


ROBERT C. "BOB" BALINK El Paso County, CO  
10/07/2004 09:04:36 AM  
Doc \$0.00 Page  
Rec \$221.00 1 of 44 204168887



ORIGINAL

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**FOR**

**JACKSON CREEK FILING NO. 5**

Prepared by and return after recording to:

Ronald J. Snow, Esq.  
McGloin, Davenport, Severson and Snow  
Professional Corporation  
1600 Stout Street, Suite 1600

TABLE OF CONTENTS

	<u>Page</u>
RECITALS .....	1
DECLARATION .....	1
ARTICLE I - DEFINITIONS .....	1
1.1 "Act" .....	1
1.2 "Annexable Property" .....	1
1.3 "Annexing Deed" .....	2
1.4 "Annexed Property" .....	2
1.5 "Architectural Review Committee" .....	2
1.6 "Articles" .....	2
1.7 "Assessment(s)" .....	2
1.8 "Association" .....	2
1.9 "Association Property" .....	2
1.10 "Board" .....	2
1.11 "Bylaws" .....	2
1.12 "Common Area" .....	2
1.13 "Declarant" .....	2
1.14 "Declaration" .....	3
1.15 "Developer" .....	3
1.16 "Development Rights" .....	3
1.17 "District" .....	3
1.18 "First Mortgage" .....	3
1.19 "First Mortgagee" .....	3
1.20 "General Assessment" .....	3
1.21 "General Common Allocation" .....	3
1.22 "Improvement" .....	3
1.23 "Living Unit" or "Dwelling Unit" .....	3
1.24 "Lot" .....	3
1.25 "Map" .....	3
1.26 "Member" .....	3
1.27 "Mortgage" .....	4
1.28 "Owner" .....	4
1.29 "Period of Declarant Control" .....	4
1.30 "Person" .....	4
1.31 "Project" .....	4
1.32 "Property" .....	4
1.33 "Records" .....	4
1.34 "Recreation Areas" .....	4
1.35 "Reimbursement Assessments" .....	4
1.36 "Related User" .....	4
1.37 "Restrictions" .....	4
1.38 "Rules and Regulations" .....	4
1.39 "Security Interest" .....	4
1.40 "Special Assessments" .....	4
1.41 "Special Declarant Rights" .....	5
1.42 "Subdivision" .....	5
1.43 "Supplemental Assessments" .....	5
1.44 "Triview Metropolitan" .....	5
1.45 "Voting Member" .....	5

	<u>Page</u>
ARTICLE 2 - DEVELOPMENT OF THE PROPERTY/ANNEXATION .....	5
2.1 Subdivision and Development by Declarant .....	5
2.2 Conveyance and Acceptance of Common Areas .....	5
2.3 Merger .....	5
2.4 Manner and Effect of Annexation .....	5
2.5 No Annexation Required; Contraction of Annexable Property .....	6
ARTICLE 3 - GENERAL RESTRICTIONS/PERMITTED USES .....	6
3.1 General Restrictions .....	6
3.1.1 Residential and Common Areas .....	6
3.1.2 Improvements and Use .....	6
3.1.3 Unsightly Articles .....	6
3.1.4 Landscaping Requirement .....	7
3.1.5 Antennas/Satellite Dishes/Generators/Playground Structures .....	7
3.1.6 Insurance Rates .....	7
3.1.7 No Further Subdividing .....	7
3.1.8 Nuisances .....	7
3.1.9 Repair of Buildings .....	7
3.1.10 Improvements and Alterations .....	7
3.1.11 Violation of Restrictions .....	8
3.1.12 Drainage .....	8
3.1.13 No Hazardous Activities .....	8
3.1.14 No Temporary Structures .....	8
3.1.15 No Mining and Drilling .....	8
3.1.16 Vehicles .....	8
3.1.17 Construction Activities .....	8
3.1.18 Fencing .....	9
3.1.19 Animals .....	9
3.1.20 Exterior Lighting .....	9
3.1.21 Common Area Restriction .....	9
3.1.22 No Violation of Law .....	9
3.1.23 Restrictions on Signs .....	9
3.1.24 Conditions for Architectural Control .....	9
3.1.25 Rules and Regulations .....	10
3.1.26 Storage .....	10
3.1.27 Trash Burning .....	10
3.1.28 Leases .....	10
3.1.29 Covenants Run with Land .....	10
3.1.30 Trampolines/Basketball Goals/Hoops .....	10
3.1.31 Motorized Vehicles; Watercraft .....	10
3.1.32 No Animals Running Free in Mouse Area .....	10
3.2 Exemption for Declarant .....	10
3.3 Exemption for Developers .....	11
3.4 Assignment by Declarant/Transfer of Special Declarant Rights .....	11
ARTICLE 4 - MAINTENANCE .....	11
4.1 Owner's Duty of Maintenance .....	11
4.2 Association's Maintenance Obligations .....	12
ARTICLE 5 - ASSOCIATION .....	12
5.1 Organization .....	12
5.2 Duties and Powers of the Association .....	12

	<u>Page</u>
5.2.1	Assessments ..... 12
5.2.2	Association Property ..... 12
5.2.3	Title to Association Property upon Dissolution ..... 12
5.2.4	Repair and Maintenance of Association Property ..... 13
5.2.5	Maintenance of Common Areas ..... 13
5.2.6	Payment of Taxes ..... 13
5.2.7	Insurance ..... 13
5.2.8	Rules and Regulations ..... 13
5.2.9	Enforcement ..... 13
5.2.10	Management Company ..... 13
5.2.11	Maintenance Agreements ..... 13
5.2.12	Borrowing ..... 13
5.2.13	Easements ..... 13
5.2.14	Assignment ..... 13
5.2.15	Other ..... 14
5.2.16	Power to Engage Employees, Agents and Consultants ..... 14
5.2.17	General Corporate Powers ..... 14
5.3	Membership and Voting ..... 14
5.3.1	Generally ..... 14
5.3.2	Multiple Owners ..... 14
5.3.3	Proxies ..... 14
5.3.4	Association Owned Lots ..... 14
5.4	Board of Directors ..... 14
5.4.1	General ..... 14
5.4.2	Extent of Power ..... 14
5.5	Officers ..... 15
5.6	Articles and Bylaws ..... 15
5.7	Meetings ..... 15
5.8	Covenants for Assessments ..... 15
5.8.1	Method of Assessment ..... 15
5.8.2	Subordination of the Lien to Mortgages ..... 15
5.8.3	General Assessment ..... 15
	(a) Purpose ..... 15
	(b) Basis for Assessment ..... 16
	(c) Increase in Maximum Lot Assessment ..... 16
	(d) Procedure for Monthly Assessments Below Maximum Assessment ..... 16
	(e) Method of Assessment ..... 16
	(f) Date of Commencement of General Assessments ..... 16
5.8.4	Budget Process ..... 16
5.8.5	Supplementary Assessments ..... 16
5.8.6	Special Assessments ..... 17
5.8.7	Reimbursement Assessments ..... 17
5.8.8	Declarant Assessment ..... 17
5.8.9	Time for Payments ..... 17
5.8.10	Lien for Assessments and Other Amounts ..... 17
5.8.11	Working Capital ..... 17
5.8.12	Estoppel Certificate ..... 18
5.8.13	No Abatement ..... 18
5.8.14	Effect of Nonpayment of Assessments; Remedies of Association ..... 18
5.8.15	Exempt Property ..... 18
5.9	Non-Liability of Officials ..... 18
5.10	Indemnification ..... 18
5.11	Non-Liability for Certain Changes and Amendments ..... 18

	<u>Page</u>
5.12 Audit .....	19
5.13 Association Books and Records .....	19
5.14 Surplus Funds .....	19
5.15 Delegation to Master Association .....	19
5.16 Association Insurance .....	19
<b>ARTICLE 6 - ARCHITECTURAL REVIEW COMMITTEE .....</b>	<b>19</b>
6.1 Required Approval .....	19
6.2 Membership of Committee .....	20
6.3 Improvement to Property Defined .....	20
6.4 Approval of Improvements Required .....	20
6.5 Committee Guidelines or Rules .....	20
6.6 Submission of Plans .....	20
6.7 Criteria for Approval .....	20
6.8 Architectural Review Fee .....	21
6.9 Decision of Committee .....	21
6.10 Appeal to Association Board .....	21
6.11 Failure of Committee to Act on Plans .....	21
6.12 Obtaining Governmental Approvals .....	21
6.13 Prosecution of Work after Approval .....	21
6.14 Notice of Completion .....	21
6.15 Inspection of Work .....	21
6.16 Notice of Noncompliance .....	21
6.17 Failure of Committee to Act after Completion .....	22
6.18 Appeal to Association Board of Finding of Noncompliance .....	22
6.19 Correction of Noncompliance .....	22
6.20 No Implied Waiver or Estoppel .....	22
6.21 Committee Power to Grant Variances .....	22
6.22 Compensation of Members .....	23
6.23 Meetings of Committee .....	23
6.24 Records of Actions .....	23
6.25 Nonliability for Committee Action .....	23
6.26 Construction Period Exception .....	23
<b>ARTICLE 7 - EASEMENTS .....</b>	<b>23</b>
7.1 Easement for Encroachments .....	23
7.2 Maintenance Easement .....	23
7.3 Utilities Easement .....	23
7.4 Rights of Declarant Incident to Construction .....	24
7.5 Owner's Easement .....	24
7.6 Association's Easements .....	24
7.7 Declarant's Easements .....	24
7.8 Easements Deemed Created .....	24
<b>ARTICLE 8 - AMENDMENT .....</b>	<b>24</b>
8.1 Amendment .....	24
8.2 First Mortgagee Approval .....	25
8.3 Notice of Action .....	25
8.4 Expenses .....	25
<b>ARTICLE 9 - MISCELLANEOUS .....</b>	<b>25</b>
9.1 Term .....	25
9.2 Notices .....	26

	<u>Page</u>
9.3 Severability .....	26
9.4 Condemnation .....	26
9.5 Governing Law .....	27
9.6 Exhibits .....	27
9.7 Development Rights and Special Declarant Rights .....	27
9.8 Colorado Common Interest Ownership Act .....	27
9.9 Registration by Owner of Mailing Address .....	27
9.10 Recording Data of Easements and Licenses .....	27
9.11 Arbitration of Disputes .....	27
9.11.1 Binding Arbitration .....	27
9.11.2 Stenographic Record .....	28
9.11.3 Procedure .....	28
9.12 Consent for Litigation or Arbitration .....	28
9.13 Liability of Directors or Officers for Failure to Maintain an Action Against the Declarant .....	28
9.14 Utilization of Funds Resulting from the Cause of Action .....	28
9.15 No Destructive Testing .....	29
9.16 WAIVER OF TRIAL TO A JURY OR TRIAL TO A JUDGE .....	29
ARTICLE 10 - DECLARANT'S DISCLAIMERS .....	29
10.1 Declarant's Disclaimers .....	29
10.1.1 Future and Adjacent Development .....	29
10.1.2 School Information .....	30
10.1.3 Changes in Price, Size and Design .....	30
10.1.4 View Impairment .....	30
10.1.5 Tax and Insurance Estimates .....	30
10.1.6 Outstanding Dedications .....	30
10.1.7 Representations Regarding the Neighborhood .....	30
10.2 Acknowledgment of Inconvenience .....	30
10.3 Recording Data of Easements and Licenses .....	30

Attachments:

- Exhibit A - Legal Description of the Property
- Exhibit B - List of Recorded Easements and Licenses, including:
  - Map (Plat)
  - Exceptions to Title
- Consent of Lender - Horizon Banks, N.A.
  - Bank of Cherry Creek
  - Triview Public Building Authority

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
JACKSON CREEK FILING NO. 5**

This Declaration of Covenants, Conditions and Restrictions for Jackson Creek Filing No. 5 (the "Declaration") is made this 29th day of September, 2004, by Trail Ridge Homes at Jackson Creek, LLC, a Colorado limited liability company (the "Declarant").

**RECITALS**

A. Declarant is the owner of that certain real property located in the Town of Monument, County of El Paso, State of Colorado, as more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Replat of Jackson Creek Filing No. 5 which depicts the Property was recorded in the real property records of El Paso County, Colorado on July 29, 2003, at Reception No. 203172887 (the "Map").

B. The Property consists of approximately 30.78 acres and is part of the Master Planned Community commonly known as Regency Park Development.

C. Because the Property is a part of Jackson Creek Filing No. 5, the Triview Metropolitan District (hereinafter, "Triview") has accepted certain easements, covenants, conditions and restrictions to provide for the cooperative development, improvement, use, operation, maintenance, repair and enjoyment of common property located within Jackson Creek Filing No. 5 pursuant to the Service Agreement for Triview.

D. Declarant now desires to create a planned community and to establish certain mutually beneficial easements, covenants, restrictions and equitable servitudes for the cooperative development, improvement, use, operation, maintenance, repair and enjoyment of such planned community under a general plan for the purpose of enhancing and perfecting the value, desirability and attractiveness of such planned community.

E. There is no guarantee that all portions of the Property will be completed or added to the Project.

**DECLARATION**

NOW, THEREFORE, Declarant hereby declares that as portions of the Property (also hereinafter referred to as "Annexable Property") is annexed and made subject to this Declaration, such annexed property will be owned, held, conveyed, encumbered, leased, improved, used, occupied, enjoyed, sold, transferred, hypothecated, maintained and altered subject to the following covenants, conditions, restrictions, limitations, reservations, exceptions and equitable servitudes. Once any portion of the Annexable Property is annexed to this Declaration pursuant to the terms hereof, the terms hereof shall touch and concern such annexed property, and shall (i) run with the land and all parts thereof at law and as an equitable servitude; (ii) bind all Persons having or acquiring any interest in said property or any part thereof; (iii) inure to the benefit of and be binding upon every part of said property and every interest therein; and (iv) inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and each Owner's grantees, heirs, assigns and successors in interest, and the Association and its successors in interest. As of the date hereof, none of the Property has been annexed or made subject to this Declaration.

