easement shall be appurtenant to and shall pass with the title to every Lot.

2.2 Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

2.2.1 The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Property and, with written consent of two-thirds (2/3) of the Owners, to mortgage said property as security for any such loan;

2.2.2 The right of the Association to take such steps as may be reasonably necessary to protect the Common Property against foreclosure;

2.2.3 The right of the Association to promulgate and publish rules and regulations (which each Member shall strictly comply with) including, but not limited to, the right of the Association to establish reasonable charges for the use of any recreational facilities which may subsequently be located on the Common Property;

2.2.4 The right of the Association to suspend the voting rights and the right to use any recreational facilities located within the Common Property of a Member for any period during which any sums assessed against such Member's Lot or charged against such Member and/or such Member's Lot remains unpaid;

2.2.5 The right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved in writing by two-thirds (2/3) of the Owners, and unless written notice of the proposed agreement and/or action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads, and/or for other purposes consistent with the intended use of the Common Property and as may be reasonably necessary or useful for the proper maintenance or operation of the Property shall not be deemed a transfer within the meaning of this Subsection;

2.2.6 The right of the Association to close or limit the use of the Common Property, or portions thereof, while maintaining, repairing, and making replacements in or to the Common Property;

2.2.7 The right of the Association to allow limited use of any recreational facilities by others, for such fees and/or charges as shall be established by the Association; and

2.2.8 The right of the Association to install, provide and maintain a satellite earth station, cable television system or other electronic systems for the benefit and enjoyment of the Owners.

2.3 Delegation of Use. Any Owner may delegate their right of enjoyment to the Common Property and facilities thereon to the members of the Owner's family, the Owner's tenants, or contract purchasers who reside at such Owner's Lot.

2.4 Payment of Taxes or Insurance by Mortgagees. First Mortgagees of Lots 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 Property and may pay overdue premiums on hazard insurance policies or secure a new hazard insurance coverage on the lapse of a policy for the Common Property, and any First Mortgagee making any such payment shall be owed immediate reimbursement therefor from the Association.

2.5 Improvements to be Constructed by Declarant/Water and Sewer Systems. Declarant shall construct only the following facilities upon the Common Property, to wit: a domestic, raw water and sewer system, including one well house, one sewer treatment plant, one water tank and underground utility lines for water and sewer. Declarant has constructed a fountain and a pond. Further, Declarant shall chip-seal the private streets within the Property. Any additional facilities, including any recreational facilities, shall be constructed by the Association at its sole cost and expense.

2.6 Water and Sewer Systems. The central, domestic raw water and sewer system within the property shall be owned, operated and maintained by the Association. The water and sewer systems shall be operated by the Association pursuant to this Declaration, the Articles and Bylaws of the Association, such Rules and Regulations as the Association may adopt, and according to all terms and conditions of the plan for augmentation set forth and adjudicated in Case Numbers 82 CW 172 and 83 CW 207, Water Division No. 5, State of Colorado, as the same may be amended from time to time. These cases and the amendments thereto, provide limitations and restrictions upon sewage disposal systems, irrigated lawn and garden areas, water use and administration. Said restrictions include a limitation per Residence of up to 3,000 square feet of irrigated lawn or garden area. Any Owner may apply to the Association for amendment of the plan for augmentation as decreed in the foregoing cases. Upon approval of such application by the Association, and deposit by the Owner of an appropriate retainer or advance to cover the Association's costs and attorneys fees, the Association shall make application to the Water Court, Water Division No. 5, State of Colorado, for such amendment. The Owner requesting such amendment or modification shall indemnify and hold harmless the Association from any liability resulting from said application, including all direct expenses and costs incurred by the Association in prosecuting said application.

2.6.1 Disclosure. Declarant hereby discloses, and each Owner, by acceptance of a deed or other instrument of transfer, acknowledges and agrees that prior to completion of Residences upon all of the Lots within the Property, it is anticipated



that the plan for augmentation will need to be amended or modified. The costs of such amended plan for augmentation shall be paid by Declarant. With regard to the prospective amended plan for augmentation, the Declarant discloses that it may seek change or modification to the maximum allowed irrigated acreage described above. Declarant further discloses that the allowed irrigated acreage in the Common Property may be reduced to allow the Association to provide sufficient water to Owners of Lots, or the Declarant may purchase, on behalf of the Association or otherwise, additional water or water rights.

**2.6.2 Easements/Repairs/Extension of Service.** The Association shall have all appropriate easements on the Property for access and as necessary to construct, service and repair water and sewer facilities. The Association has the reserved right to enter upon any Lot within the Property to drill wells or construct facilities for domestic water consumption or sewer service. The Association reserves the right, upon reasonable notice, to shut off its mains for the purpose of making repairs or extensions or for any other purpose and no Owner, Person or occupant of a Residence shall be entitled to any offset, reduction of fees or claim of loss or damage therefore, all of the same being expressly disclaimed by the Association and waived by each Owner. Such disclaimer of the Association and waiver by each Owner shall include any claims for offset, reduction, damage or loss.

**2.6.3 Minimum Sewage Systems.** Each Residence shall contain at least one fully equipped bathroom. All sewage from a Residence, if not treated and provided for by the Association and its sewage system, shall be disposed of by means of an individual sewage treatment facility approved by the Colorado State Department of Health, any local health agencies having jurisdiction thereof, and the Architectural Control Committee. Individual wells or sewage disposal systems, including septic tanks, leach fields or evaporative sewage disposal systems servicing an individual Lot shall be permitted only within Block 9 and Block 16 (as more fully described in Exhibit "C") and only as allowed by law and after approval by the Architectural Control Committee. Further, the Architectural Control Committee shall only approve individual water or sewer systems in the event a Lot is reasonably or practically inaccessible to the central water and sewer systems operated by the Association. Any such individual wells or sewage disposal systems shall be owned, operated and maintained at the sole expense of the Owner having the beneficial use thereof. Individualized sewage treatment facilities shall not be utilized in such a manner as to pollute or threaten to pollute ground or surface waters or the water supply system of the Association.

**2.6.4 Installation of Water and/or Sewer Taps.** No water or sewer taps shall be made to a Lot without prior written notice to the Association and unless the installation of said taps and all appurtenances are inspected and approved by the Superintendent or a representative of the Association. All taps shall be in conformance with the standards of the Association and shall include a corporation stop, curb stop, curb box, meter and appurtenances. Minimum inside diameter sizing for water service connections shall be computed in conjunction with the latest edition of the uniform plumbing code and in accordance with the recommended rules for sizing the water supply system utilizing the fixture unit method. The maximum allowable velocity in the service line shall be 10 feet per second. All service lines, meters and appurtenances from Lot lines to and within a Residence shall be the property and responsibility of the Owner of the said Lot. All necessary repairs and replacements within a Lot shall be the sole responsibility of the Lot Owners.

