

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
BELMONT RIDGE**

✓ Please remit original to:  
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Scott Doyle, Larimer County, CO

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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR BELMONT RIDGE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BELMONT RIDGE, as amended from time to time (this "Declaration"), is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by PREO (Belmont Ridge), LLC, a Colorado limited liability company ("Declarant").

RECITALS

A. Declarant owns the real property located in the City of Windsor, County of Larimer, State of Colorado, that is described on Exhibit "A" attached hereto (the "Property"), as well as the property that is described on Exhibit "B" attached hereto (the "Annexable Property").

B. Declarant desires to create a planned community on the Property pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

C. Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration for the purpose of protecting the value and desirability of the community and enhancing the health, comfort, safety, convenience and general welfare of Declarant and the Owners.

**ARTICLE I  
DECLARATION**

1.1. Declaration.

Declarant hereby creates a planned community named "Belmont Ridge" on the Property and declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration.

1.2. Covenants Running with the Land.

All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, the Owners (as such term is defined below), the Association (as such term is defined below), and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

**ARTICLE II  
DEFINITIONS**

2.1. Basic Definitions.

As used in this Declaration, the following terms have the meanings given to them in this Section 2.1.

(a) "Act" means the Colorado Common Interest Ownership Act, Colorado Revised Statutes, Sections 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

(b) "Annexable Property" means the real property described on Exhibit "B" attached hereto.

(c) "Articles" means the Articles of Incorporation of the Association, as the same may be amended from time to time.

(d) "Assessment" means a General Assessment, a Special Assessment or a Default Assessment levied and assessed pursuant to Article VII below.

(e) "Assessment Lien" has the meaning given to that term in Section 7.8

(f) "Association" means the Belmont Ridge Homeowners Association, a Colorado non-profit corporation, and its successors and assigns.

(g) "Association Common Elements" means any and all real estate within the Community now or hereafter owned or leased by the Association.

(h) "Association Documents" means this Declaration, the Articles, the Bylaws, the Rules and Regulations, and the Policies, as the same may be amended from time to time.

(i) "Bylaws" means the Bylaws of the Association, as the same may be amended from time to time.

(j) "Common Expenses" means: (i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Association Common Elements, (B) maintaining, repairing, improving or replacing any Master Association Property; (C) providing facilities, services and other benefits to Owners, (D) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby, as well as any other Association Documents, (E) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto, (F) regulating and managing the Community, (G) operating the Association, and (H ) performing and observing

obligations or conditions to be performed or observed by the Association under any easement, contract or agreement; and (ii) reserves for any such costs, expenses and liability.

(k) "Community" means the common interest community located within the Property.

(l) "Community-Wide Standard" means the highest of: (A) the standard of use, conduct, maintenance, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (B) the minimum standards described in any Association Document.

(m) "County Records" means the real property records maintained by the Clerk and Recorder of Larimer County, Colorado.

(n) "Declarant" means PREO (Belmont Ridge), LLC, a Colorado limited liability company, and any Person to which, by recorded document, the Declarant expressly assigns one or more of the Declarant's rights under this Declaration (which shall state the extent of the Declarant's rights to which document such assignee succeeds).

(o) "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Belmont Ridge, as the same may be amended or supplemented from time to time, by appropriate recorded instrument, and also including the Plat.

(p) "Default Assessment" has the meaning given to that term in Section 6.6

(q) "Development and Sale Period" means the period in which the Declarant owns any property within the Community that is intended for sale to Purchasers, and any period in which Declarant retains the right to add property to the Community.

(r) "Director" means a duly elected or appointed member of the Executive Board.

(s) "Executive Board" means the Association's Board of Directors.

(t) "First Mortgage" means any Mortgage that is not subordinate to any other lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

(u) "First Mortgagee" means a Mortgagee under a First Mortgage.

(v) "General Assessment" has the meaning given to that term in Section 6.4.

(w) "Guest" means any family member, employee, agent, independent contractor, lessee, customer or invitee of an Owner.

(x) "Improvement" means any building, fence, structure or other improvement (including but not limited to a Residence) located on a Lot.