**ARTICLE 1  
DEFINITIONS**

1.1 "Act" means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes ("C.R.S.") § 38-33.3-101, *et seq.*, as amended.

1.2 "Annexable Property" shall mean that Property which is owned by Declarant as described on Exhibit A, attached hereto, and which may be annexed into the Property by future annexation as contemplated by this Declaration. The Annexable Property includes all rights and easements, if any, appurtenant to the real property

described in Exhibit A, attached hereto. After all or any portion of the Annexable Property has been annexed to this Project and subjected to the governance of this Declaration as hereinafter provided, the use and enjoyment of such annexed property (including exercising any such rights and easements by any person) shall be subject to the terms and provisions of this Declaration.

1.3 "Annexing Deed" shall mean, for each particular portion of the Annexable Property, the first to occur of any of (a) the first deed, executed by the Declarant, which shall be Recorded after the Recordation of this Declaration by which title to such portion of the Annexable Property shall be conveyed by the Declarant to another party, or (b) any deed made in connection with an involuntary transfer of such portion of the Annexable Property, including, without limitation, any treasurer's deed made in connection with a tax sale of such portion of the Annexable Property or any sheriff's deed or public trustee's deed made in connection with any foreclosure, whether a judicial foreclosure or a foreclosure through the public trustee, of a Mortgage, as defined in this Declaration, encumbering such portion of the Annexable Property, or any deed in lieu of foreclosure of any such Mortgage; provided, however, that, notwithstanding the foregoing, the term "Annexing Deed" shall, without limitation, not include (i) any deed from the Declarant of any portion of the Annexable Property to another party if such deed shall expressly refer to this Declaration and state that such deed shall not constitute an Annexing Deed for the purposes hereof, or (ii) any bona fide Mortgage encumbering all or any portion of the Annexable Property, provided that, as is more particularly provided above, a deed made in connection with, or in lieu of, a foreclosure of such Mortgage shall constitute an Annexing Deed for the purposes hereof.

1.4 "Annexed Property" shall mean and refer to, as of any particular time, those portions of the Annexable Area, as hereinafter defined, which, pursuant to the provisions hereinafter set forth, have been submitted to or annexed to this Declaration by an Annexing Deed. As of the time of recording this Declaration, no portion of the Annexable Property has been submitted to this Declaration or been annexed. Accordingly, No portion of the Annexable Area yet constitutes Annexed Property. The term "Annexed Property" shall expressly exclude any tracts or other portions of the Property deeded to Triview.

1.5 "Architectural Review Committee" (sometimes referred to as the "Committee") means the Committee that is formed by Article 6 of this Declaration.

1.6 "Articles" (sometimes "Articles of Incorporation") means the articles of incorporation of the Jackson Creek Filing No. 5 Homeowners' Association, Inc., a Colorado nonprofit corporation, which have been or will be filed in the office of the Secretary of State of the State of Colorado, as the same may from time to time be amended.

1.7 "Assessment(s)" means any assessment levied, charged, or assessed against an Owner in accordance with the provisions of this Declaration, including (but not necessarily limited to) General Assessments, Supplemental Assessments, Special Assessments and Reimbursement Assessments.

1.8 "Association" shall mean and refer to the Jackson Creek Filing No. 5 Homeowners' Association, Inc., a Colorado corporation, not-for-profit, its successors and assigns.

1.9 "Association Property" means all real and personal property now or hereafter owned by, or leased to, the Association, including any "Common Area" as defined below.

1.10 "Board" means the Board of Directors of the Association.

1.11 "Bylaws" means the Bylaws of the Association which may be adopted by the Board, as such Bylaws may be amended from time to time.

1.12 "Common Area" means any portion of the Annexed Property together with all improvements thereon (other than "Lots" as defined below) owned by the Association for the primary benefit of all Members of the Association and the Project as a whole including, without limitation, landscaped areas adjacent to public rights-of-way, landscaped areas within island and/or median areas associated with public rights-of-way, entrance areas, parking areas, trails, parks, gardens, Recreation Areas, and other personal and real property now or hereafter owned or controlled by the Association. Common Areas are subject to the terms, limitations, rules and regulations provided in this Declaration and those established by the Board from time to time.



1.13 **"Declarant"** means Trail Ridge Homes at Jackson Creek, LLC, a Colorado limited liability company. The term **"Declarant"** shall also include one or more successors in interest which have been designated in writing (which writing shall be recorded in the Records) by the then existing Declarant and who have purchased or owns all or a portion of the Property then owned by the existing Declarant.

1.14 **"Declaration"** means this instrument as it may be amended from time to time.

1.15 **"Developer"** means a Person, other than the Declarant, who purchases or owns all or a portion of the Property for purposes of subdivision, development, construction of residential living units and/or resale; provided, however, that no successor or assignee of the Declarant, including any Developer, shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in an instrument of succession or assignment or which pass by operation of law.

1.16 **"Development Rights"** means the rights hereby reserved by the Declarant to (i) add real estate to the Project and make subject to this Declaration any additional property; (ii) create Lots and Common Areas within the Property; (iii) further subdivide Lots or convert Lots into Common Areas; (iv) exercise such other rights reserved herein by the Declarant.

1.17 **"District"** shall mean and refer to the Triview Metropolitan District, as defined in Section 1.44 below.

1.18 **"First Mortgage"** means any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering any Lot within the Project or a portion thereof recorded in the Records which is guaranteed under the Veterans Administration loan guaranty program or the Federal Housing Authority or having priority of record over all other recorded liens except those liens made superior by statute (such as, for example, general ad valorem tax liens and special assessments, mechanic's liens and the Association's lien for Assessments).

1.19 **"First Mortgagee"** means any Person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such Person under such First Mortgage.

1.20 **"General Assessment"** shall mean the Assessments levied by the Association for the purpose of covering the portion of annual costs of operating the Association, including expenses incurred in connection with any authorized function of the Association, which are to be paid by each Owner and charged to each Lot in the Project.

1.21 **"General Common Allocation"** means with respect to each Lot, the fractional number obtained by dividing one by the total number of Lots existing in the Project from time to time.

1.22 **"Improvement"** means every structure and all appurtenances thereto of every type and kind including, but not limited to, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, poles, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone, regular or cable television, or other utilities.

1.23 **"Living Unit" or "Dwelling Unit"** shall mean and refer to any structure situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

1.24 **"Lot"** means and refers to any plot of land shown upon the Map or any other recorded subdivision map or plat affecting the Project, or any portion thereof, with the exception of the Common Area and public streets, but including all appurtenances and improvements now or hereafter located thereon, which has been annexed to this Declaration by Annexing Deed and is therefore included as a portion of the Annexed Property. The term **"Lot"** is synonymous with the term **"unit"** as defined in the Act. The total number of Lots which the Declarant reserves the right to create within the Project shall not exceed 91 Lots.

1.25 "Map" means the subdivision Replat of Jackson Creek Filing No. 5 recorded in the Records of El Paso, County on July 29, 2003, at Reception No. 203172887.

1.26 "Member" means any Person who is a member of the Association pursuant to Section 5.3.

1.27 "Mortgage" shall mean and refer to a mortgage, deed of trust, or other similar security instrument held or owned by a First Mortgagee which encumbers any Lot and/or Living Unit.

1.28 "Owner" means a Person or Persons (including Declarant or any Developer), owning a Recorded fee simple interest in a Lot from time to time. Such term shall include a contract vendee under an installment land sales contract, but shall not include (i) the vendor under such a contract; or (ii) a Person holding an interest in a Lot merely as security for the performance of an obligation (unless and until such a security holder becomes an owner in fee simple of a Lot).

1.29 "Period of Declarant Control" means that period commencing upon recordation of this Declaration and terminating no later than: (i) 60 days after conveyance of 75% of the Lots that may be created to Owners other than the Declarant; (ii) two years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or (iii) two years after any right to add new Lots was last exercised. Notwithstanding the foregoing, the Declarant may voluntarily (i) terminate the Period of Declarant Control, which election shall be in the sole discretion of the Declarant; and/or (ii) surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

1.30 "Person" means a natural individual or any other entity with the legal right to hold title to real property.

1.31 "Project" means, at any given time, such portions of the Jackson Creek Filing No. 5, that have been made subject to this Declaration from time to time.

1.32 "Property" means all of the real property described on attached Exhibit A, which real property is currently owned by the Declarant, along with any and all Improvements now in place or hereafter constructed thereon.

1.33 "Records" means the official real property records of El Paso County, Colorado; "to Record" means to file for recording in the Records; and "of Record" and "Recorded" means having been recorded in the Records, and "Recording" means the act of recording a document or instrument in the Records.

1.34 "Recreation Areas" means all Common Areas designated by Declarant as such to be held for recreational purposes for the benefit of all Members and the benefit of the Project as a whole.

1.35 "Reimbursement Assessments" means those Assessments levied by the Association pursuant to Section 5.8.7.

1.36 "Related User" shall mean any member of the family of an Owner who resides with such Owner; guests and invitees of an Owner; employees and agents of an Owner; and occupants, tenants and contract purchasers residing in a dwelling unit of an Owner on such Owner's Lot who claim by, or through, an Owner.

1.37 "Restrictions" means (i) this Declaration as amended from time to time; (ii) the "Rules and Regulations" from time to time in effect; (iii) the Articles and Bylaws of the Association from time to time in effect.

1.38 "Rules and Regulations" (sometimes "Rules") means the rules and regulations adopted by the Board pursuant to Section 5.2.8 as they may be amended from time to time.

1.39 "Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment

of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

1.40 "Special Assessments" means those Assessments levied by the Association pursuant to Section 5.8.6.

1.41 "Special Declarant Rights" means the rights hereby reserved for the benefit of Declarant to perform the following acts as specified in the Act and this Declaration: to complete improvements indicated on the Map; to exercise any Development Right; to maintain sales offices, management offices, signs advertising and marketing all or any portion of the Property and model homes; to use easements through the Common Areas for the purpose of making improvements within the Project or within any real estate which may be added to the Project; to make the Property subject to this Declaration; to merge or consolidate a common interest community of the same form of ownership; to appoint or remove any officer of the Association or any member of the Board during the Period of Declarant Control, and to amend this Declaration pursuant to Sections 38-33.3-205(4) and (5), 38-33.3-208(3), 38-33.3-209(6), 38-33.3-210 and 38-33.3-222 of the Act; to construct any recreation facilities; to license one or more Developers to use one or more Special Declarant Rights in furtherance of construction and development of the Property as contemplated by this Declaration; and to designate purchasers of more than two (2) undeveloped Lots as a successor Declarant.

1.42 "Subdivision" means a parcel of land which has been shown on a final and recorded subdivision plat approved pursuant to, and in accordance with, the laws of El Paso County, State of Colorado, as the same may be amended from time to time.

1.43 "Supplemental Assessments" means those Assessments levied by the Association pursuant to Section 5.8.5.

1.44 "Triview Metropolitan District" (sometimes "Triview" or "District") means the Triview Metropolitan District, a special taxing district which has the obligation by statute or contract to maintain certain areas in El Paso County, which areas may include portions of the Common Areas within the Project. Triview also has the obligation by statute or contract to provide potable water and sanitary sewer services in certain areas in El Paso County.

1.45 "Voting Member" means a Member entitled to vote pursuant to Section 5.3 hereof.

## ARTICLE 2

### DEVELOPMENT OF THE PROPERTY/ANNEXATION

2.1 Subdivision and Development by Declarant. Declarant has or will subdivide the Property into Lots for single-family residential development. The Declarant intends to develop some or all of such areas and, at Declarant's option, to designate areas as Common Areas, Recreation Areas, or for other purposes for the benefit of the Project. The Declarant contemplates developing the Property as a unified planned development community pursuant to the Map as the Map may be amended from time to time. The intended development of, and restrictions upon, each portion of the Property is intended to benefit each other portion and the whole thereof.

2.2 Conveyance and Acceptance of Common Areas. Declarant expressly reserves the right in the course of development of the planned community to convey to the Association, and the Association shall accept, certain areas such as open spaces and drainage ways which for any reason are not intended to be developed and/or other property or facilities which are deemed by Declarant to be most suitable as Common Areas of the Association. Unless provided otherwise in the Restrictions, all Common Areas shall be accessible to the public. The Declarant contemplates that maintenance of certain open spaces will be assumed by one or more governmental entities.

2.3 Merger. In accordance with its Articles of Incorporation, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes or, alternatively, the properties, rights and obligations of an association similar in corporate nature and purposes may by operation of law be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other basis as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Project except as

hereinafter provided. Such merger or consolidation shall have the assent of two-thirds (2/3) of the Owners of Lots within the Project at the time of the proposed merger and the consent of at least sixty-seven percent (67%) of First Mortgagees within the project at the time of the proposed merger.