**2.6.5 Tap Fees.** Upon application for connection to the water and sewer system, the Owner of the subject Lot desiring service shall pay a tap fee to the Association of no less than \$2,050 per Residence to compensate the Association for capital investments in the water and sewer systems. Fees for water taps, sewer taps, hook-ups and connections, shall be determined by the Association on such basis as the Association may determine in its sole discretion, but shall not be less than \$2,050.00 per Residence. Declarant does hereby disclose, and each Owner does acknowledge and agree that the Association is obligated to reimburse Declarant upon payment by an Owner of water tap, hook-up or connection fees.

**2.6.6 Metered Service.** All water taps shall be metered. The cost of the installation of meters in all instances shall be borne by the Owner of the subject Lot, in whose name the service shall be kept.

**2.6.7 Collection of Fees.** All fees authorized hereunder may be collected as provided for in paragraph 4 of this Declaration.

**2.6.8 Waste.** Owners shall prevent unnecessary waste of water and shall keep all water outlets closed when not in actual use. Hydrants, toilets, water closets, bathtubs and other openings must not be left running for any person other than the use for which they are intended. Any such waste shall be a violation of this Declaration.

**2.6.9 Supplying Water to Others.** No Owner or occupant of any Residence in which water is introduced or supplied by the Association will be allowed to supply water to other persons or families. Water service furnished by the Association shall be used only for the personal use of the Owner and the occupants of the Residence served. Any water use which is not personal to the Owner or occupants of a Residence served shall be a violation of this Declaration.

**2.6.10 Water Rates.** Water rates shall be included in the general assessment of the Association, established on a regular basis for water service up to the quantities specified in the Association's Rules and Regulations. Water rates shall be computed to include cost of operation, maintenance, interest, capital expense and reserve for replacement. Water use in excess of the maximum levels specified in the Association's Rules and Regulations may be assessed at a penalty rate of twice the estimated monthly cost of water service contained within the general assessments.

**2.6.11 Sewer Rates.** Sewer rates shall be contained within the general monthly assessment regularly set by the Association. Said assessment shall be reduced based on the estimated reduction in cost on a prorata basis for each lot not served by the central sewer system. Sewer rates shall be computed to include cost of operation, maintenance, interest, capital expense, and reserve for replacement.

**2.6.12 Delinquent Assessments - Service Turned Off.** If for any reason any assessments or other charges due the Association become delinquent, service may be terminated to the Owner. In no case shall service be recommended until such delinquencies, together with all costs and charges have been paid in full.

2.6.13 Water Shortages. The Association shall have the power to take necessary and reasonable steps in limiting water use in times of water shortage, or for the purpose of complying with the terms of any water right decrees under which the water system is operating. Such steps include placing a moratorium on the extension of any new taps, limiting or eliminating outside irrigation, creating priority service to Owners, water rationing or other measures which the Association may deem necessary.

2.6.14 Sewage Facilities and Lift Stations. All Lots have gravity drainage to sewer mains, except Lots 30, 31, 32 and 33, Block 8, due to the topography of the Property. Declarant discloses and each Owner acknowledges that sewage and lift stations will be necessary on Lots 30, 31, 32 and 33, Block 8 and are the responsibility of the Owner of such Lot and the Owner of such Lot shall also be obligated to pay the cost of such lift station (including purchase, installation, operation, maintenance, capital expense, and reserve for replacement).

**3. MEMBERSHIP AND VOTING RIGHTS**

3.1 Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Membership in the Association shall be limited to Owners of Lots.

3.2 Voting Rights of Owners. The Owner or Owners of each Lot shall be entitled to one vote for each such Lot owned by said Owner or Owners.

3.3 Board of Directors. The affairs of the Association shall be managed by the Board of Directors which may by resolution delegate any portion of its authority to an executive committee, or to a director or Managing Agent for the Association. Prior to the engagement of a Managing Agent by the Association, such Managing Agent shall submit evidence of its own insurance as provided for hereinafter. There shall not be less than three (3) nor more than seven (7) members of the Board of Directors, the specific number to be set forth from time to time in the Bylaws, all of whom shall be Owners elected by Owners.

3.4 Reservation. Notwithstanding anything to the contrary provided for herein, however, until one hundred twenty (120) days after Declarant or Participating Builders have conveyed seventy-five percent (75%) of the Lots then subject to this Declaration to Owners (other than Declarant and Participating Builders), or until five (5) years from the date of recording of this Declaration in the office of the Clerk and Recorder of Garfield County, Colorado, whichever event shall first occur, the members of the Board of Directors shall be appointed solely by Declarant.

**4. ASSESSMENTS**

4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot (including Declarant and Participating Builders) by acceptance of a deed or other instrument of transfer (whether or not it shall be so expressed in such deed or other

instrument of transfer) shall be personally obligated and is deemed to covenant and agree to pay to the Association annual and special assessments (such assessments to be established and collected as hereinafter provided) and any fees, fines, charges, liquidated damages or other penalty or charge imposed by the Association. The annual and special assessments, together with liquidated damages, penalties or charges imposed by the Association, the Association's costs and reasonable attorney's fees, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charges are made. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or Managing Agent of the Association may prepare a written notice setting forth the amount of unpaid indebtedness or other charges on a Lot or against an Owner, the name of the reputed owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the members of the Board of Directors, by the Managing Agent of the Association or by the Association's attorney and may be recorded in the office of the Clerk and Recorder of the County of Garfield, Colorado. The lien for unpaid assessments or other allowed charges shall attach to each Lot at the beginning of each assessment period or when imposed and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. Each assessment, penalty or charge imposed by the Association, together with liquidated damages, costs, and reasonable attorney's fees, shall also be the personal obligation of each person who was the Owner of such Lot at the time when the assessment became due or the charge or penalty was imposed. Such personal obligations shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on each Lot 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 subject to this Declaration shall constitute a waiver of all homestead and any other exemptions as against said lien.

**4.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners of the Property. Specifically, assessments shall be used for the following: for the improvement, repair, replacement, and maintenance of the Common Property and the appurtenances and Improvements thereto and thereon, including without limitation; improvement, operation, repair and maintenance of the water and sewer systems; maintenance and repair of all roads located on the Common Property; maintenance of any landscaping located on the Common Property, pruning trees and hedges located on the Common Property, maintaining all fences, lighting facilities and masonry and wood entryway signs located within the Common Property, maintaining, repairing and replacing all Improvements located on the Common Property, and paying all taxes, insurance premiums, professional management fees, utilities and other costs in connection with the Common Property.

**4.3 Maximum Annual Assessments.** Until commencement of the second annual assessment period, the maximum annual assessment (exclusive of fees or assessments due the Association for metered water and sewer service) shall be Seven Hundred Eighty Dollars (\$780.00) per Lot.