(y) "Lot" means a lot depicted and described on a Plat that is intended for residential use. A Lot includes any Improvements located on such Lot, including a Residence. A Lot is referred to in the Act as a "Unit."

(z) "Majority," regardless of whether capitalized, means any percentage greater than fifty percent (50%).

(aa) "Master Association" means the Master Fossil Ridge Community Association, a Colorado non-profit corporation, which is the master association created pursuant to the Master Declaration of Covenants, Conditions and Restrictions for Fossil Ridge Subdivision recorded in the County Records at Reception No. 2005-0058755.

(bb) "Master Association Property" means any real estate and improvements thereon owned or leased by the Master Association that are subject to any use and cost sharing agreement between the the Association and the Master Association.

(cc) "Plat" means the all plats for the Property, recorded or to be recorded in the County Records, as the same may be amended or supplemented from time to time by appropriate recorded instrument .

(dd) "Membership" means a membership in the Association and the rights granted to Owners pursuant to this Declaration and the other Association Documents to participate in the Association.

(ee) "Mortgage" means any mortgage, deed of trust or other document pledging any Lot or interest therein as security for payment of a debt or obligation.

(ff) "Mortgagee" means any Person named as a mortgagee, beneficiary, or in a similar capacity, under any Mortgage, and any successor to the interest of any such Person under a Mortgage.

(gg) "Officer" means a duly elected or appointed officer of the Association.

(hh) "Owner" means the record holder of legal title to the fee simple interest in any Lot. If there is more than one record holder of legal title to a Lot, each record holder shall be an Owner. The term "Owner" includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in a Lot.

(ii) "Person" means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

(jj) "Policies" means any policies, including governance policies, adopted by the Association or the Executive Board from time to time, as same may be amended from time to time.

(kk) "Property" means the real property described on Exhibit "A" attached hereto, together with any of the Annexable Property that is later made subject to this Declaration in accordance with the terms and conditions contained herein.

(ll) "Purchaser" means a Person, other than Declarant or a Successor Declarant, who acquires legal title to the fee simple interest in any Lot.

(mm) "Residence" means an Improvement located on a Lot that is intended for occupancy for residential purposes.

(nn) "Rules and Regulations" means any instruments adopted by the Association for the regulation and management of the Community, as the same may be amended or supplemented from time to time.

(oo) "Share of Common Expenses" means the share of Common Expenses allocated to each Lot in accordance with the terms and conditions of Section 6.2. A Lot's Share of Common Expenses is referred to in the Act as part of a Lot's "Allocated Interests."

(pp) "Special Assessment" has the meaning given to that term in Section 6.5.

(qq) "Special Declarant Rights" means all "Special Declarant Rights" (as such term is defined in the Act) that Declarant reserves for itself in this Declaration, including, without limitation, the rights set forth in Article XIV, below.

(rr) "Successor Declarant" means any Person who succeeds to any Special Declarant Right.

2.2. Gender and Number. Wherever the context of this Declaration so requires: (a) words used in the masculine gender shall include the feminine and neuter genders; (b) words used in the neuter gender shall include the masculine and feminine genders; (c) words used in the feminine gender shall include the masculine and neuter genders; (d) words used in the singular shall include the plural; and e) words used in the plural shall include the singular.

### **ARTICLE III LOTS AND COMMON ELEMENTS**

3.1. Lots. The Lots described on Exhibit A attached are hereby included in the Community at this time. Declarant reserves the right at any time prior to the date that is twenty (20) years after the date on which this Declaration is recorded in the County Records, to add to the Community any or all of the Annexable Property, and any other real property pursuant to Section 14.2 below. The maximum number of Lots that may be created by the Declarant and included in the Community is two hundred (200).

3.2. Association Common Elements. No Common Elements are currently included in the Community. However, if any Common Elements are later included in the Community, every Owner and the Guests, tenants, and licensees of each Owner, shall have a perpetual right and

easement of access over, across, and upon any Common Elements for the purpose of entering and exiting such Owner's Lot and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Lot; provided, however, that such right and easement shall be subject to the following:

- (a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the Plat;
- (b) the right of the Association to reasonably regulate the use of Common Elements;
- (c) the right of the Association to adopt, from time to time, any and all Rules and Regulations concerning the Common Elements as the Association may determine are necessary or prudent, subject to the terms of this Declaration.