2.4 Manner and Effect of Annexation. Portions of the Annexable Property may, from time to time, become part of and made subject to this Declaration, and thereby constitute Annexed Property for the purposes of this Declaration, effective upon the Recordation of an Annexing Deed for such portion of the Annexable Property in the office of the Clerk and Recorder of El Paso County, Colorado. Upon Recordation of an Annexing Deed for any portion of the Annexable Property as aforesaid, such portion shall thereupon, automatically and without any further action by any other party, constitute Annexed Property and such Annexed Property, and each part thereof, shall, from and after the date of such Recordation, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the Restrictions and other provisions set forth in this Declaration, for the duration thereof. Conversely, unless and until an Annexing Deed for a portion of the Annexable Property is Recorded, such portion of the Annexable Property shall not be subject to this Declaration, none of the Restrictions in this Declaration shall be construed to affect, encumber, apply to or constitute a cloud upon title to such portion of the Annexable Property, and the Owner of such portion of the Annexable Property shall not, by virtue of such ownership, be entitled to any of the rights and benefits to which Members of the Association are entitled pursuant to this Declaration. Consequently, it is the express intention of Declarant in executing this Declaration that the Restrictions and other provisions set forth in this Declaration which apply to Annexed Property shall apply to the Annexable Property, or portion thereof, only from and after the date the Annexable Property, or portion thereof, becomes Annexed Property in accordance with the foregoing provisions.

2.5 No Annexation Required; Contraction of Annexable Property. Notwithstanding any other provision of this Declaration to the contrary, nothing in this Declaration shall be construed to obligate the Annexable Property, or any portion thereof, to be made subject to this Declaration. Declarant expressly reserves the right, in its sole discretion, to make or cause the Annexable Property, or any portion thereof, to be subject to this Declaration or to determine to not make the Annexable Property, or any portion thereof, subject to this Declaration. Additionally, the Annexable Property may, in Declarant's sole discretion, from time to time be contracted to delete any portion of the Annexable Property, provided that such portion has not theretofore been made a part of the Annexed Property as provided herein, effective upon the Recordation of a written instrument, executed by Declarant, referring to this Declaration, describing such portion and declaring that such portion shall thereafter be deleted from the Annexable Property under this Declaration.

### ARTICLE 3

#### GENERAL RESTRICTIONS/PERMITTED USES

3.1 General Restrictions. All of the Annexed Property shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

3.1.1 Residential and Common Areas. All of the Annexed Property (excluding any Common Area) shall be improved and used solely for residential use for single-family homes except that any Common Areas may be improved and used for active and passive recreational purposes for the primary benefit of the Owners and occupants of Lots, subject to the Restrictions. In addition, Declarant (or the Board if such authority is delegated to it by Declarant) may, in its sole and absolute discretion, permit within specific residential areas other Improvements and uses consistent with the zoning then in effect for such specific residential area. No business or commercial activity shall be carried on or within the Project other than those home occupations defined as such in the El Paso County Zoning Code, and any such home occupation shall comply with the following: All home occupation activities shall (i) be interior to a Living Unit; (ii) not generate any additional traffic; (iii) not require or generate parking of commercial vehicles; and (iv) comply with any additional Rules and Regulations that may be adopted by the Board. Nothing in this Declaration, however, shall prevent the rental of property within a residential area by the Owner thereof for residential purposes, subject to all the provisions of the Restrictions. No commune, extended family cohabitation, or similar type living arrangements shall be permitted anywhere on the Project.

3.1.2 Improvements and Use. Except as provided in this Section 3.1, no Lot shall be improved or used except as a dwelling or structure designed to accommodate no more than a single family and occasional guests,

plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-family residence.

3.1.3 Unightly Articles. No unsightly article shall be permitted to remain on any Lot or any other portion of the Project if it is visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, mobile homes, recreation vehicles, graders, trucks (other than pickups), boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment and garden and maintenance equipment shall be kept at all times (except when in actual use) in an enclosed structure or otherwise fully screened from view in a manner consistent with this Declaration, such as approved fencing and structures. Further, no repair or maintenance work shall be done on any of the foregoing, or on any automobile, other than minor emergency repairs, except in an enclosed garage or other structure. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view.

3.1.4 Landscaping Requirement. At the time of, or as soon as reasonably possible following, construction of a residential structure on a Lot, but in any event no later than six months or one growing season after issuance of a Certificate of Occupancy for the residential structure, such Lot shall be suitably landscaped with grass, shrubs and trees. In addition, all such landscaping shall be subject to the approval of the Architectural Review Committee. Thereafter all grass, shrubs and trees shall be kept and maintained in an attractive, healthy, live and growing condition. All dead or diseased grass areas, shrubs and trees shall be promptly removed and replaced with suitable replacement landscaping. All landscaping plans should utilize xeriscaping techniques, unless otherwise approved by the Architectural Review Committee. No artificial plants or artificial flowers shall be placed on the Lot as exterior landscape materials. Artificial grasses may be used, but are subject to the sole discretion of the Architectural Review Committee. The Rules will further define the types of landscaping.

3.1.5 Antennas/Satellite Dishes/Generators/Playground Structures. Except for any which may, at Declarant's option, be erected by Declarant, no exterior radio or television antenna, satellite dish, aerial or other reception/receiver device, nor any playground structure, shall be erected or maintained on the Project without the prior written approval of the Architectural Review Committee. The location of all such devices shall be subject to the prior written approval of the Architectural Review Committee. No wind-powered electrical generators shall be permitted.

3.1.6 Insurance Rates. Nothing shall be done or kept on or at the Project which will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done or kept on or at the Project which would result in the cancellation of insurance on any Association Property or which would be in violation of any law.

3.1.7 No Further Subdividing. No Lot or Common Area shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Review Committee; provided, however, that when Declarant is the Owner thereof, Declarant may, subject to C.R.S. §§ 38-33.3-212 and 38-33.3-213, further divide and subdivide and/or reconfigure any Lot or Common Area and convey any easement or other interest less than the whole, all without the approval of the Architectural Review Committee. Further, nothing contained herein shall be deemed to require the approval of the Architectural Review Committee for the transfer or sale of any Lot, including Improvements thereon, to more than one person to be held by them as tenants in common or joint tenants, or for the granting of any First Mortgage for the sale or transfer of any Lot or Common Area pursuant to the terms of any First Mortgage or by way of a deed in lieu of foreclosure thereof. No Owner shall have the right to partition or seek partition of the Common Area or any Lot.

3.1.8 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any part of the Project, and no odors shall be permitted to arise therefrom so as to render the Project or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property or to its occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security and emergency devices used exclusively for security and emergency

purposes) shall be located, used or placed on the Project without the prior written approval of the Board or the Architectural Control Committee.

3.1.9 Repair of Buildings. No Improvement constructed upon any land within the Project shall be permitted to fall into disrepair, and each such Improvement shall be kept at all times in good condition and repair and adequately painted or otherwise finished by the Owner (including Association) thereof.

3.1.10 Improvements and Alterations. There shall be no construction (other than repairs pursuant to Section 3.1.9 above), excavation or alteration which in any way alters the exterior appearance of any Improvement, or removal of any Improvement, without the prior approval of the Architectural Review Committee.

3.1.11 Violation of Restrictions. If any Owner or Developer or their respective family, guests, licensees, lessees, invitees, agents or employees violates the Restrictions, the Board may invoke any one or more of the following remedies: (i) impose a fine upon such Developer or Owner for each violation; (ii) cause the violation to be cured and charge the cost thereof to such Developer or Owner as more particularly described in Article 4 below; and (iii) obtain injunctive relief against the continuance of such violation. Before invoking any such remedy, the Board shall give such Developer or Owner notice (as provided in Section 9.2) except that the Board may immediately suspend the right to use any Recreation Area, or other Common Area facility by any Developer or Owner and their respective family, guests, licensees, lessees, and invitees without notice for any period during which any Assessment owed by such Developer or Owner is past due and unpaid. Each Owner shall be liable to the Association for any damage to the Common Area (including any Recreation Area) caused by the negligence or willful misconduct of the Owner or such Owner's family, guests, pets, tenants or invitees.

3.1.12 Drainage. There shall be no interference with the established drainage patterns over any property within the Project, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Review Committee. Neither the Declarant nor its successors or assigns shall be liable for any loss of, use of, or damage done to, any shrubbery, trees, flowers, Improvements, fences, walks, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters.

3.1.13 No Hazardous Activities. No activities shall be conducted on or within the Project and no Improvements shall be constructed on or within the Project which are, or might be, unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon or within the Project and no open fires shall be lighted or permitted on or within the Project except in a contained barbecue unit while attended and in use for cooking purposes or within a safe interior fireplace.

3.1.14 No Temporary Structures. No tent or shack or other temporary building, improvement or structure shall be placed upon or within the Project; provided, however, that temporary structures necessary and appropriate for sales activities, construction activities, and office space for marketing personnel, architects, builders and foremen may be maintained with the prior approval of the Declarant or Architectural Review Committee as appropriate. No sales offices, management offices or model homes may be present on or within the Project without the prior consent of the Declarant or the Committee and shall be maintained in strict compliance with any restrictions of the Declarant or the Committee.

3.1.15 No Mining and Drilling. No portion of the Project shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth; provided, however, that Declarant or the Association may, by appropriate written permit, grant, license, or easement agreement, allow the drilling of wells and the installation of infiltration galleries for the extraction of water.

3.1.16 Vehicles. In addition to the provisions of Section 3.1.3, the use of all vehicles including, but not limited to, gliders, trucks, automobiles, graders, boats, tractors, pickups, mobile homes, trailers, buses, campers, recreational vehicles, bicycles, motorcycles, motor scooters, wagons, sleighs and snowmobiles, shall be subject to the Rules and Regulations and/or any architectural rules, standards or criteria issued by the Architectural Review Committee pursuant to Article 6 of this Declaration. The Rules and Regulations and architectural rules, standards or criteria may prohibit or limit the use thereof within specified parts of the Project and may also provide parking and storage regulations

and adopt other rules regulating the same. In general the afore mentioned vehicles may not be stored on or around the exterior of any Living Unit or on the Lot, with the exception of daily use automobiles. Daily use automobiles may only be stored on approved driveways and in garages.

3.1.17 Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by Declarant, Developer or any Owner upon any portion of the Project, provided that when completed such Improvements shall in all ways conform to the Restrictions. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities so long as such construction is (i) pursued to completion with reasonable diligence; (ii) in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto; and (iii) conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision including, but not limited to, any provision prohibiting temporary structures, may be granted by the Architectural Review Committee; provided that such waiver shall be limited to a reasonable period for such construction. Such waiver may, but need not, be recorded or in recordable form. Notwithstanding anything to the contrary contained in the foregoing, no construction activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment by any Owner or the Owner's family of the Owner's Lot.

3.1.18 Fencing. The Declarant may construct certain entryways, fences, fence pillars or walls on or within the Project. No Owner shall construct, modify, replace, paint or obstruct any such entryways, fence, fence pillars or walls without the prior written approval of the Architectural Review Committee. Without limiting the generality of the foregoing, fencing materials shall be restricted to three-rail plank fence; no privacy fencing shall be allowed unless such privacy screening is immediately adjacent to the rear patio of the applicable Lot and no more than twelve (12) feet from the house constructed on the Lot. Material for the containment of any pets permitted by these Covenants and Restrictions may be added to perimeter fencing, subject to prior approval by the Architectural Review Committee.

3.1.19 Animals. No animals, livestock, poultry or bees of any kind shall be raised, bred, kept or boarded in or on the Project, provided, however, that the Owner of each Lot may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets so long as such pet(s) is/are (i) not kept for any commercial purpose; (ii) kept under control at all times; and (iii) not kept in such number or in such manner as to create a nuisance. Notwithstanding anything to the contrary contained in the foregoing, the Board shall have, and is hereby granted, the right and authority to determine in its reasonable sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that any Owner is otherwise in violation of this Section 3.1.19, and to take such action or actions as it deems necessary to correct any such violation. It is expressly understood that any Owner's right to keep household pets is coupled with a responsibility for such Owner's pet(s), and accordingly, each Owner of a household pet is financially responsible and liable for any damage caused by such pet.

3.1.20 Exterior Lighting. No exterior light, including landscape lighting, shall be installed or maintained on any Lot without the prior approval of the Architectural Review Committee. Further, and notwithstanding such prior approval, upon being given notice by the Architectural Review Committee that any exterior light is objectionable, the Owner of the Lot on which same is located will immediately remove said light or shield the same in such a way that it is no longer objectionable.

3.1.21 Common Area Restriction. All use and occupancy of the Common Area (including, without limitation, any Recreation Area, if applicable) shall be subject to and governed by the Rules and Regulations adopted by the Association. No damage or waste shall be committed to the Common Area or Improvements located thereon.

3.1.22 No Violation of Law. Nothing shall be done or kept in or on any portion of the Project which would be in violation of any statute, rule, ordinance, regulations, permit, or validly imposed requirement of any governmental body.

3.1.23 Restrictions on Signs. No signs or flags shall be displayed to the public view on any Lot without the prior written approval of the Architectural Review Committee, with the following exceptions: (i) Declarant may erect and maintain a sign or signs in connection with the construction, development, operation, promotion and sale

of the Lots and/or Living Units; (ii) the patriotic display of flags not exceeding 4' x 6' in size shall be permitted on customary holidays; and (iii) signs of customary dimensions, not exceeding 3' x 4' in size, advertising the Property or portions thereof for sale. Notwithstanding anything herein contained to the contrary, any and all signs, if allowed, shall comply with all sign standards of the applicable governmental authorities which may be applicable to the Project, as well as the Rules and Regulations.

3.1.24 Conditions for Architectural Control. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot, Living Unit, Common Area or the improvements located thereon from its natural or improved state existing on the date such property was first subject to this Declaration shall be made or done without compliance with the procedures set forth in Article 6 of this Declaration regarding the Architectural Review Committee.