**4.4 Mandatory Increases to the Annual Assessment.** Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment shall be increased effective each annual assessment year in conformance with the rise, if any, of the Consumer Price Index published by the U. S. Department of Labor, Washington, D.C., for All Items and Major Group Figures for All Urban Consumers (1967=100), for the one-year period ending with the preceding month of November. This annual increase in the maximum annual assessment shall occur automatically upon the commencement of each annual assessment year without the necessity of any action being taken with respect thereto by the Association. In the event the aforesaid Consumer Price Index is not published, for whatever reason, then the increase in the maximum annual assessment, as provided herein, shall be calculated by using a substantially comparable index designated by the Board of Directors of the Association.

**4.5 Discretionary Increases to the Annual Assessment.** Effective with commencement of the second and each subsequent annual assessment period, the annual assessment may be increased above that established by the Consumer Price Index formula, for the next succeeding annual assessment year and at the end of each such annual assessment period, for each succeeding annual assessment year, provided that any such increase shall have the assent of two-thirds (2/3) of the Owners voting in person or by proxy at a meeting duly called for this purpose.

**4.8 Discretionary Reductions to the Annual Assessment.** Subject to the provisions hereof relating to Declarant's and Participating Builders' obligations to subsidize the Association for shortfalls in assessments, the Board of Directors of the Association may, at any time and from time to time, after consideration of the projected maintenance costs and other financial needs of the Association, and upon written notification to each Owner of the amount of the actual assessment to be levied, fix the actual assessment against each Lot at an amount less than allowed hereby. In the event the Board of Directors of the Association determines, at any time and from time to time, during any annual assessment period in which the Association shall have levied an assessment in an amount less than the maximum annual assessment, that the rate of assessment then in effect is less than may be necessary to adequately fund all maintenance costs and other financial needs of the Association, then the Board of Directors of the Association may increase the actual assessment against each Lot upon written notification thereof to each Owner, provided that the amount of the actual assessment against each Lot shall not be increased to an amount in excess of the maximum annual assessment for that annual assessment period.

**4.7 No Limitations In Event of Merger or Consolidation.** The limitations hereof shall not apply to any change in assessments undertaken as an incident to a merger or consolidation of the Association.

**4.8 Reserve Fund.** The Association shall maintain an adequate reserve fund out of the annual assessments for the maintenance, repair and replacement of those elements of the Common Property that must be maintained, repaired or replaced on a periodic basis.

**4.9 Special Assessments for Capital Improvements.** In addition to the annual assessments authorized hereby, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or



in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, or for the funding of any operating deficit incurred by the Association. Any such assessment shall have the assent of two-thirds (2/3) of the votes of the Owners voting in person or by proxy at a meeting duly called for this purpose.

**4.10 Notice and Quorum for any Action to be Authorized by Owners Under this Paragraph.** Written notice of any meeting called for the purpose of taking any action authorized under this Paragraph 4 shall be sent to all Members not less than 15 days nor more than 60 days in advance of the meeting. The first such meeting called for such purpose shall require the presence of Members or of proxies entitled to cast fifty-one percent (51%) of the votes of the Owners to constitute a quorum. If the required quorum is not present, other meetings may be called subject to the same notice requirement, and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**4.11 Uniform Rate of Assessments.** Annual and special assessments (exclusive of fees or assessments due the Association for metered water and sewer service) must be fixed at a uniform rate for all Lots.

**4.12 Exemption.** Notwithstanding anything to the contrary contained in this Declaration, the rate of annual and special assessments set for Lots which have not yet been leased, rented, or otherwise occupied as a Residence shall be fixed at one-quarter (1/4) of the assessment rate for the other Lots. In the event that, prior to:

- (a) the expiration of one hundred and twenty (120) days after Declarant and Participating Builders have conveyed seventy-five percent (75%) of the Lots then subject to this Declaration to Owners (other than Declarant or Participating Builders);
- (b) five (5) years from the date of recording of this Declaration; or
- (c) written notice from Declarant of surrender and relinquishment of its retained power to control the Association through appointment of the members of the Board of Directors,

whichever occurs first, the annual assessments for common expenses (exclusive of those amounts held by the Association for an adequate reserve fund and for working capital) fail to equal or exceed the actual expenses incurred by the Association during an annual assessment period because of such partial assessment, then all owners who had previously paid such partial assessment shall pay a sufficient amount, up to the amount of full parity on such assessment (exclusive of any shortfall caused by expenditures for capital improvements), to the Association to meet any such shortfall, so long as written notice must be given by the Association within two (2) years thereafter. Each Owner obligated hereunder shall pay a pro rata share of the amount necessary to meet each such shortfall in Association assessments, up to the amount of full parity on such assessments; such pro rata share to be based on the number of Lots not subject to the full assessment rate described above and the duration of such payment of assessment at less than the full rate during the applicable annual assessment period.

**4.13 Date of Commencement of Annual Assessments.** The initial annual assessment shall commence on the first day of the month following the first residential occupancy of a Lot. The second and each subsequent annual assessment period shall correspond with the fiscal year of the Association. The annual assessments may be made due and payable in twelve monthly installments or with such other frequency per annum, on such dates as determined by the Board of Directors of the Association, provided that the first annual assessment shall be adjusted according to the number of months in the first annual assessment year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last installment due.

**4.14 Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment or portion thereof which is not paid when due shall be delinquent. If any assessment or portion thereof which is not paid within ten (10) days after the due date, then the Association may assess liquidated damages against the Owner and their Lot in an amount of not less than Twenty Dollars (\$20.00) for each month or other period said assessment is delinquent, which sum is intended and for the purpose of paying the extra costs and expenses involved in handling such delinquent assessments. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include liquidated damages on the assessment, as above provided, and a reasonable attorney's fee to be fixed by the court, together with all costs, including the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of their Lot.

**4.15 Working Capital.** The Association shall require the first Owner of each Lot, who purchases that Lot from Declarant or a Participating Builder, to make a non-refundable contribution of capital to the Association in an amount equal to two (2) times the monthly installment of the annual assessment effective at the time of conveyance of the Lot, which sum shall be held in a segregated account by the Association as and for working capital. Said payment shall be held for the use and benefit of the Association as it deems desirable, including but not limited to use to insure that the Board of Directors of the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or pay for services deemed necessary or desirable by the Board. Such deposit shall not relieve an Owner from their obligation to make regular payment of assessments as the same become due. Upon the transfer of their Lot, an Owner shall be entitled to a credit from his transferee in an amount equal to that portion of the first private Owner's payment into the working capital fund which remains in the account, which amount shall be calculated by multiplying such first private Owner's payment to the working capital fund by a fraction, the numerator of which is equal to the amount in the fund as of the date of the Association's last financial statement (or, if readily available, such amount as of a more current date) and the denominator of which is equal to the total amount which would have been in such account had there been no expenditures as of such date.

**4.16 Subordination of the Lien to Mortgages.** The lien of the Association provided for herein, including without limitation any fees, costs, liquidated damages, fines, penalties or other charges which may be levied by the Association in connection with unpaid assessments or violations of this Declaration, the Articles, Bylaws or any other rules, regulations, covenants, conditions or restrictions shall be subordinate to the lien of

any First Mortgage. Sale or transfer of any Lot shall not affect the Association's lien except that sale or transfer of any Lot pursuant to foreclosure of any First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien as to all charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure shall relieve any Lot from liability for any assessments or other charges thereafter becoming due, nor from the lien thereof; provided, however, that in the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrue prior to the acquisition of title to the Lot in question by such First Mortgagee. For the purpose of defining the point in time at which a First Mortgagee or any successful third party purchaser at a foreclosure sale of a First Mortgage becomes obligated to pay annual and special assessments, acquisition of title shall be deemed to have occurred after such party obtains a certificate of purchase or other instrument indicating such party's successful bid at the foreclosure sale.

## 5. ARCHITECTURAL CONTROL COMMITTEE

5.1 Composition of Committee. The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until all Lots have been conveyed to the first Owner thereof (other than Declarant and Participating Builders), Declarant shall appoint the Architectural Control Committee. A majority of the Committee may designate a representative to act for it.

The initial members of the Architectural Control Committee shall be:

Jimmy Sills  
45705 Highway 6  
Glenwood Springs, Colorado 81601

Kit Williams  
605 North Frontage Road, #14A  
Vail, Colorado 81657

Robert T. Lazier  
P. O. Box 1325  
Vail, Colorado 81658

5.2 Purpose. The Board, or the Architectural Control Committee, if one then exists, shall regulate the external design, appearance and location of the Property, Lots, Residences and of Improvements thereon in such manner as:

- (a) to promote those qualities in the environment which bring value to the Property, Lots, and Residences; and
- (b) to foster the attractiveness and functional utility of the community as a place to live, including maintenance of a harmonious relationship among structures, vegetation and topography.

**5.3 Architectural Aesthetic Requirements.** In order to maintain the architectural aesthetics of the Property, no Improvements, buildings, projections or other structures, and no walls, patios, landscaping, planters or other similar items shall be commenced, improved, constructed, maintained, erected, altered or remodeled (if already in existence) specifically including the alteration, painting and/or staining of the exterior of any Residence; nor shall any grading, excavation, tree removal, planting and/or exterior addition, change or alteration thereon be made until the plans and specifications accurately showing the nature, kind, shape, dimensions, materials, colors (including color of paint or stain) and locations of the same shall have been submitted to and approved in writing by the Board or the Architectural Control Committee, if one then exists. The Board, or the Architectural Control Committee shall review all applications for alterations or construction of Improvements in relation to the purpose of design review as herein provided, and in relation to the harmony and integrity of exterior design and location of the proposed Improvements in relation to surrounding structures and topography, the overall community design of the Property, the character of the exterior materials, and the quality of the exterior workmanship. Additionally, architectural approval shall be based, among other things, on: (a) the integrity, conformity and harmony of exterior design, colors and materials with neighboring structures; (b) relation of the proposed improvements to the natural topography, grade and finished ground elevation; (c) relation of the structure to that of neighboring structures and natural features of the Property; and (d) conformity of the plans and specifications to the purpose and general plan and intent of this Declaration.

**5.3.1** The Architectural Control Committee shall approve or disapprove all plans within thirty (30) days after complete submission of three sets of each application. Required drawings included within an application shall include: A site plan depicting structures, yards, drives, fences, utilities, site drainage, landscaping, floor plans, elevations of structures, a description of exterior materials to be used, a proposed construction schedule, a proposed completion date, a construction loan commitment or other satisfactory evidence of the financial capability of the owner to complete the improvements within the specified construction schedule. The Committee may notify adjacent Owners of a pending application, and may accept comments and suggestions from such owners. All decisions of the Committee should be in writing. One copy of a set of plans and specifications shall remain on file and become a permanent record of the Committee. In the event that the Architectural Control Committee fails to approve or disapprove said plans and specifications within thirty (30) days after the complete submission thereof, approval shall not be required and this Paragraph shall be deemed to have been fully complied with.

**5.3.2** The Board or the Architectural Control Committee may condition approval of proposals or plans and specifications for any Improvement on such changes as it deems appropriate. Additionally, the Association, the Board or the Architectural Control Committee, may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Board or the Architectural Control Committee may adopt rules or guidelines setting forth procedures for the submission of plans for approval, and it may require a reasonable fee to accompany each application for approval. The Board or the Architectural Control Committee may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as based upon the reasonable cost of the

construction, alterations or addition contemplated. The Board or the Architectural Control Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Board or the Architectural Control Committee of any required plans, specifications and requirements herein, review of any plan(s) submitted for approval may be postponed. Decisions of the Board or the Architectural Control Committee and the reasons for the decisions shall be transmitted to the applicant at the address set forth in the application for approval.

5.3.3 An applicant may appeal an adverse decision by the Architectural Control Committee to the Board of Directors of the Association, which may reverse or modify such decision by a two-thirds (2/3) vote of those directors present and voting at a meeting at which a quorum is present. The Board or the Architectural Control Committee shall not arbitrarily or unreasonably withhold its approval of plans and specifications. Approval by the Board or the Architectural Control Committee shall not be deemed to constitute compliance with the requirements of any local building codes, and it shall be the responsibility of the Owner or other person submitting plans to the Board or to the Architectural Control Committee to comply therewith. If the work contemplated by any such plans and specifications shall require a building permit or other permit under local building codes, then a copy of any and all such permits shall be submitted to the Architectural Control Committee after the same is issued.

5.3.4 The Owner shall proceed diligently with construction of any Improvement and shall notify the Board and the Architectural Control Committee of the completion of work on any Improvement within ten (10) days of such completion.

5.4 Vote. A majority vote of the Architectural Control Committee is required to approve a proposed change or Improvement, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control.

5.5 Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

5.6 Development by Declarant. Notwithstanding anything contained herein to the contrary, the provisions hereof shall not apply to Declarant's development of the Property.

5.7 Liability. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed hereby, in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained herein. Such variances or adjustments 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 and shall not militate against the general intent and purpose hereof.

**6. INSURANCE**

**6.1 Insurance on Common Property.** The Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Property. All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Association and shall provide that the policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the insured, as well as to the First Mortgagees of each Lot. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of a Lot, upon written request. Insurance shall be carried in blanket form, naming the Association, as the insured, as trustee and attorney in fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any such Owner's membership in the Association. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering availability, cost and risk coverage provided by such insurance:

**6.1.1** A policy of property insurance covering all insurable improvements located on the Common Property, with a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation, and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and/or coverage on personal property owned by the Association. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following: (a) Loss or damage by fire or other perils normally covered by the standard extended coverage endorsement; and (b) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard all risk endorsement, where such is available.