3.1.25 Rules and Regulations. Every Owner or guests or members of any Owner's family, or Related User, or tenant, and employees of each Owner shall strictly adhere to the Rules and Regulations adopted from time to time by the Association. The Board may adopt general rules, including but not limited to, Rules and Regulations to regulate potential problems relating to the use of the Project and the well being of the Owners, such as keeping of animals, storage items, and the use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, signs, trash, trash containers, maintenance, and removal of vegetation on the properties. The Board may also adopt Rules and Regulations concerning the use of Common Areas and Recreation Areas.

3.1.26 Storage. No tanks for the storage of gas, fuel, oil, or other materials shall be erected, placed, or permitted above or below the surface of any Lot.

3.1.27 Trash Burning. Trash, leaves, and other similar materials shall not be burned within the Project.

3.1.28 Leases. Any lease agreements between an Owner and a tenant shall provide that the tenant shall comply in all respects to the provisions of this Declaration, the Articles, Bylaws and Rules and Regulations of the Association, and that any failure by the tenant to comply with the terms and provisions of such documents shall be a default under the lease. All tenants shall meet the requirements of Section 3.1.25 of this Article. The Board may require information forms to be completed and security deposits to be made by tenants. Further, all leases shall be in writing, and a copy thereof shall be provided upon request to the Board of Directors, which may require the use of its approved lease form or the insertion of particular provisions. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has violated any provision of this Declaration, the Articles of Incorporation or the Bylaws. No short-term leases (i.e., for terms less than month-to-month) shall be permitted, and no time-sharing or such other forms of interval ownership shall be permitted.

3.1.29 Covenants Run with Land. All covenants, conditions, and restrictions contained herein are intended to and shall run with the land, and Declarant hereby agrees, for itself and its successors and assigns, that such covenants, individually and collectively, touch and concern the land and shall be binding, fully and in all respects, upon Declarant's successors in title to the land, regardless of how succession of title may be accomplished.

3.1.30 Trampolines/Basketball Goals/Hoops. No trampolines or trampoline fences, basketball goals, hoops, backboards, nets or similar sport or playground equipment shall be installed without the prior written approval of the Architectural Review Committee.

3.1.31 Motorized Vehicles; Watercraft. No motorized vehicles or motorized watercraft shall be permitted on any Common Area (including without limitation any Recreational Area) without the prior written permission of the Association or the Architectural Review Committee.

3.1.32 No Animals Running Free in Mouse Area. Notwithstanding any other provision in the Declaration or the Rules, no Owner or a Related User shall permit a Pet to run free on any area located west of the Project that is shown on the Map as "Mouse North Area" or "Mouse Area North".



3.2 Exemption for Declarant. Notwithstanding anything in this Declaration to the contrary, during the Period of Declarant Control neither Declarant nor any of Declarant's activities shall in any way be subject to the control of, or under the jurisdiction of, the Architectural Review Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to (i) excavate and grade; (ii) construct and alter drainage patterns and facilities; (iii) construct any and all types of Improvements; (iv) locate, relocate and maintain model homes and construction, sales and leasing offices and similar facilities in locations well suited for such uses as determined by the Declarant from time to time (all real estate used for such purposes not designated as a Lot on the Map is a part of the Common Area); and (v) post signs incidental to construction, sales and leasing, on the Common Area and/or Lots owned by Declarant. Notwithstanding anything to the contrary contained in the foregoing, no such activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment by any Owner or the Owner's family of the Owner's Lot. When the Declarant ceases to be an Owner, the Declarant will cease to have any rights with regard to any real estate used as a sales office, management office, or model home.

3.3 Exemption for Developers. During the Period of Declarant Control, Declarant may exempt Developers from such restrictions of this Declaration for activities which Declarant deems to be incidental and necessary to the Developer's development activities, in Declarant's sole and absolute discretion.

3.4 Assignment by Declarant/Transfer of Special Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, Declarant may delegate, transfer or assign in whole or in part any of its privileges, exemptions, development rights and duties under this Declaration or under the Act (including the Special Declarant Rights) to any other Person and may permit the participation in whole or in part by any other Person in any of its privileges, exemptions rights and duties hereunder. Without in any way limiting the generality of the preceding sentence, Declarant may in its sole discretion exempt from the control and jurisdiction of the Architectural Review Committee any Developer, or any assignee and successor in interest of all or substantially all of Declarant's interests, rights, and responsibilities in and to the Property. Any such delegation, transfer or assignment of any Special Declarant Right must be made in accordance with C.R.S. § 33-33.3-304.

#### ARTICLE 4 MAINTENANCE

##### 4.1 Owner's Duty of Maintenance.

4.1.1 Owners and occupants (including lessees) of any Lot shall, jointly and severally, have the duty and responsibility, at their sole cost and expense, to keep the Lot so owned or occupied, including Improvements, ground or drainage easements and other rights-of-way incident thereto in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Lawn mowing on a regular basis;
- (c) Tree and shrub pruning;
- (d) Watering landscaped areas;
- (e) Keeping exterior lighting and maintenance facilities in working order;
- (f) Keeping lawn and garden areas alive, free of weeds, and attractive;
- (g) Keeping parking areas, driveways and curbs in good repair;
- (h) Keeping sidewalks free of snow and ice;
- (i) Complying with all government health and police requirements;
- (j) Repair of exterior damages to Improvements;
- (k) Cleaning of landscaped areas lying between street curbs and lot lines, unless such streets or landscaped areas are expressly designated to be Common Area maintained by applicable governmental authorities, the Association; and
- (l) Repainting of Improvements.

4.1.2 If, in the opinion of the Association, any Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must

within thirty (30) days after receiving such notice, perform the repairs and maintenance or make arrangements with the Association for making the repairs and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such repair and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person.

4.1.3 Notwithstanding any provision herein to the contrary, if, at any time, an Owner shall fail to control weeds, grass and/or other unsightly growth, the Association shall have the authority and right (but not the obligation) to go onto the Lot of such Owner for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a sum up to Two Hundred and No/100 Dollars (\$200.00) for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. If, at any time, weeds or other unsightly growth on the Lot exceed six inches (6") in height, the Association shall have the right and authority (but not the obligation) to mow and clean the Lot, as aforesaid.

4.1.4 The Owners and occupants (including lessees) of any Lot on which work is performed pursuant to Sections 4.1.2 and 4.1.3 above shall, jointly and severally, be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all said persons, jointly and severally, and shall constitute a lien against the Lot on which said work was performed. Such lien shall have the same attributes as the lien for Assessments and Special Assessments set forth in this Declaration, and the Association shall have the identical powers and rights in all respects, including, but not limited to, the right of foreclosure.

#### 4.2 Association's Maintenance Obligations.

4.2.1 The Association shall have the duty and responsibility, at its sole cost and expense, to keep all portions of the Common Area not deeded to the District, (including all green belts, open areas, drainage and subsurface drainage, drives, walkways and bike paths) in a well maintained, safe, clean and attractive condition at all times. The public streets shall be cleared of snow by the Association whenever the streets are impassable until such time as El Paso County assumes the obligation to provide snow removal services. All underground drainage on the Project that is not maintained by Triview shall be maintained by the Association. The cost for such maintenance obligations of the Association shall be passed on to all Owners as a General Assessment.

4.2.2 The Association may negotiate and contract with the Triview to perform the required maintenance on the Common Areas. Triview may be financed by mill levies that will be assessed against all Lots within the Project, and collected annually by the El Paso County Treasurer along with other real estate property taxes. Notwithstanding the foregoing, in the event Triview fails or refuses to maintain any portion of the Common Areas that the Association is obligated to maintain pursuant to this Section 4.2, the Association shall ultimately be responsible for such maintenance.

4.2.3 The Association may contract with Triview to perform maintenance and management services for the Common Areas and facilities for the consideration and upon terms to be determined by the parties.

### **ARTICLE 5** **ASSOCIATION**

5.1 Organization. The Association shall be organized no later than the date that the first Lot is conveyed to a purchaser other than Declarant or a Developer. The Association shall be a not-for-profit Colorado corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law, the Act, and set forth in the Articles, Bylaws and this Declaration. Neither the Articles, Bylaws nor any Rules and Regulations promulgated by the Board shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between the Declaration and the Articles, Bylaws and/or Rules and Regulations, this Declaration shall control.

5.2 Duties and Powers of the Association. Subject to and in accordance with this Declaration, the Association shall have all of the rights and powers conferred upon it by law, the Act, this Declaration, the Articles and the Bylaws. Without limiting the generality of the foregoing, the Association shall have the following powers and shall perform each of the following duties for the benefit of the Members of the Association:

5.2.1 Assessments. To determine, levy and collect Assessments pursuant to this Declaration.

5.2.2 Association Property. Subject to the provisions of C.R.S. § 38-33.3-312, to accept, own, convey, lease, encumber, operate and maintain all Association Property (real and personal) which may be conveyed or leased to it by Declarant (or otherwise acquired by the Association), together with all Improvements of whatever kind and for whatever purpose which may be located in said areas.

5.2.3 Title to Association Property upon Dissolution. Subject to C.R.S. § 38-33.5-218, in the event of dissolution of the Association, the Common Area shall, to the extent permitted by law and where reasonably possible, be conveyed or transferred to an appropriate governmental or quasi-governmental agency or agencies, or to a nonprofit corporation, association, trust or other organization, to be used for the common benefit of the Owners for similar purposes for which the Common Area was held by the Association. To the extent the foregoing is not possible, the Common Area shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed first for the payment of debts and obligations incurred by the Association and then to the Owners in an equitable manner determined by the Board (which determination will be conclusive) based upon each Owner's pro rata portion of the Project.

5.2.4 Repair and Maintenance of Association Property. To maintain in good repair and condition all lands, Improvements, and other Association Property owned, controlled or maintained by the Association.

5.2.5 Maintenance of Common Areas. To maintain the entrance, parking and other Common Areas and Improvements thereon which shall be installed, or otherwise accepted for maintenance by Declarant and/or the Association and, in addition, to maintain certain designated landscaped areas located along and within certain designated primary public rights-of-way and drainage and other easements located on or benefitting the Project.

5.2.6 Payment of Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by the Association, to the extent that such taxes and assessments are not levied directly upon the Owners. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

5.2.7 Insurance. To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount, to comply with C.R.S. § 38-33.3-313.

5.2.8 Rules and Regulations. To make, establish and promulgate, and in its discretion to amend or repeal and reenact, such rules and regulations (as set forth in Section 3.1.25 of this Declaration) as it deems proper covering any and all aspects of its functions, including the use and occupancy of Lots and Association Property. Without limiting the generality of the foregoing, such Rules and Regulations may set dues and fees and establish the regulations governing the operation of Association Property and/or Common Areas. Each Member shall be entitled to examine such Rules and Regulations at any time during normal working hours at the principal office of the Association.

5.2.9 Enforcement. To enforce, on its own behalf and on behalf of all Owners, all of the covenants, conditions and restrictions set forth in this Declaration, under an irrevocable power of attorney (hereby granted) coupled with an interest as beneficiary of said covenants, conditions and restrictions, and as assignee of Declarant, and to perform all other acts, whether or not anywhere expressly authorized, as may be reasonably necessary to enforce any of the provisions of this Declaration.

5.2.10 Management Company. To retain the services of a professional management company to manage some or all of the affairs of the Association provided that (i) such company shall be licensed to do business in the State of Colorado, to the extent required by law; (ii) the term of any contract for such services shall not exceed one (1) year and shall be terminable on thirty (30) days' written notice, with or without cause and without the payment of a termination fee; and (iii) each and every management contract made between the Association and a manager or managing

agent during the Period of Declarant Control shall terminate absolutely and, in any event, no later than thirty (30) days after the expiration of the Period of Declarant Control.

5.2.11 Maintenance Agreements. To enter into contracts or other agreements (whether binding or not) with the Triview Metropolitan District, any other special district or other organization for the repair and maintenance of all or any portion of the Association Property.

5.2.12 Borrowing. Subject to the provisions of C.R.S. § 38-33.3-312, to borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt and securities therefor encumbering the Common Area or portions thereof and/or other Association Property.

5.2.13 Easements. To grant easements, leases, licenses and concessions over the Common Area to serve the Project.

5.2.14 Assignment. To assign its right to future income, including the right to receive assessments.

5.2.15 Other. To carry out all duties of the Association set forth in the Restrictions..

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

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

### 5.3 Membership and Voting.

5.3.1 Generally. Every Owner of a Lot within the Annexed Property (including Declarant) shall automatically be a Member of the Association and shall remain a Member for so long as that Person continues to be an Owner. The Association shall have only one (1) class of Members and each Member shall be entitled to one (1) vote for each Lot owned by such Member. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. Except as expressly provided in this Article 5, no other voting rights are created by this Declaration.

5.3.2 Multiple Owners. When an Owner consists of more than one Person, while each such Person shall be a Member of the Association, only one of such co-Owners shall be entitled to exercise the single vote to which the Lot is entitled and be a Voting Member. Fractional votes shall not be allowed. If only one of the co-Owners of a Lot is present at a meeting of the Association, that co-Owner shall be entitled to cast the single vote allocated to that Lot. If more than one of the co-Owners of a Lot are present, the single vote allocated to that Lot may be cast only in accordance with the agreement of a majority of the co-Owners of such Lot. If any one of the co-Owners of a Lot casts a vote allocated to that Lot without the protests being made promptly (i.e., before the end of the meeting of the Association at which such vote was cast) by any of the co-Owners of the Lot to the person presiding over such meeting, then it shall be conclusively presumed that the vote was cast in accordance with the agreement of a majority of the co-Owners of such Lot. No change in the membership of a Member shall be effective for voting purposes until the Board receives written notice of the change together with satisfactory evidence of the change.