**6.1.2** A comprehensive policy of public liability insurance covering all of the Common Property, insuring the Association in an amount not less than \$1,000,000 covering bodily injury, including death of persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Property, legal liability arising out of law suits relating to employment contracts of the Association, and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

**6.1.3** A policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association. Such fidelity coverage or bonds shall meet the following requirements: (a) all such fidelity coverage or bonds shall name the Association as an obligee; and (b) such

fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

**6.1.4** If the Common Property or any portion thereof, is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the Common Property has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Property 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.

**6.1.5** A policy providing errors and omissions insurance of officers and directors of the Association, and the members of the Architectural Control Committee, in such amounts and containing such provisions as may from time to time be deemed necessary or desirable by the Board of Directors of the Association.

**6.2** Damage to Common Property. In the event of damage to or destruction of all or a portion of the Common Property due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Property damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association shall cause such Common Property to be promptly repaired and reconstructed, using the insurance proceeds and the proceeds of a special assessment (which notwithstanding the provisions of this Declaration to the contrary), may be levied without a vote of the Members. The amount of such assessment shall be equal to the amount by which the cost of repair or reconstruction exceeds the sum of the insurance proceeds available and shall be assessed equally against each Lot. The assessment provided for herein shall be a debt of each Owner and a lien on such Owner's Lot and the improvements thereon, and shall be enforced and collected as provided herein.

**6.3** Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, the Association policy shall be primary insurance not contributing with any of such other insurance.

**6.4** Other Insurance to be Maintained by Owners. Insurance coverage on the property, furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot and hazard insurance coverage on the improvements constructed on Lots, shall be the responsibility of the Owner thereof.

**6.5** Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers the risks insured by the Association.

**7. RESTRICTIONS**

**7.1 General Plan.** It is the intention of the Declarant to establish and impose a general plan for the improvement, development, and use of the Common Property and Lots, in order to enhance the value, desirability, and attractiveness of the Property.

**7.2 Restrictions Imposed on the Common Property.** The Declarant hereby declares that the Common Property shall be held and shall henceforth be sold, conveyed, used, improved, owned, and hypothecated upon, subject to the following provisions, conditions, limitations, restrictions, agreements, and covenants:

**7.2.1 Use of Common Property.**

(a) No use shall be made of the Common Property which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Property.

(b) No Owner shall place any structure whatsoever upon the Common Property, except as allowed or provided herein, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Property to all Members.

(c) The use of the Common Property shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

(d) No use shall ever be made of the Common Property which will deny ingress and egress to those Owners having access to a public street or to their Lots only over Common Property, and said rights of ingress and egress to all Lots are hereby expressly granted.

**7.2.2 Construction and Development Rights.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, and Participating Builders, their employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Common Property, such facilities as reasonably necessary or incidental to the construction and sale of Lots and development of the Property, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, model units, sales offices, parking areas and lighting facilities. Notwithstanding the foregoing, Declarant or Participating Builders shall not perform any activity or maintain any facility on any portion of the Common Property in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees of and to his Lot, parking areas, and/or to a public right of way.

**7.2.3 Rules and Regulations.** Rules and regulations concerning and governing use of the Common Property, may be adopted, amended and repealed, from time to time by the Board of Directors of the Association, and the Board of Directors may establish and enforce penalties for the infraction thereof, including without



limitation the levying and collecting of fines for the violation of any of such rules and regulations or for the violation of any provision of this Declaration, the Articles of Incorporation or Bylaws of the Association; provided, however, that copies of such rules and regulations shall be furnished to Owners and shall be uniform and non-discriminatory except to the extent that such rules and regulations concern discretionary rights given to the Association or its Board of Directors in this Declaration, the Articles of Incorporation or Bylaws of the Association.

**7.3 Restrictions Imposed on Lots.** The Declarant hereby declares that the Lots shall be held and shall henceforth be sold, conveyed, used, improved, owned and hypothecated subject to the following provisions, conditions, limitations, restrictions, agreements and covenants:

**7.3.1 Specific Architectural and Aesthetic Restrictions.**

(a) All accessory structures shall be so designed as to blend with and compliment the general architectural scheme of the Residence, and shall otherwise meet all architectural standards and requirements set forth herein.

(b) Metal or plywood sheds or structures are expressly prohibited.

(c) All structures (including accessory structures) shall be located entirely within the building envelope for a Lot, as initially determined by the Declarant and/or the Architectural Control Committee.

(d) All structures, including Residences, shall be sited or situate on each Lot by an owner, and approved by the Architectural Control Committee. In siting a structure, the Architectural Control Committee shall approve locations as near to the spot selected by an Owner as shall not impede or restrict the view plane of other Owners.

**7.3.2 Completion of Residences.** Each Residence and/or structure shall be completed within six months from the date of issuance of a building permit, and each Owner shall be required to provide evidence, such as a loan commitment, to the Architectural Control Committee that said Owner has a financial ability to construct the intended improvements within this time period.

**7.3.3 Use and Building Type.** All Lots shall be used and limited to use for residential purposes. No business building, machine shop or other industrial or commercial structure or building devoted to commercial or public enterprise shall be erected or used on any Lot and no business which attracts any customers or clients to a Lot shall be conducted or carried on or be practiced upon any Lot or within any Residence or accessory building constructed thereon, except that buildings may be erected and used by Declarant, its successors, assigns or designees for use in developing and marketing the Property and the Lots. No building shall be erected, altered or placed or permitted to remain upon any Lot other than detached single family dwellings not to exceed two (2) stories with a private garage to accommodate not less than two (2) cars. Not more than one Residence shall be constructed on any one Lot.

**7.3.4 Residence Cost; Quality and Size.** No Residence shall be permitted on any Lot at an actual builder's construction cost, excluding land costs, of less

than \$30,000.00 based on cost levels prevailing on the date this Declaration is recorded, it being the intention and purpose of this provision to assure that all Residences shall be of a quality workmanship and materials substantially the same or better than that which can be procured at the stated minimum cost level on the date that this Declaration is recorded for the minimum permitted Residence size. The habitable floor area of a Residence, exclusive of open porches and garages, shall be not less than 1,350 square feet.

**7.3.5 Reflective Glass.** No reflective glass windows shall be utilized in any Improvements constructed upon the Lots.

**7.3.6 Utility Connections.** All utility connections installed upon the Lots, including all electrical and telephone connections and installations of wires to buildings, including television, microwave or radio connections shall be made underground from the nearest available source, except that during the construction of a building structure, the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction. The location of all such transformers and other apparatus shall be subject to the prior approval of the Committee.

**7.3.7 Mechanical Equipment.** No heating, air conditioning, electrical or other equipment shall be installed on the roof of any Residence, building or structure or hung on exterior walls unless the same is enclosed, screened, covered and installed so as to be an integral part of the architectural design of the Residence or building to which said equipment is attached or related in a manner which shall first have been approved in writing by the Committee, except that solar energy collectors or panels, if used, may be installed on the roof of any Residence, building or structure or in any exposed location, if harmoniously done and if approved by the Committee in its sole discretion.

**7.3.8 Fencing.** Any and all fencing materials utilized within the Property shall be restricted to cedar or redwood or such other materials as may be approved by the Committee, and all fence designs and specifications for fences to be located within the Property shall be approved by the Committee prior to installation. Architectural screen fences are allowed provided they are located within building envelopes designated for each Lot by the Declarant or the Committee and have been approved in advance by the Committee. Open post and rail fences, limited to four feet above ground level are allowed provided they are located so as to not unduly disrupt natural brush and tree vegetation or cause erosion, and have been approved in advance by the Committee.

**7.3.9 Landscaping.** Landscaping shall blend with natural vegetation and shall be completed within ninety days (weather permitting) of the receipt of a certificate of occupancy for a Residence. Trees shall not be removed or cut down without the prior approval of the Committee; however, it is recognized that selective cuttings of natural vegetation may be necessary to prevent wild fire or forest fire dangers and to prevent the spread of tree disease, and cuttings of natural vegetation for these purposes shall be allowed. All areas cut, filled or disturbed by the installation of Improvements or other activity of an Owner shall be fully restored and landscaped utilizing "long lived" ground cover, sod, shrubs, trees and other materials. Short lived and non-living, durable landscape materials may be utilized only as a supplement to long lived elements. The landscaping of each Lot having once been installed shall be maintained by the Owner in a

neat, attractive, sightly and wellkept condition, which shall include lawns mowed, hedges trimmed, replacement of dead, diseased or unsightly materials, removal of weeds and debris and appropriate pruning of plant materials. Undeveloped Lots shall be maintained in a sightly and well kept condition by their respective Owners.

**7.3.10 Roofing.** Any and all roofing materials utilized for Improvements within the Property shall be restricted to shake wood shingles, asphalt composition (as allowed by the Committee) or such other materials as may be approved by the Committee. All roofs shall have a minimum 5-12 pitch, unless otherwise approved by the Committee.

**7.3.11 Temporary Structures.** No portion of any Improvement shall be occupied as living quarters prior to the completion of the construction of the entire Residence as evidenced by a final, unconditional certificate of occupancy ("CO") therefor. No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residential dwelling unit either temporarily or permanently. However, anything herein to the contrary notwithstanding, temporary facilities may be constructed for purposes of housing sales and construction personnel with regard to the sale and construction of Lots and Residences within the Property. Any temporary facilities constructed in connection herewith must be constructed and maintained in a sightly and well kept condition and shall be subject to the prior written approval of the Committee.

**7.3.12 Antennae.** No television, other antenna, microwave dish, satellite earth station or similar device of any type shall be erected, installed or maintained at any Lot or upon any Improvement within the Property without the prior approval of the Committee.

**7.3.13 Height Restrictions.** No Improvement, building or appurtenance shall exceed the heights permitted by applicable ordinances, rules or regulations or thirty (30) feet in height, measured from the front elevation thereof, whichever is less.

**7.3.14 Animals and Pets.** No animals, pets, livestock, reptiles, fish, birds, poultry or bees of any kind shall be raised, bred or kept on any Lot save and except that domesticated dogs, cats and other common household pets permitted by the Association may be kept by an Owner so long as they are not kept, bred or maintained for any commercial purposes; provided, further, that all such common household pets shall be allowed subject to all governmental animal control ordinances and laws and subject to such rules and regulations as may be promulgated by the Association. Owners of allowed household pets shall be responsible for any damage caused by such pets upon the Common Property and shall be obligated to clean up after their pets upon the Common Property.

**7.3.15 Signs Restricted.** No signs of any kind shall be displayed to the public view on any Lot except signs used by the Declarant or its authorized designees, successors and assigns (including Participating Builders) to advertise the Property and/or Lots and Residences during the construction and sales period; provided, however, that the Owner of each Lot may display one (1) sign of not more than five (5) square feet advertising such Lot and/or Residence for sale or rent; and, provided, further, that Participating Builders may display one (1) sign of not more than eight (8) square feet advertising Lots and Residences for sale or rent. Any and all signs shall require the prior written approval of the Committee.

7.3.16 Oil and Mining Operations Prohibited. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon any Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained or permitted upon any Lot. The foregoing restriction shall apply equally to any equipment or activities connected with the drilling and permanent placement of wells used to secure water.

7.3.17 Vehicles. No vehicles shall be permitted to be parked on streets within the Property, streets adjoining Lots, or access easement areas to a Lot. Recreational vehicles, boats, motorcycles, campers, vans, hauling trucks, commercial type vehicles, trailers and mobile homes shall be parked or stored on the side or in the rear yards of any Lot; provided, however, the same are completely surrounded by a sight barrier approved by the Committee. No motor vehicles, campers, trailers, boats or recreational vehicles shall be rebuilt or repaired, except in the sight barrier area, garage or in the driveway of each Lot (provided, however, that repairs in a driveway must be completed within forty-eight (48) hours) and provided, further, that under no circumstances shall such repairs be performed if the same result in the creation of an unsightly or unsafe condition. Unlicensed vehicles shall not be stored or maintained within the Property unless completely screened or surrounded by a site barrier approved by the Committee.

7.3.18 Nuisance. The Owner of any Lot shall not suffer or permit any noxious or offensive activity to be conducted, carried on or practiced thereon or within any Residence or accessory building constructed thereon or otherwise use or employ such Lot and Residence for any purpose that will constitute any annoyance to the neighborhood or a nuisance as provided by law, or that will detract from the residential value, reasonable enjoyment and quality of the Property.

7.3.19 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping or temporary storage ground for rubbish, trash, garbage or other waste. All such items shall be kept in approved sanitary containers located on the Lot so long as they in no way interfere with the overall beauty and reasonable enjoyment of the other Lots located upon the Property. No exterior incinerator shall be permitted on any Lot. All equipment for the lawful storage or disposal of garbage and refuse shall be kept in a clean and sanitary condition. No weeds shall be permitted to grow upon any Lot at a height in excess of twelve (12) inches or as provided by applicable law, whichever is lesser. Further, the Owner of each Lot located within the Property shall use reasonable efforts in order to maintain a Lot in conformance with this Declaration, as well as in conformance with reasonable and accepted practices in order to maintain the overall beauty of the Property.

7.3.20 Easements. Easements for the installation, repair, maintenance and replacement of utilities, television cables and drainage facilities over and across portions of the Lots are reserved as shown on the recorded plat for the Property. Within these easements, no Improvements, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, repair, maintenance and replacement of any utilities or cables or which may change the direction of flow or obstruct or retard the flow of water through the drainage channels located in the easements or through drainage channels stemming from said easements.

Notwithstanding the foregoing, all easement areas located on each Lot and all Improvements constructed thereon shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible.

**7.3.21 Discharge of Firearms.** Discharge of guns or firearms within the Property shall be expressly prohibited, except for self-defense or to otherwise protect life or property as allowed by law.