5.3.3 Proxies. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one Person, each such co-Owner of the Lot may vote or register protest to the casting of votes by the other co-owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section 5.3.3 except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date, unless it provides otherwise.

5.3.4 Association Owned Lots. No votes allocated to a Lot owned by the Association may be cast.

5.4 Board of Directors.

5.4.1 General. The affairs of the Association shall be governed by a "Board of Directors" (sometimes referred to as the "Board") which may, by resolution, delegate any portion of its authority to an executive committee or an officer, executive manager or director for the Association. The qualifications and number of directors, the term of office of directors, the manner in which directors shall be elected and the manner in which directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws.

5.4.2 Extent of Power. The Board of Directors shall have all powers for the conduct of the affairs of the Association which are enabled by law, the Declaration, the Articles and its Bylaws which are not specifically reserved to Members, the Declarant or the Architectural Review Committee by said Documents. The Board of Directors shall exercise its powers in accordance with this Declaration, the Articles and the Bylaws.

5.5 Officers. The Board will select the officers of the Association, which officers may also serve as members of the Board.

5.6 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners' membership in the Association may be amplified by provisions of the Articles and Bylaws of the Association. Such Articles and Bylaws may include any reasonable provisions with respect to corporate matters, including provisions with respect to notices, record dates and quorums for meetings of directors and Owners, but no such provisions may be inconsistent with any provision of this Declaration.

5.7 Meetings. The meetings of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board or by Owners having twenty percent (20%) of the votes in the Association. Not less than ten (10) nor more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Owner pursuant to Section 9.2 hereof. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board.

5.8 Covenants for Assessments. The Association shall have the power to levy Assessments against the Lots and the Owners thereof, and each Owner, and if more than one (1) Person, all such Persons, jointly and severally, by acceptance of the deed to a Lot, whether or not it shall be expressed in any such deed, shall be deemed to covenant and agree expressly in any such deed to pay all such Assessments in the manner and for the purposes provided herein. Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Assessments, including the power and authority to determine where, when, and how Assessments shall be paid to the Association, and each Owner shall comply with such determination.

5.8.1 Method of Assessment. All Assessments shall be levied by the Association against Lots and collected and disbursed by the Association. The Board of Directors shall fix the amount of the Assessments as provided hereinafter and set the date or dates such Assessments shall become due other than the date of delinquency set forth in Section 5.8.9 hereof.

5.8.2 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage, except to the extent provided in § 316 of the Act, C.R.S. § 38-33.3-316.

The lien of such assessments shall be superior to any homestead exemption or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien. Sale or transfer of any Lot shall not affect the liens for said charges except that sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including a deed in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract shall extinguish the lien of such charges as to payments which became due prior to such sale, transfer, cancellation or forfeiture of executory land sales contract. No sale, transfer, cancellation or forfeiture of executory land sales contract shall relieve such Lot from liability for any such charges thereafter becoming due or 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.

#### 5.8.3 General Assessment.

(a) Purpose. The General Assessment shall be used to promote the welfare of the Members and in particular to improve, maintain, and operate the Common Areas and facilities, including funding of an adequate reserve fund for maintenance, repair, replacement of those elements of the Common Areas that must be replaced on a periodic basis, to retire debt(s) of the Association, and to pay annual insurance costs necessary to the Association, all tax liabilities assessed by any federal, state or local tax authority relating to the Common Areas, as well as any professional fees incurred by the Association.

(b) Basis for Assessment. For General Assessment purposes, all Lots which are or have been annexed by Annexing Deed shall be assessed at one hundred percent (100%) of the General Assessment rate.

(c) Increase in Maximum Lot Assessment. Until January 1 of the year immediately following the annexation by Annexing Deed of the first Lot by Declarant, or a Developer, the maximum General Assessment shall be Twenty Five and No/100 Dollars (\$25.00) per Lot per month.

(i) From and after January 1 of the year immediately following the annexation by Annexing Deed of the first Lot by Declarant or a Developer, the maximum General Assessment shall be increased effective January 1 each year in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding twelve (12) month period.

(ii) From and after January 1 of the year immediately following the annexation by Annexing Deed of the first Lot by Declarant or a Developer, the maximum General Assessment may be increased above that established by the Consumer Price Index formula by a vote of the Members for the next succeeding one (1) year and at the end of each such one (1) year period, for such succeeding period of one (1) year, provided that any such increase shall have obtained the prior written consent of at least sixty-seven percent (67%) of Members and sixty-seven percent (67%) of the First Mortgagees of Lots within the Association. The Board of Directors of the Association may, after consideration of the current maintenance costs and the financial requirements of the Association, fix the actual monthly assessment at an amount less than the maximum.

(d) Procedure for Monthly Assessments Below Maximum Assessment. The Declarant anticipated that the initial monthly assessment will not exceed Twenty Five and No/100 Dollars (\$25.00) per Lot per month based upon budget projections of the Declarant. However, the General Assessment may be raised by the Board during the Period of Declarant Control or during the operation of the Association after the Period of Declarant Control without prior approval of assessable unit owners until it reaches the maximum level described in subparagraph (c) of this Section 5.8.3.

(e) Method of Assessment. By vote of a majority of the Board of Directors, the Board shall fix the General Assessment at an amount not in excess of the current maximum assessment, provided, however, that the General Assessment shall be sufficient to meet the obligations imposed by the Declaration. In the event the Board fails to fix an Assessment for any fiscal year, then each Assessment established for the prior year shall automatically be continued until such time as the Board acts.

(f) Date of Commencement of General Assessments. The first General Assessment provided for herein against any given Lot shall commence on the first day of the month following annexation of such Lot by Annexing Deed pursuant to Section 2.4 hereof.

5.8.4 Budget Process. To determine the amount required to be raised by General Assessments for any fiscal year, the Board shall prepare an Annual Budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by the Budget, the estimated costs and expenses which will be payable, and the estimated income and the funds which will be available in that fiscal year, and the estimated total amount of money required to be raised by the General Assessment to cover such costs and expenses and to provide a reasonable reserve. The Board of Directors shall furnish a copy of such Budget to any Owner upon request, and upon request to any Mortgagee. Based on such Budget, the Board of Directors shall determine the amount of the General Assessment for such fiscal period as is provided in this Section 5.8. The total amount of money required to be raised by the General Assessment for such fiscal year shall be the amount as determined by the Board necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in the coming fiscal year, including the payment of debts from prior fiscal years, providing reasonable reserves, and providing a reasonable carry-over reserve for the following fiscal year.

5.8.5 Supplementary Assessments. In the event that the Board shall determine, at any time or from time to time, that the amount of the General Assessment is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more Supplementary Assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each Supplementary Assessment, the Board shall revise the annual budget for such fiscal year provided in Section 5.8.4, or prepare a new budget, a copy of which shall be furnished to any Owner, or on request, to any Mortgagee. Based on such revised or new Budget, the Board may make a Supplementary Assessment for such fiscal year against each Lot, the amount of which shall be determined by the Board as provided in Section 5.8.3.

5.8.6 Special Assessments. Special Assessments may be made for the purposes of raising funds for capital improvements and for any other Association purpose for which General Assessments may not or have not been made. Whether to make a Special Assessment and the amount thereof per Lot shall be determined by the Board, provided that no Special Assessment shall be valid unless approved by a majority vote of the Members present and voting in person or by Proxy at any Annual Meeting of the Members of the Association or at any Special Meeting thereof called for the purpose of considering such Special Assessment.

5.8.7 Reimbursement Assessments. The Board of Directors of the Association may, subject to the provisions hereof, levy an Assessment against any Member if (a) the willful or negligent failure of the Member or Related User of the Member to comply with this Declaration, the Articles, the Bylaws, Rules and Regulations adopted by the Association, or guidelines or rules adopted by the Association or the Architectural Review Committee have resulted in the expenditure of funds to cause compliance, or (b) if a Member or a Related User of the Member shall fail to pay any fines or penalties established in the Rules and Regulations for breach of or failure to comply with this Declaration or such Rules and Regulations. Such Assessments shall be known as Reimbursement Assessments. The amount of the Reimbursement Assessments shall be due and payable to the Association thirty (30) days after notice to the Member of the decision of the Board of Directors of the Association that the Assessment is owing.

5.8.8 Declarant Assessment. The Declarant or its assigns (including any Developer, if applicable) shall have no obligation to pay any General Assessment on each improved Lot which has been platted within the Project which Declarant owns, but has not conveyed to third-party purchasers. Should the Declarant or its assigns build a Dwelling Unit on any Lot, the Declarant or its assigns (which may include a Developer, if applicable) shall have no obligation to pay any General Assessment to the Association until such time as that Dwelling Unit and Lot are conveyed to a third-party purchaser, or are used for residential dwelling purposes.

5.8.9 Time for Payments. The General Assessment for each Lot shall be payable, subject to Section 5.8.11 hereof, in twelve (12) equal monthly installments due on the first day of each month. Any payment not received by the tenth (10th) day of each month shall be a delinquent payment. Special and Supplementary Assessments shall be payable as provided in the resolutions authorizing the same. All installments of General, Supplementary, and Special Assessments shall be due and payable without notice or demand, and all Assessments shall be paid without any

setoff or diminution of any kind. Any Assessment or installment thereof or other amount payable pursuant to this Section 5.8 or under the Articles or Bylaws which is not paid when due shall bear interest from the date it becomes delinquent until paid at the rate of twenty-one percent (21%) per annum or such lesser rate as the Board shall determine and/or may be subject to a late charge as may be set and uniformly applied by the Board. All payments on account shall be first applied to interest and late charges and then to the Assessment payment due.

5.8.10 Lien for Assessments and Other Amounts. The Association shall have a lien against each Lot and any Improvements thereon to secure payment of any Assessment and other amounts due and owing to the Association with respect to that Lot plus interest and/or any late charges as provided in Section 5.8.9, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in any manner for foreclosure of mortgages in the State of Colorado. The obligations being part of the purchase price of each Lot, such lien shall be superior and paramount to any homestead or other exemption provided by law, and each Owner hereby specifically waives his or her homestead exemption, but only with respect to such lien for Association assessments.

5.8.11 Working Capital. The Association or Declarant may require the Owner of any Lot who purchases that Lot from Declarant or a Developer to make a contribution to capital equal to two monthly General Assessments currently being collected by the Association from its Members with the Association, which sum shall be held by the Association as and for working capital. Such deposit shall not relieve an Owner from making the regular payment of Assessments as the same become due. Any amount collected shall not be refunded to the Owner upon the sale or transfer of a Lot. No Owner shall be entitled to interest on any amount provided as working capital to the Association. The provisions of this Section 5.8.11 shall not apply to the Declarant or any successor in interest to the Declarant or require any working capital contribution by Declarant or any successor in interest of the Declarant. The working capital collected hereunder may be used by the Association to defray any budget deficits, especially during the inception of the Association when Owner assessments may be insufficient to cover the costs of operating the Association and performing the obligations of the Association. The Declarant shall not use any portion of the working capital fund to defray any of Declarant's expenses or construction costs while it is in control of the Association.

5.8.12 Estoppel Certificate. Upon payment of a reasonable fee and upon written request of any Owner, or First Mortgagee, or any person with any right, title or interest in a Lot or intending to acquire any right, title, or interest in a Lot, the Association shall furnish a written statement setting forth the amount of any Assessments, if any, due or accrued and then unpaid with respect to such Lot and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association, for all purposes, that no greater or other amounts were then due or accrued and unpaid.

5.8.13 No Abatement. No diminution or abatement of Assessments shall be allowed or claimed for any reason including, without limitation, from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance, or order of a governmental authority.

5.8.14 Effect of Nonpayment of Assessments; Remedies of Association. Any Assessment (whether General, Supplemental, Special, or Reimbursement) installment not paid within ten (10) days after the due date shall be delinquent. Thereupon, the Association shall provide notice of such delinquency pursuant to Section 9.2 hereof and may (a) declare the entire balance of such General, Special or Supplementary Assessment due and payable in full; (b) charge interest from the due date at the percentage rate specified in Section 5.8.9 hereof; (c) give notice, to the Owner that in the event payment with accrued interest is not paid within thirty (30) days from the date of such notice, then the express contractual lien provided for herein shall be foreclosed; or (d) upon giving notice to the Owner, suspend the right of such Owner to vote or to use the Common Area until the Assessment and accrued interest are paid in full. The Association shall have the same remedies described herein in the event that any Reimbursement Assessment is not paid within thirty (30) days after notice to the Owner of the Assessment.

5.8.15 Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein: (a) All properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use; (b) all Common Areas; and (c) all



properties exempted from taxation by the state or county government on the terms and to the extent of such legal exemption.

5.9 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board of Directors, the Architectural Review Committee, or any other committees of the Association or any member thereof, nor any officers, directors, partners, or employees of the Declarant or of the Association, shall be liable to any Owner, Developer, or to the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of Plans or Specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and which Declarant, the Board, or such committees or officers reasonably believed to be within the scope of their respective duties, subject to C.R.S. § 38-33.3-303(2).

5.10 Indemnification. To the fullest extent permitted by law, Declarant, and every director, officer, committee member, partner and shareholder of the Association, the Architectural Review Committee and of the Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal, or control over members of the Board or its control over the Association or any committee thereof) shall be and is hereby indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, or at the request of, the Association may, in the discretion of the Board, be indemnified by the Association. Any such indemnification shall be limited to all expenses and liabilities (including, without limitation, all attorneys' fees and court costs) reasonably incurred by or imposed upon such person in connection with any proceeding to which such person may be a party or in which such person may become involved, by reason of being or having served in such capacity on behalf of the Association (or in the case of such Declarant by reason of having appointed, removed, controlled or failed to control members of the Board, or controlled or failed to control the Association), or incurred in any settlement thereof, whether or not such person is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred

5.11 Non-Liability for Certain Changes and Amendments. Neither the Declarant, the Association, nor their successors or assigns shall be liable to, or subject to injunction by, any Member or Owner or to one another in the event that any change in zoning of the Property is sought or obtained, or in the event that any subdivision map amendment or change in density shall be sought and obtained.

5.12 Audit. The Association shall provide a financial statement (which may or may not be audited) for the immediately preceding fiscal year, at a reasonable fee (to reflect the cost of providing the same) 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.

5.13 Association Books and Records. The Association shall make available to Owners, First Mortgagees, and insurers or guarantors of any such First Mortgage, current copies of this Declaration, the Articles, Bylaws, Rules and Regulations, books, records, and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

5.14 Surplus Funds. Any surplus funds of the Association remaining after payment of, or provision for, common expenses, costs, obligations and any prepayment of or provision for reserves shall not be credited to the Owners but shall, instead, be added to any reserve accounts maintained by the Association.

5.15 Delegation to Master Association. In accordance with C.R.S. § 38-33.3-220, the Association and the Board may delegate in part or in full any of the powers of the Association described in this Declaration or in C.R.S. § 38-33.1-302 to a master association.

5.16 Association Insurance. The Association shall obtain and continue in effect the following insurance:

(a) A master fire insurance policy with extended coverage endorsement for the full insurable value of all of the improvements within the Association Property.

(b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant and the Owners against liability incident to ownership

or use of the Common Area. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such policies must provide that they may not be canceled or substantially modified by any party without at least thirty (30) days' prior written notice to the Association.

(c) Flood loss for the maximum amount available if any Association Property is located in a federally identified Flood Hazard Area.

(d) A fidelity bond covering members of the Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as insured and written in an amount equal to at least the estimated maximum funds, including reserves in the custody of the Association or a management agent at any given time during the term of the bond. However, the bond shall not be less than a sum equal to three (3) months' aggregate assessments on all Lots plus reserve funds or such greater amounts as may be required by the Act or other statutes of the State of Colorado.

(e) Workmen compensation insurance covering any employees of the Association.

(f) Any other insurance coverage as required by the Act.

Insurance premiums for such policies shall be a common expense to be included in the Assessments levied by the Association.

#### **ARTICLE 6** **ARCHITECTURAL REVIEW COMMITTEE**

6.1 **Required Approval.** No Improvements to Property subject to this Declaration shall be commenced, placed, erected, or altered upon any portion of the Project (including the Lots, Common Areas, and Recreation areas), until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing by the Architectural Review Committee appointed by the Board of Directors and composed of not less than three (3) members.

6.2 **Membership of Committee.** Members of the Architectural Review Committee may, but shall not necessarily be, Members of the Association. Members of the Architectural Review Committee shall be appointed within ninety (90) days after the date of the Association is formed. Members of the Architectural Review Committee may be removed at any time by the Board of Directors of the Association and shall serve for such term as may be designated by the Board of Directors of the Association or until resignation or removal by the Board of the Association. In the event for any reason an Architectural Review Committee is not in existence or is unable or unwilling to act, the Board shall act on the Committee's behalf.

6.3 **Improvement to Property Defined.** "Improvement to Property," requiring approval of the Architectural Review Committee, shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure or other Improvements, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and (e) any change or alteration of any previously approved Improvement to Property including any change of exterior appearance, color or texture.

6.4 **Approval of Improvements Required.** The approval of the Architectural Review Committee shall be required for any Improvement to Property on any Lot or other portion of the Annexed Property within the Project, except for any Improvement to any portion of the Property made by Declarant and except as prior approval may be waived or certain Improvements to Property may be exempted in writing or under written guidelines or rules promulgated by the Architectural Review Committee because approval in such case or cases is not reasonably required to carry out the purposes of this Declaration.

6.5 Committee Guidelines or Rules. The Architectural Review Committee may issue guidelines or rules relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property. Such guidelines or rules may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. Such guidelines or rules may waive the requirement for approval of certain Improvements to Property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration. Such guidelines or rules may elaborate or expand upon the provisions herein relating to procedures and criteria for approval. Such guidelines or rules may specify rules and restrictions pertaining to the construction of Improvements to Property, including, for example, the storage of construction materials and hours of construction operations. Such guidelines or rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

6.6 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property, the Owner or such Owner's duly authorized representative proposing to make such Improvement to Property ("Applicant") shall submit to the Architectural Review Committee at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Architectural Review Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property ("Plans"). The Architectural Review Committee may require submission of additional Plans or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Architectural Review Committee of all required materials in connection with the proposed Improvement to Property, the Architectural Review Committee may postpone review of any materials submitted for approval.

6.7 Criteria for Approval. The Architectural Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the Project in the vicinity of the proposed Improvement to Property, that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Project, and that the Improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the Project or the enjoyment thereof by Owners. The Architectural Review Committee may condition its approval of any proposed Improvement to Property upon the making of such changes therein as the Architectural Review Committee may deem appropriate.

6.8 Architectural Review Fee. The Architectural Review Committee may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Architectural Review Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the estimated cost of the proposed Improvement to Property.

6.9 Decision of Committee. The decision of the Architectural Review Committee shall be made within thirty (30) days after receipt by the Architectural Review Committee of all materials required by the Architectural Review Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the Architectural Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Architectural Review Committee.

6.10 Appeal to Association Board. If the Architectural Review Committee denies, imposes conditions on, or refuses approval of a proposed Improvement to Property, the Applicant may appeal to the Board of Directors of the Association by giving written notice of such appeal to the Architectural Review Committee within twenty (20) days after such denial or refusal. The Board of Directors or a tribunal appointed pursuant to the Bylaws of the Association shall hear the appeal in accordance with the provisions of the Bylaws of the Association for notice and hearing, and the Board of Directors for the Association shall decide whether or not the proposed Improvement to Property or the conditions imposed by the Architectural Review Committee shall be approved, disapproved or modified.

6.11 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed disapproved, unless approval or a request for additional information or materials is transmitted to the Applicant by the Architectural Review Committee within thirty (30) days after the date of receipt by the Architectural Review Committee of all required materials.

6.12 Obtaining Governmental Approvals. Applicant shall obtain, prior to commencement of construction of any Improvements to Property, all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any governmental authority having jurisdiction ("Governmental Approvals") in order for Applicant to construct, operate and maintain the Improvements to Property. The Governmental Approvals shall be deemed to include, but not be limited to, building approvals by El Paso County.

6.13 Prosecution of Work after Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible in complete conformity with the description of the proposed Improvement to Property, any materials submitted to the Architectural Review Committee in connection with the proposed Improvement to Property, any conditions imposed by the Architectural Review Committee and in compliance with the conditions and restrictions of this Declaration.

6.14 Notice of Completion. Upon completion of any Improvement to Property, the Applicant may give written Notice of Completion to the Architectural Review Committee. Until the date of receipt of such a Notice of Completion, the Architectural Review Committee shall not be deemed to have Notice of Completion of such initial Improvements or Improvement to Property.

6.15 Inspection of Work. The Architectural Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate thirty (30) days after the Architectural Review Committee shall have received a Notice of Completion from the Applicant.

6.16 Notice of Noncompliance. If, as a result of inspections or otherwise, the Architectural Review Committee finds that any Improvement to Property has been done without obtaining the approval of the Architectural Review Committee, or was not done in substantial compliance with the approved Plans or other materials furnished to, and any conditions imposed by, the Architectural Review Committee, or has not been accomplished as promptly and diligently as possible, then the Architectural Review Committee shall notify the Applicant in writing of the noncompliance, which notice shall be given, in any event, within thirty (30) days after the Architectural Review Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

6.17 Failure of Committee to Act after Completion. If, for any reason other than the Applicant's act or neglect, the Architectural Review Committee fails to notify the Applicant of any noncompliance within thirty (30) days after receipt by the Architectural Review Committee of written Notice of Completion from the Applicant, the Improvement to Property shall be deemed in compliance if the Improvement to Property was, in fact, completed as of the date of the Notice of Completion.

6.18 Appeal to Association Board of Finding of Noncompliance. If the Architectural Review Committee gives any notice of noncompliance, the Applicant may appeal to the Board of Directors of the Association by giving written notice of such appeal to the Board of Directors of the Association and the Architectural Review Committee within thirty (30) days after receipt of the notice of noncompliance by the Applicant. If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Architectural Review Committee shall request a finding of noncompliance by the Board of Directors of the Association by giving written notice of such request to the Association and the Applicant within thirty (30) days after delivery to the Applicant of a notice of noncompliance from the Architectural Review Committee. In either event, the Board of Directors of the Association or a tribunal appointed pursuant to the Bylaws of the Association shall hear the matter in accordance with the provisions of the Bylaws for notice and hearing, and the Board of Directors of the Association shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

6.19 Correction of Noncompliance. If the Board of Directors of the Association determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board of Directors of the Association. If the Applicant does not comply with the Board of Directors of the Association ruling within such period, the Board of Directors, may, at its option, record a Notice of Noncompliance against the real property on which the noncompliance exists, may remove the noncomplying Improvement to Property (or other applicable Improvements) or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant, the Board of Directors of the Association may levy a Reimbursement Assessment against the Owner of the applicable Lot for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration.

6.20 No Implied Waiver or Estoppel. No action or failure to act by the Architectural Review Committee or the Association shall constitute a waiver or estoppel with respect to future action by the Architectural Review Committee with respect to any Improvement to Property. Specifically, the approval by the Architectural Review Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to Property.

6.21 Committee Power to Grant Variances. The Architectural Review Committee may authorize variances from compliance with any of the provisions of this Declaration for property in the Project when circumstances such as, but not limited to, topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Board of Directors or a majority of the members of the Architectural Review Committee. If any such variance is granted, no violation of the provisions of this Declaration for property in the Project shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for property in the Project for any purpose except as to the particular property and particular provisions covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with Restrictions in any deed or lease from Declarant or to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, development guides and zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

6.22 Compensation of Members. Members of the Architectural Review Committee may receive reimbursement of out-of-pocket expenses incurred by them in the performance of their duties hereunder if approved by the Board of Directors of the Association.

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

6.24 Records of Actions. The Architectural Review Committee shall report in writing to the Board of Directors of the Association all final action of the Architectural Review Committee, and the Board shall keep a permanent record of such reported action.

6.25 Nonliability for Committee Action. There shall be no liability imposed on the Architectural Review Committee, any member of the Committee, any Committee representative, the Association, any member of the Board of Directors of either, or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural Review Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Architectural Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of the Improvement to Property from

the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

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

## **ARTICLE 7 EASEMENTS**

7.1 Easement for Encroachments. If any portion of the Improvements located on a Lot or the Common Area encroaches upon a Lot or the Common Area, as applicable, including any encroachments arising or resulting from the repair or reconstruction of such an Improvement, 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. The easement does not relieve an Owner of liability in case of willful misconduct nor relieve Declarant or any other person of liability for failure to adhere to the Map.

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

7.3 Utilities Easement. A blanket easement is hereby created upon, across, over, and under the Common Area for utilities and the installation, replacement, repair, and maintenance of utilities including, but not limited to, water, sewer, gas, telephones, electricity and cable 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 or within the Project and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, and television wires, circuits, conduits 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 Area without restricting or nullifying 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 in this Section 7.3 shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Project.

7.4 Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress, and egress over, in, upon, under, and across the Common Area including, but not limited to, the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's construction on the Property.

7.5 Owner's Easement. An easement is hereby granted to the Owners upon, across, over, in, and under the Common Area for purposes of access to their Lots and to use the Common Areas, including all other real estate that becomes Common Areas, for all other purposes permitted by this Declaration.

7.6 Association's Easements. There is hereby reserved to the Association easements: (i) over certain Lots for ditches and drainage channels, as shown on the Map; and (ii) over and across any Lot for the purpose of irrigating land and maintaining ditches and drainage channels and appurtenant facilities.

7.7 Declarant's Easements. Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, water and other purposes incident to development and sale of the Lots and for the exercise of its Special Declarant Rights located in, on, under, over and across the Common Area and any Association Property during the Period of Declarant Control, provided that such easements do not create a permanent,

unreasonable interference with the rights of the Owners. Upon termination of the Period of Declarant Control, an easement is hereby granted to the Association for purposes permitted by this Declaration.

7.8 Easements Deemed Created. All conveyances of portions of the Property (including Lots) hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 7, even though no specific reference to such easements or to this Article 7 appears in the instrument of such conveyance.

## **ARTICLE 8** **AMENDMENT**

8.1 Amendment. Subject to the provisions of Section 8.2 and C.R.S. § 38-33.3-217, any amendment to this Declaration that would terminate the Declaration shall require the affirmative vote or written consent of the Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated and, during the Period of Declarant Control, the written approval of Declarant. Further, any termination of this Declaration and the planned community created hereby must be in accordance with C.R.S. § 38-33.3-218. Except as provided in the foregoing, and subject to Section 8.2 and C.R.S. § 38-33.3-218, this Declaration may be amended by the affirmative vote or written consent of the Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated and, during the Period of Declarant Control, with the written approval of Declarant.