## 8. EASEMENTS

**8.1 Easement for Encroachments.** If any portion of a Residence encroaches upon the Common Property, including any future encroachments arising or resulting from the repair or reconstruction of a Residence subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such encroachment.

**8.2 Maintenance Easement on Lots and Common Property.** An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Lots and Common Property, together with the right to make such use of the Common Property, as may be necessary or appropriate to perform the duties and functions which the Association is obligated or permitted to perform pursuant to this Declaration.

**8.3 Utilities on the Common Property and to the Lots.** There is hereby created a blanket easement upon, across, over and under the Common Property and to the Lots for utilities and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity and master, cable and satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Property and to the Lots and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone and television wires, circuits, cable, conduits, satellite reception dishes and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Property, without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon conveyance by Declarant of the last Lot to the first Owner thereof (other than Declarant). The easement provided for hereby shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Property.

## 9. FIRST MORTGAGEES

**9.1 Member and First Mortgagee Approval.** Subject to the provisions of Sections 10.6 (b) and (c) hereof, but notwithstanding anything to the contrary set forth elsewhere in this Declaration, unless the Association has obtained the prior written

consent of at least sixty-seven percent (67%) of the Owners and sixty-seven percent (67%) of the First Mortgagees of Lots (based upon one vote for each First Mortgage owned), the Association shall not:

9.1.1 by act or omission, change, waive, or abandon any scheme of architectural control, or enforcement thereof, as set forth in this Declaration;

9.1.2 fail to maintain full current replacement cost fire and extended insurance coverage on the Common Property;

9.1.3 use hazard insurance proceeds for Common Property property losses for purposes other than to repair, replace, or reconstruct such property;

9.1.4 by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer any property owned, directly or indirectly, by the Association for the benefit of the Owners (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes consistent with the intended use of such property and reasonably necessary or useful for the proper maintenance or operation of the Property or the Association);

9.1.5 change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

9.1.6 add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association, which establish, provide for, govern or regulate any of the following; provided that any First Mortgagee who receives a written request to approve any such non-material additions or amendments to any of such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days of its receipt of such request, shall be deemed to have approved such request, and further provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, (A) voting rights; (B) assessments, the Association's lien or subordination of such lien; (C) reserves for maintenance, repair and replacement of those elements of the Common Property which must be maintained, repaired or replaced on a periodic basis; (D) insurance, including but not limited to fidelity bonds; (E) rights to use the Common Property; (F) responsibility for maintenance and repair of any portion of the Common Property; (G) contraction of the Property or withdrawal of property to or from the Property; (H) boundaries of any Lot (after establishment thereof by Declarant) or Residence; (I) interests or rights in or to the Common Property; (J) convertibility of Lots or Residences into Common Property or of Common Property into Lots or Residences; (K) leasing of Residences; (L) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his Lot; (M) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages; or

9.1.7 effectuate any decision to terminate professional management and assume self-management of the Association when professional management has previously been required by an First Mortgagee of a Lot or insurer or guarantor of such a First Mortgage;

9.1.8 terminate the legal status of the Property as a planned unit development;

9.1.9 restore or repair the Property, or any portion thereof, including but not limited to Improvements located thereon, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Property and the construction of Improvements thereon;

9.1.10 terminate the legal status of the Property after substantial destruction or a substantial taking in condemnation of the Property.

9.2 **Notice of Action.** Each First Mortgagee of a Lot, or insurer or guarantor of such a First Mortgage, upon written request to the Association identifying the name and address of the First Mortgagee or insurer or guarantor of the First Mortgage and the Residence address of the property which is subject to such First Mortgage, shall be entitled to timely written notice of: (A) any condemnation loss or casualty loss which affects a material portion of the Property or any Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage; (B) any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days; (C) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (D) any proposed action which would require the consent of a specified percentage of First Mortgagees as provided herein.

9.3 **Financial Statement.** The Association shall provide a financial statement for the immediately preceding fiscal year, free of charge to the party so requesting, to any First Mortgagee of a Lot, or any insurer or guarantor of such a First Mortgage, within a reasonable time after written request therefor by any such party.

## 10. GENERAL PROVISIONS

10.1 **Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles, Bylaws or rules and regulations adopted by the Association, and shall be entitled to enjoin any violation thereof, to cause any such violation to be remedied, or to recover damages resulting from such violation. In addition, violation of any such condition, covenant, restriction, reservation, rule or regulation shall give to the Association the right to enter upon the portion of the Property wherein said violation or breach exists and to summarily abate and remove, at the expense of the Owner, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof. No such entry by the Association or its agents shall be deemed a trespass, and the Association and its agents shall not be subject to liability to the Owner of any Lot for such entry and any action taken to remedy or remove a

violation. The cost of any abatement, remedy or removal hereunder shall be a binding personal obligation on an Owner in violation of any such provision. Further, the Association shall have the right, power and authority to establish and enforce penalties or monetary charges for violations of this Declaration, the Articles, Bylaws and any rules and regulations adopted by the Association, and such penalties and/or monetary fines shall be a binding personal obligation of the Owner of the subject property. In any legal or equitable proceeding for the enforcement of such provisions, whether it be an action for damage, declaratory relief or injunctive relief, or any other action, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorney fees. The prevailing party shall be entitled to said attorney fees even though said proceeding may be settled prior to judgment. All remedies provided herein or at law or in equity shall be cumulative and are non-exclusive. Failure by the Association, or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

10.3 Conflicts of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, the Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

10.4 Expansion.

10.4.1 The Declarant or the owners of the real property described on Exhibit "C" attached hereto and incorporated herein by this reference, may annex the real property described in Exhibit "C", until five (5) years from the date upon which this Declaration is recorded in the office of the Clerk and Recorder of Garfield County, Colorado. The Declarant and the said owners shall have the right to annex the real property described in Exhibit "C" without the consent of the individual Owners or First Mortgagees, but subject to a determination by the Federal Housing Administration of the U.S. Department of Housing and Urban Development or the Veterans Administration that the annexation is in accord with the general plan heretofore approved by them (if such approval is then required by either of such agencies). Further, in the event the owners of the real property described in Exhibit "C" desire to annex their properties, thirty (30) days prior written notice must first be given by such owners to the Association.

10.4.2 Additional property may be annexed by the Association or Owners with the consent of two-thirds (2/3) of the Owners.

10.4.3 Each such annexation shall be effected, if at all, by recording a document in the office of the Clerk and Recorder of the County of Garfield, Colorado, which document shall provide for annexation to this Declaration of the property described in such document. All provisions of this Declaration, including but not limited to those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members of the Association, may but shall not be required to apply to the annexed property. Prior to transferring ownership of the first Lot in the Property



and in any property which is annexed by Declarant as provided hereby, other than to Declarant or a Participating Builder, Declarant shall convey any Common Property contained in the annexed property, as appropriate, to the Association.