8.1.1 An amendment to this Declaration shall be effective only upon the occurrence of all of the following events:

(a) The amendment shall have been reduced to a writing, which writing shall have been approved (by an affirmative vote or written consent) by the applicable required percentage of Owners and, if applicable, Declarant and the First Mortgagees;

(b) A written certificate, executed and acknowledged by the president or any vice president of the Association, shall be attached to the written amendment which shall state that such amendment was approved by the applicable required percentage of Members, Declarant and by all First Mortgagees, if any, who are required to approve such amendment pursuant to Section 8.2; and

(c) The approved written amendment described in Section 8.1.1(a), and including the certificate described in Section 8.1.1(b) shall be Recorded in the Records.

8.1.2 It will be a presumption subsequent to the Recording of an Amendment to this Declaration pursuant to Section 8.1.1(d) that all votes and consents required to pass the same pursuant to this Declaration were duly obtained (at a duly-called meeting of the Association, in the case of votes). Such presumption may be rebutted by an action commenced within one (1) year from the date the amendment is Recorded; in the absence of any such action, such presumption shall thereafter become conclusive.

8.1.3 Except to the extent expressly permitted or required by the Act, no amendment made to this Declaration may create or increase Special Declarant Rights, increase the number of Lots beyond the maximum number stated herein, or change the boundaries of any Lot or the allocated interests of a Lot, or the uses to which any Lot is restricted, in the absence of the consent of at least sixty-seven percent (67%) of the Owners.

8.2 First Mortgagee Approval. Except to the extent otherwise provided herein, the prior consent of at least fifty one percent (51%) of the votes of eligible First Mortgagees (based upon one vote for each Lot encumbered by a First Mortgage) must be obtained to add or amend any provisions of this Declaration, the Articles, or Bylaws of the Association, which establish, provide for, govern, or regulate any of the following: (i) voting allocation; (ii) any provisions which are for the express benefit of First Mortgagees; or (iii) any action to terminate this Declaration. Nothing contained in this Section 8.2 may operate to (a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Board; or (b) prevent the Association or the Board from commencing, intervening in, or settling any solicitation or proceeding; or (c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds pursuant to C.R.S. § 38-33.3-313.

8.3 Notice of Action. 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 Lot which is subject to such First Mortgage, each such First Mortgagee of a Lot, or insurer or guarantor of such a First Mortgage, shall be entitled to timely written notice of:

8.3.1 Any condemnation or casualty loss which affects a material portion of the Project or any Lot subject to a First Mortgage held, insured, or guaranteed by such First Mortgagee, insurer, or guarantor of a First Mortgage;

8.3.2 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 or Bylaws, provided the Board has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

8.3.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

8.3.4 Any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article 8.

8.4 Expenses. Subject to C.R.S. § 38-33.3-217, all expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of the Association; provided, however, that if the particular amendment is required as a result of the Declarant's exercise of its Special Declarant Rights, then all such expenses shall be the sole responsibility of Declarant and if the particular amendment is required as a result of a certain Owner's request to relocate boundaries between Lots or to subdivide Lots or to reallocate limited common elements (as that term is defined in the Act), then all such expenses shall be the sole responsibility of the requesting Owner.

## **ARTICLE 9**

### **MISCELLANEOUS**

9.1 Term. This Declaration, including all of the covenants, conditions and restrictions contained herein, shall run with and bind the Annexed Property up to and including the twenty-fifth (25th) anniversary of the date of Recording of this Declaration, unless amended as herein provided. After such twenty-fifth (25th) anniversary, this Declaration, including all covenants, conditions and restrictions contained herein shall be automatically extended for successive periods of ten (10) years each, unless extinguished by a written instrument approved by the Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated and recorded in the Records.

9.2 Notices. Any notice permitted or required to be given by the Restrictions shall be in writing and may be delivered personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or a legal holiday) after a copy of such notice has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purposes of service of notices, or to the residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice given by such Person to the Association.

9.3 Severability. In the event that any portion of this Declaration shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

9.4 Condemnation.

9.4.1 In the event proceedings are initiated by any government or agency thereof seeking to take by eminent domain the Common Area, any part thereof or any interest therein, with a value (including loss of value to the balance of the Common Area and Improvements thereon) as reasonably determined by the Association in excess of Ten Thousand Dollars (\$10,000.00), the Association shall give prompt notice thereof, including a description of the



part of or interest in the Common Area or improvement thereon sought to be so condemned, to all First Mortgagees, all Owners, and to the Declarant. 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 Area or part thereof, but the Association shall not enter into any such proceedings, settlement, or agreements, pursuant to which the Common Area 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, all Owners and Declarant at least fifteen (15) days' prior written notice thereof.

9.4.2 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 Area, the award made for such taking, if such award is sufficient to repair and restore the Common Area, shall be applied by the Association to such repair and restoration. If such award is insufficient to repair and restore the Common Area, or if the full amount of such award is not expended to repair or restore the Common Area, 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 such Owner's 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 Project 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 Area, or any combination thereof.

9.4.3 If a Lot is acquired by eminent domain or part of a Lot is acquired by eminent domain leaving the Lot Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Owner for that Lot and its allocated interests whether or not any Common Areas are acquired. Upon acquisition, unless the decree otherwise provides, that Lot's allocated interests are automatically reallocated to the remaining Lots in proportion to the respective allocated interests of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken under this Section 9.4.3 is thereafter a Common Area.

9.4.4 Except as provided in Section 9.4.3, if part of a Lot is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Lot and its interest in the Common Areas, whether or not any Common Areas are acquired.

9.4.5 If part of the Common Area is acquired by eminent domain, that portion of any award attributable to the Common Area taken must be paid to the Association. Any portion of the award attributable to the acquisition of a limited common element (as that term is defined in the Act) must be equally divided among the Owners of the Lots to which that limited common element was allocated at the time of acquisition. For the purposes of acquisition of a part of the Common Area other than the limited common elements, service of process on the Association shall constitute sufficient notice to all Owners, and service of process on each individual Owner shall not be necessary.

9.4.6 The court decree shall be recorded in every county in which any portion of the Annexed Property is located.

9.5 Governing Law. This Declaration shall be governed by, and construed under, the laws of the State of Colorado in existence as of the date of Recording of this Declaration in the Records.

9.6 Exhibits. All exhibits and riders attached hereto shall be deemed incorporated herein by this reference.

9.7 Development Rights and Special Declarant Rights. The Declarant expressly reserves the right to exercise all Development Rights and the other Special Declarant Rights for the maximum time limit allowed by law or for twenty (20) years, whichever period is shorter, unless sooner terminated by a Recorded instrument signed by the Declarant. The Declarant shall exercise such Development Rights and Special Declarant Rights in accordance with the provisions of the Act including, without limitation, C.R.S. § 38-33.3-210. Declarant may exercise any Development Right with respect to all or to any portion of the Property at any time. No assurances are provided as to the order in which Declarant may subject any portion of the Property to the exercise of any Development Right. If any Development Right

is exercised with respect to any portion of the Property, such Development Right may, but is not required to, be exercised in all or in any other portion of the remainder of the Property.

9.8 Colorado Common Interest Ownership Act. This Declaration shall be subject to all mandatory requirements of the Act. In the event of any conflict between any term or provision of this Declaration and any mandatory provision of the Act, the mandatory provisions of the Act shall control in all instances. In the event of any conflict between any term or provision of this Declaration and any permissive or non-mandatory provision of the Act, the provisions of this Declaration shall control in all instances.

9.9 Registration by Owner of Mailing Address. Each Owner shall register a mailing address with the Association, and except for monthly or periodic statements and other routine notices, all other notices or demands intended to be served upon an Owner (including, without limitation, notice of matters affecting the Project) shall be sent either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. In the event an Owner fails to register a mailing address with the Association as set forth herein, such Owner's registered mailing address shall be the mailing address of the Lot owned by such Owner. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent certified mail, postage prepaid, to the office of the Association at such address as identified by the Association in writing to each Owner.

9.10 Recording Data of Easements and Licenses. The recording data for recorded easements and licenses appurtenant to, or included in, the Project or to which any portion of the Project is or may become subject by virtue of a reservation in the Declaration is set forth in Exhibit B, attached hereto and incorporated herein by this reference. The location of such areas affecting the Project may be found on the Map.

9.11 Arbitration of Disputes. All Disputes (as defined below) shall be subject to binding arbitration, as follows:

9.11.1 Binding Arbitration. Any action, dispute, claim or controversy between the Declarant and the Association and Owners, or any of them, whether sounding in contract, tort or otherwise, and whether or not concerning an individual Unit or the Common Area (the "Dispute" or "Disputes"), shall be resolved by binding arbitration as set forth in this section. Such Dispute shall be resolved by binding arbitration in accordance with the Colorado Uniform Arbitration Act, C.R.S. § 13-22-201, et seq., as then in effect by a single arbitrator. The arbitrator's award shall be entered as a judgment in the appropriate court in the county in which the Project is located. In the event of any inconsistency between such rules and these arbitration provisions, these provisions shall supersede such rules. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceedings under this section. The parties shall be entitled to conduct discovery as if the dispute were pending in a District Court in the State of Colorado. In any arbitration proceeding subject to these provisions, the arbitrator is specifically empowered to allow discovery and decide pre-hearing motions that are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Any arbitrator selected under this section shall be knowledgeable in the area of the subject matter of the Dispute and shall be selected by the parties to the Dispute, any court in which the Project is located or any private organization providing such services. In the event the parties to the Dispute cannot agree upon an arbitrator, they shall apply to the Chief Judge of the District Court where the Project is located for appointment of a qualified arbitrator.

9.11.2 Stenographic Record. A stenographic record of the binding arbitration mandated by Section 9.11.1 shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and appeals. The arbitrator's decision shall contain findings of fact and conclusions of law to the extent applicable, and the arbitrator shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the arbitrator upon all of the issues considered by the arbitrator is binding upon the parties, and upon filing of a statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the arbitrator shall be appealable as if rendered by a court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

9.11.3 Procedure. If any claim regarding defects in construction is made, each claim shall be specified with particularity. Each location of any claimed defect must be identified, and all evidence supporting each claim, along with all repair methodologies and costs of repair, must be provided in advance of any request for arbitration.

9.12 Consent for Litigation or Arbitration. In order to protect the Members and the Association from indiscriminate arbitration or litigation, and the accompanying expense, distraction and commitment of financial and other resources, the Association shall not initiate or participate in any arbitration or litigation (other than the collection of dues payable to the Association), in its own name or on behalf of the Members, without complying with the provisions of this Section 9.12. Prior to the initiation or participation by the Association in any arbitration or litigation, the Board must first give due consideration to (a) the expense, distraction, and commitment of financial and other resources that will be incurred or suffered by the Association and its Members; and (b) whether mediation is a valid and reasonable alternative to such arbitration or litigation. If the Board reasonably determines that arbitration or litigation is appropriate after such due consideration, the Board shall (i) call a special meeting of the Members (pursuant to the terms of the Bylaws of the Association); (ii) report to the Members at the Special Meeting all of the Board's concerns, deliberations and conclusions as required in above Section 9.12(a) and (b); (iii) establish a budget for such arbitration or litigation and describe that budget in reasonable detail to the Members; (iv) recommend to the Members that the Association initiate or participate (as the case may be) in arbitration or litigation; and (v) recommend adoption of the budget for such action. Notwithstanding any other provision of this Declaration, the Articles or the Bylaws, and regardless of the number of Members actually attending such Special Meeting, the Association shall not initiate or participate in any arbitration or litigation without the prior written consent of sixty-seven percent (67%) of all Members of the Association and sixty-seven percent (67%) of holders of Eligible Security Interests to that course of action, subject to the budget for such action which must be separately approved by the same percentage of Members. The above procedure shall not be required whenever the Association is named as a defendant in an arbitration or litigation; however, the Board shall attempt to mediate or seek alternative dispute resolution in any such dispute and the Association shall not expand the scope of such dispute by prosecuting counterclaims without Members' consent as required by this Section 9.12.

9.13 Liability of Directors or Officers for Failure to Maintain an Action Against the Declarant. No officer or director of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion such cause of action if the following criteria are satisfied:

- 9.13.1 the officer or director was acting within the scope of his duties;
- 9.13.2 the officer or director was acting in good faith; and
- 9.13.3 the act or omission was not willful, wanton or grossly negligent.

9.14 Utilization of Funds Resulting from the Cause of Action. In the event the Association receives funds as the result of any settlement, arbitration or judgment based upon a cause of action, after payment of fees and costs incurred in connection with prosecution of such action, the Association shall:

- 9.14.1 deposit the proceeds in a special, interest-bearing account and
- 9.14.2 utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the claim of defect or for purposes of remedying any other claim for any other alleged matter.

9.15 No Destructive Testing. In the event any design or construction defect relating to the construction or maintenance of common areas within the Condominium Project is alleged, neither the Association, any member of the Association, nor any Owner of a Unit within the Condominium Project shall have a right to perform destructive testing on any portion of the common areas within the Condominium Project (including, without limitation, any common areas adjacent to or being a part of any Unit within the Condominium Project) unless the party proposing such destructive testing can show direct proof that there is actual, identifiable and confirmable evidence of a material defect in construction or design, which evidence is provided to the Association and reviewed and confirmed by the Association prior to any such destructive testing. Mere allegation of defects in construction or design (without concrete proof of such defect) will not be sufficient. In the event substantial evidence is provided to the Association, and in the event

the Association has thoroughly reviewed and confirmed the existence of a material defect in construction or design, the Association shall not grant its consent to any destructive testing unless and until the Association has received both an affirmative, written obligation from the party who proposes such testing to immediately repair and/or replace the tested area and improvements, together with a cash deposit, letter of credit or bond to cover one hundred twenty five percent (125%) of the estimated cost to repair and/or replace the areas and improvements to be tested, such deposit, letter of credit or bond being in a form that will allow the Association to immediately draw against the same in the event the common areas subject to such destructive testing is not repaired or replaced to an as-new condition within seven (7) days from the date such testing has been completed, or within twenty one (21) days from the date such testing commenced (whichever is earlier).

9.16 WAIVER OF TRIAL TO A JURY OR TRIAL TO A JUDGE. THE ASSOCIATION, ITS BOARD OF DIRECTORS, AND THE MEMBERS, RESPECTIVELY, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY A JURY OR TO A JUDGE WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY THEM AGAINST DECLARANT OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DECLARATION OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO, OR ANY CLAIM ARISING OUT OF ALLEGATIONS OF DEFECTIVE CONSTRUCTION.

## **ARTICLE 10**

### **DECLARANT'S DISCLAIMERS**

#### **10.1 Declarant's Disclaimers.**

10.1.1 Future and Adjacent Development. Declarant is not obligated to construct any future common improvement within the Project (except as to improvements for which bonds or other security have been posted in favor of the Association) or in any later phases of development of the Project, if applicable. Declarant has provided no representations, warranties or promises respecting landscaping or improvements that may be constructed elsewhere within the Project or adjacent hereto. The depiction of buildings, facilities or improvements on any plan, model, topographic maps, drawing or map does not constitute a representation, warranty or covenant by Declarant that such buildings, facilities or improvements will be constructed or that natural or landscaped areas will remain unchanged or undeveloped. No representation, promise or warranty, has been made by Declarant regarding the development of adjacent properties, the investment potential of the property or Lot, any economic benefits to the Lot Owner to be derived from the managerial efforts of Declarant or any third party designated or arranged for by the Lot Owner related to the rental of the Living Unit or regarding the continued existence of any view from the Lot or value of the location of the Lot for which the Lot Owner may have paid a location premium. Each of the Lot Owners have purchased their Lots with the understanding that Declarant is under no obligation to develop any Lots other than those presently released for sale, and has no obligation with respect to future plans, zoning, development or annexation of additional property in the area. Each of the Lot Owners have purchased their Lots with the understanding that the sizes or Lots, and the size and type of Living Units constructed on Lots, may change at the sole discretion of the Declarant and that the sales prices may decrease or increase at the sole discretion of the Declarant.

10.1.2 School Information. Declarant has made no representations, warranties or assurances that the Lot will be included within any particular school district.

10.1.3 Changes in Price, Size and Design. Declarant has made no promises, representations or assurances regarding the pricing, size, design, configuration and architectural style of any further residences or improvements constructed or to be constructed in the Project or in other phases of the development or otherwise, and each Lot Owner, by taking title to a Lot, thereby acknowledges that as market conditions or other facts change, such matters may be subject to change including, without limitation, reduction in prices of other residences to be built or sold in the Project and/or sales incentives offered in connection therewith and, changes in size, design or product type of homes to be built or sold in the Project.

10.1.4 View Impairment. Neither Declarant nor any of its authorized agents, representatives or employees have made any representations, warranties or promises concerning any view, present or future, that may be enjoyed from all or any portion of a Lot or the Project. The view from the Lot may change, be affected or obstructed by

(i) construction or installation of improvements, structures, fences, walls and/or landscaping by Declarant or other owners of property within or outside the Project and/or (ii) the growth of trees, landscaping and/or vegetation within or outside the Project. The Declaration does not contain any provisions intended to protect the view from any Lot or any other portion of the Project.

10.1.5 Tax and Insurance Estimates. Any sum estimated for taxes or insurance affecting the Lot or any Living Unit may increase or decrease depending upon fluctuation of real property taxes or insurance rates.

10.1.6 Outstanding Dedications. All or a portion of the Project may be subject to an outstanding dedication to one or more "Governmental Authorities." A Governmental Authority can accept irrevocable dedications at any time and once accepted, the facility or area accepted will be open to the public and maintained by the Governmental Authority. Declarant has provided no assurances as to when or if a Governmental Authority will accept any such dedication.

10.1.7 Representations Regarding the Neighborhood. Declarant has made no investigations, representations, warranties or assurances concerning the nature or character of individuals living in the Project or in the neighborhood surrounding the Project.

10.2 Acknowledgment of Inconvenience. Each of the Lot Owners, by taking title to a Lot, acknowledge and agree that there are inconveniences which will accompany the construction of this Project, including but not limited to construction noise, construction traffic, uncompleted buildings, areas not landscaped, potholes and construction supplies stored in plain view.

10.3 Recording Data of Easements and Licenses. The recording data for recorded easements and licenses appurtenant to, or included in, the Project or to which any portion of the Project is or may become subject by virtue of a reservation in the Declaration is set forth in Exhibit B, attached hereto and incorporated herein by this reference. The location of such areas affecting the Project may be found on the Map.

[Signature Page Follows]

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

Declarant:

TRAIL RIDGE HOMES AT JACKSON CREEK, LLC,  
a Colorado limited liability company

By Customized Homes, LLC, its Manager

By Genesis Homes, LLC, its Manager

By MRG Realty, Inc., its Manager

By *Miles R. Grant*  
Miles R. Grant, President

STATE OF COLORADO

County of Jefferson } ss.

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of September, 2004, by Miles R. Grant as President of MRG Realty, Inc., Manager of Genesis Homes, LLC, Manager of Customized Homes, LLC, Manager of TRAIL RIDGE HOMES AT JACKSON CREEK, LLC, a Colorado limited liability company.

Attachments:

Exhibit A - Legal Description of the Property

Exhibit B - List of Recorded Easements and Licenses, including:

Map (Plat)

Exceptions to Title

Consent of Lender - Horizon Banks, N.A.

- Bank of Cherry Creek

- Triview Public Building Authority

*Amy I. White*  
Notary Public

AMY I. WHITE  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires 12/31/05

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 through 91, inclusive; and Tracts A through I, inclusive; all in JACKSON  
CREEK FILING NO. 5, County of El Paso, State of Colorado

Exhibit B

RECORDED EASEMENTS AND LICENSES

- 1 The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded October 22, 1887 in Book 35 at Page 168; and any and all assignments thereof or interest therein.
- 2 The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded September 21, 1897 in Book 208 at Page 48; and any and all assignments thereof or interest therein.
- 3 Any tax, assessment, fee or charge resulting from the inclusion of the subject property in the Triview Metropolitan District, as disclosed by Order of Inclusion recorded June 4, 1985 in Book 5017 at Page 193. Notice recorded December 11, 1997 under Reception No. 97145688.
- 4 Terms, conditions, provisions, agreements and obligations specified under the Water Lease Agreement by and between Triview Metropolitan District, a Colorado quasi-municipal corporation and The Regency Group, a Colorado general partnership recorded March 4, 1987 in Book 5325 at Page 916.
- 5 Terms, conditions, provisions, agreements and obligations specified under the Annexation and Development Contract by and between the Town of Monument and Regency Group and Triview 77 Limited Partnership and Springs Land Investments 105 Limited Partnership and Springs Interstate 25 Partners recorded October 1, 1987 in Book 5428 at Page 1246.
- 6 Terms, conditions, provisions, agreements and obligations specified under the Intergovernmental Agreement by and between The Town of Monument and The Triview Metropolitan District recorded October 1, 1987 in Book 5428 at Page 1327, Ordinance recorded February 23, 1999 at Reception No. 99027819.
- 7 Any tax, lien, fee or assessment by reason of inclusion of subject property in the Baptist Road Rural Transportation Authority, as evidenced by Certificate of Organization recorded December 3, 1997 under Reception No. 97142147.
- 8 Any tax, lien, fee or assessment by reason of inclusion of subject property in the Tri-Lakes Park and Recreation District, as evidenced by Order and Decree recorded March 23, 2001 under Reception No. 201034896.
- 9 Terms, conditions, provisions, agreements and obligations contained in the Notice of Restriction recorded February 13, 2002 at Reception No. 202025189.
- 10 Terms, conditions, provisions, agreements and obligations contained in the Notice of Restriction recorded March 8, 2002 at Reception No. 202038487.
- 11 Apparent easement for electric vault, as disclosed by ALTA/ACSM Land Title Survey dated April 15, 2002, Job No. 29403.01, by J.R. Engineering.
- 12 Easements, notes, conditions and restrictions set forth on the plat of Jackson Creek Filing No. 5, recorded May 30, 2003 at Reception No. 203118923.
- 13 Easements, notes, conditions and restrictions set forth on the Replat of Jackson Creek Filing No. 5, recorded July 29, 2003 at Reception No. 203172887.
- 14 Deed of Trust from Trail Ridge Homes at Jackson Creek, LLC., a Colorado Limited Liability Company to the Public Trustee of El Paso County for the benefit of Horizon Banks, N.A. to secure an indebtedness in the principal sum of \$1,635,000.00, and any other amounts and/or obligations secured thereby, dated May 28, 2003 and recorded June 5, 2003 at Reception No. 203123771.
- 15 An instrument purporting to modify the terms of said Deed of Trust recorded June 9, 2004 at Reception No. 204096058.



- 16 Development Assessment and Lien Agreement between Triview Public Building Authority, a Colorado nonprofit corporation and Trail Ridge Homes at Jackson Creek LLC., dated July 1, 2003, recorded July 2, 2003 at Reception No. 201151477, securing \$2,975,000.00, and Memorandum of Indenture of Trust recorded July 2, 2003 at Reception No. 203151476.
- 17 Financing Statement from Trail Ridge Homes at Jackson Creek, LLC., Debtor, to The Bank of Cherry Creek, a Branch of Western National Bank, as Trustee under the Indenture of Trust dated as of July 1, 2003, secured party, recorded July 2, 2003 at Reception No. 203151478.

CONSENT OF LENDER

As beneficiary of that certain Deed of Trust recorded on the 5th day of June, 2003, at Reception No. 203123771 and that certain Modification of Deed of Trust recorded on the 9th day of June, 2004, at Reception No. 204096058 in the real estate records of El Paso County, Colorado, HORIZON BANKS, N.A., hereby consents to the recordation of the above Declaration; however, such consent shall not be construed to waive, modify or amend any rights of such lender or obligations of the borrower contained in the Deed of Trust, all terms and provisions of which shall remain in full force and effect.

Dated this 29th day of September, 20 04.

HORIZON BANKS, N.A.

By [Signature]

Print Name Bere S. Neas

Title Branch President

STATE OF COLORADO

City 1 County of Denver )  
 ) ss.

The foregoing instrument was acknowledged before me this 29th day of September, 20 04, by BERE S. NEAS as BRANCH PRESIDENT of HORIZON BANKS, N.A.

Witness my hand and official seal.

My commission expires: 4-13-2006

[Signature]  
Notary Public

CONSENT OF LENDER

As beneficiary of that certain Development Assessment and Lien Agreement recorded on July 2, 2003, at Reception No. 201151477, that certain Memorandum of Indenture of Trust recorded July 2, 2003, at Reception No. 203151476, and that certain Financing Statement recorded July 2, 2003, at Reception No. 203151478 in the real estate records of El Paso County, Colorado, BANK OF CHERRY CREEK hereby consents to the recordation of the above Declaration; however, such consent shall not be construed to waive, modify or amend any rights of such lender or obligations of Trail Ridge Homes at Jackson Creek, LLC contained in the referenced documents, all terms and provisions of which shall remain in full force and effect.

Dated this 29<sup>th</sup> day of September, 2004

**BANK OF CHERRY CREEK,**  
a branch of Western National Bank

By

Print Name J. Brian Wintona

Title Trust Officer

STATE OF COLORADO

County of Denver ) ss.

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of September, 2004, by J. Brian Quintana as Trust Officer of BANK OF CHERRY CREEK, a branch of Western National Bank.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

**GAYLA J. MANDEVILLE**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
My Commission Expires April 18, 2008

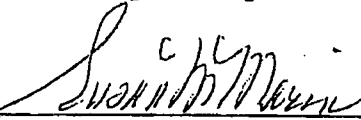
Danya Manderville  
Notary Public

CONSENT OF LENDER

As beneficiary of that certain Development Assessment and Lien Agreement recorded on July 2, 2003, at Reception No. 201151477, that certain Memorandum of Indenture of Trust recorded July 2, 2003, at Reception No. 203151476 in the real estate records of El Paso County, Colorado, TRIVIEW PUBLIC BUILDING AUTHORITY, a Colorado nonprofit corporation, hereby consents to the recordation of the above Declaration; however, such consent shall not be construed to waive, modify or amend any rights of such lender or obligations of Trail Ridge Homes at Jackson Creek, LLC contained in the referenced documents, all terms and provisions of which shall remain in full force and effect.

Dated this 30<sup>TH</sup> day of SEPTEMBER, 20 04.

TRIVIEW PUBLIC BUILDING AUTHORITY  
a Colorado nonprofit corporation

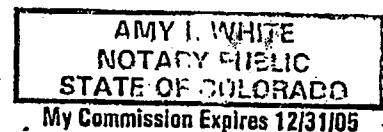
By   
Susan M. Marin, President

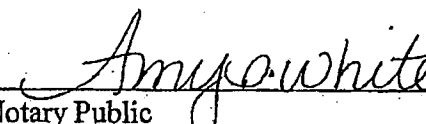
STATE OF COLORADO )  
 ) ss.  
\_\_\_\_ County of Jefferson )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of September, 20 04, by Susan M. Marin, President of TRIVIEW PUBLIC BUILDING AUTHORITY, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 12/31/05



  
Notary Public