10.4.4 Declarant has also reserved the right to cause the Association to provide water service to the real property described in Exhibit "C" (which water service would include connection of a two-inch water line to each of said properties) upon agreement by the owners thereof, to pay 120% of all reasonable and marginal costs associated therewith. Such extension of water service shall be evidenced by a separate written document or memorandum recorded in the office of the Clerk and Recorder of Garfield County, Colorado.

10.5 Condemnation. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Property, any material part thereof or any interest therein, any improvement thereon, or any material interest therein, the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Property or Improvement thereon sought to be so condemned, to all First Mortgagees of Lots, all insurers or guarantors of First Mortgages and all Owners. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the Common Property or part thereof, but the Association shall not enter into any such proceedings, settlement or agreements, pursuant to which the Common Property or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein, is relinquished, without giving all First Mortgagees of Lots, all Members, and Declarant at least fifteen (15) days prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Property, the award made for such taking, if such award is sufficient to repair and restore the Common Property, shall be applied by the Association to such repair and restoration. If such award is insufficient to repair and restore the Common Property, or if the full amount of such award is not expended to repair and restore the Common Property, the Association shall disburse the net proceeds of such award to the Owners, the Owner of each Lot receiving one (1) equal share, provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on their Lot in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Property shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation award for losses to or taking of Lots, Common Property, or any combination thereof.

10.6 Duration, Revocation, and Amendment.

(a) Each and every provision of this Declaration shall run with and bind the land ("Property") for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as otherwise provided herein, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by an instrument approved in writing by not less than fifty-one

percent (51%) of the Owners. Such amendment shall be effective when duly recorded in the County of Garfield, Colorado.

(b) Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Government National Mortgage Association, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, then, subject to the following sentence of this Section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners, or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to the expiration of one hundred and twenty (120) days after Declarant and Participating Builders have conveyed seventy-five percent (75%) of the Lots then subject to this Declaration to Owners (other than Declarant or Participating Builders) or five (5) years from the date of recording of this Declaration, whichever occurs first; and each such amendment must contain thereon the written approval of the Veterans Administration or the Federal Housing Administration of the U.S. Department of Housing and Urban Development (if such approval is then required by either of such agencies).

(c) Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration at any time prior to the expiration of one hundred and twenty (120) days after Declarant and Participating Builders have conveyed seventy-five percent (75%) of the Lots then subject to this Declaration to Owners (other than Declarant or Participating Builders) or five (5) years from the date of recording of this Declaration, whichever occurs first, for the purposes of correcting spelling, grammar, dates or as is otherwise necessary to clarify the meaning of the provisions of this Declaration.

**10.7 Registration by Owner of Mailing Address.** Each Owner shall register their mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either regular, registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid to Jimmy Sills until such address is changed by the Association.

**10.8 FHA/VA Approval.** Until expiration of one hundred and twenty (120) days after Declarant and Participating Builders have conveyed seventy-five percent (75%) of the Lots then subject to this Declaration to Owners (other than Declarant or Participating Builders) or five (5) years from the date of recording of this Declaration, whichever occurs first, the following actions shall require the prior approval of the Federal Housing Administration of the U.S. Department of Housing and Urban Development or the Veterans Administration (if such approval is then required by either of such agencies): (a) annexation of additional properties, (b) dedication of Common Property, and (c) amendment of this Declaration.

10.9 Dedication of Common Property. Declarant, in recording this Declaration, has designated certain areas of land as Common Property intended for the common use and enjoyment of the Owners for their recreation and other related activities. The Common Property is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

10.10 Disclosure Regarding Intended Application of Rezoning. Declarant hereby discloses, and each Owner does hereby acknowledge and agree that Declarant and/or the owners of the real property described in Exhibit "C" intend to apply to Garfield County, Colorado for a P.U.D., zone amendment and/or a rezoning of such property to exclude the same from any P.U.D. affecting the Property and to rezone such property to a maximum residential density allowed under Garfield County Zone District R/G/SD - Residential/General/Suburban Density. By acceptance of a deed or other instrument of transfer to a Lot, each Owner consents to the intended changes, so long as application therefor is made within ten (10) years from the date of recording of this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as of the day and year first above written.

"DECLARANT"

LAZIER-SILLS PARTNERSHIP,  
a Colorado general partnership

By *Jimmy M. Sils*  
Jimmy M. Sils, General Partner and  
Authorized Agent

By *Robert T. Lazier*  
Robert T. Lazier, General Partner and  
Authorized Agent

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Garfield )

Subscribed, sworn to and acknowledged before me this 29th day of September, 19 86, by Jimmy M. Sils, General Partner and Authorized Agent of Lazier-Sills Partnership, a Colorado general partnership.

My Commission Expires:

(SEAL) My Commission Expires  
September 24, 1988  
605-N. Frontage Rd. 14-A  
Vail CO 81657  
STATE OF COLORADO

*KTC Williams*  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Garfield )

Subscribed, sworn to and acknowledged before me this 29th day  
of Septmber, 19 86, by Robert T. Lazler, General Partner and Authorized  
Agent of Lazier-Sills Partnership, a Colorado general partnership.

My Commission Expires:

(SEAL) My Commission Expires  
September 24, 1988  
609 N. Frontage Rd. 14-A  
Vail, CO 81657  
NOTARY PUBLIC  
STATE OF COLORADO

K T C Williams  
Notary Public

**EXHIBIT A  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CANYON CREEK ESTATES**

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**Legal Description of the Property:**

Second Amended Plat of Canyon Creek Estates, a part of the SW1/4 of Section 25, Township 5 South, Range 90 West of the Sixth Principal Meridian, and a part of the N1/2 of Section 36, Township 5 South, Range 90 West of the Sixth Principal Meridian, County of Garfield, State of Colorado, as recorded on SEPTEMBER 30, 1986 in the office of the Clerk and Recorder of Garfield County at Reception No. 374954; Excepting therefrom Block 18 and Block 9.

**EXHIBIT B  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CANYON CREEK ESTATES**

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**Common Property:**

That certain property described as:

All right, title and interest as described in two separate Deeds dated October 31, 1984 naming the Association as Grantee, as recorded November 23, 1984.

The first such deed was recorded at Book 660, Page 437, Reception No. 357524 in the office and records of the Clerk and Recorder, County of Garfield, State of Colorado,

portions of which are now known as:

- Tract A-1,
- Tract A-2,
- Tract B,
- Tract C,
- Tract D,
- Tract E,
- Tract F,
- Tract G,
- Second Amended Plat of Canyon Creek Estates,
- Garfield County, Colorado

The second such deed was recorded at Book 660, Page 440, Reception No. 357525 in the office and records of the Clerk and Recorder, County of Garfield, State of Colorado.

**EXHIBIT C  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CANYON CREEK ESTATES**

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**Property Subject to Annexation:**

**Blocks 9 and 16,  
Second Amended Plat of Canyon Creek Estates,  
Garfield County, Colorado**