3.3. Master Association Property. Various tracts in and around the Community are owned by the Master Association. The Association has entered into a use and cost sharing agreement with the Master Association allowing the use of Master Association Property by Owners and Guests of this Association. The Association has agreed to contribute funds to the Master Association to pay for part of the costs incurred by the Master Association for the operation, maintenance, repair, improvement and replacement of the Master Association Property. All costs and expenses incurred by the Association in connection with the Master Association Property shall be included as part of the Common Expenses.

3.4. Separate Taxation of Lots.

Each Lot shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Act. For the purpose of such assessments, the valuation of any Association Common Elements shall be apportioned equally among the Lots. The Association shall furnish to the Tax Assessor of the county in which the Property is located, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Lot for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Lot.

**ARTICLE IV  
THE ASSOCIATION**

4.1. Formation of the Association.

On or before the date on which Declarant conveys the first Lot to a Purchaser, the Declarant shall form the Association.

4.2 Parties Involved in the Association.

(a) The Declarant - The Declarant of the Community is PREO (Belmont Ridge) LLC. The Declarant has established the Association along with the Community and, through the Association Documents, has set forth the founding principles that will guide the Community. The Declarant plays an integral part in the Community during the Development and Sale Period. The Declarant also reserves the right during the Period of Declarant Control to appoint a majority of the members of the Association's Executive Board and to retain a non-voting, advisory seat on the Board for a period of 10 years following the end of the Declarant Control Period described in the Bylaws.

(b) The Association - The Association is the primary entity responsible for administering the Community in accordance with the Association Documents. On most matters, the Association acts through the Executive Board. However, in some instances the Association Documents or applicable law limits the Board's ability to act without the approval of the Association's members. The Association may exercise all rights and powers that the Governing Documents and Colorado law expressly granted to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege. The Executive Board shall serve the same role as the board of directors of a nonprofit corporation pursuant to Colorado corporate law and as the "executive board" as defined by the Act. The Association's purposes are:

- (i) to manage, operate, insure, construct, improve, repair, replace, alter and maintain the Common Elements;
- (ii) to provide certain facilities, services and other benefits to the Owners;
- (iii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;
- (iv) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;
- (v) to enter into agreements with other Persons, including, without limitation, contracts, service agreements, easements, licenses, and leases;

(vi.) to take any action that it deems necessary or appropriate to protect the interests and general welfare of Owners;

(vii.) to regulate and manage the Community, including the adoption of reasonable Rules and Regulations and Policies;

(viii.) to provide to Owners, in accordance with requirements imposed by the Act, annual education regarding the general operation of the Association and Executive Board;

(ix.) to provide to Owners all annual disclosures required by the Act, and to compile and maintain all information required to be available to Owners under the Act; and

(x.) to take any and all actions that it deems necessary or advisable to fulfill its purposes, exercise any powers conferred on it by the Act or any Association Document, and exercise all powers that may be exercised in Colorado by nonprofit corporations.

Unless the Association Documents or Colorado law specifically provide otherwise, the Board may exercise the Association's rights and powers without any action by the membership. A summary of the matters requiring an action by the membership is contained in Section 5.3.

(c) The Owners – The Owners, as defined Section 2.1(hh). Every Owner has a responsibility to comply with the Association Documents and uphold the Community-Wide Standard described in this Declaration. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles.

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(d) Secured Lenders - If a Residence or Lot is made subject to a Mortgage, as defined in Section 2.1(ee), then the holder or beneficiary of that Mortgage also has an interest in the administration of the Community. The Association Documents contain various provisions for the protection of Mortgagees, including those set forth in Article XV.

(e) Management Company - The Association, through the Executive Board, may employ or contract for the services of a manager to act for the Association and the Board according to the powers and duties delegated to the manager pursuant to the Bylaws or resolution of the Board. The Management Company is normally hired to run the daily activities of the Association to include the following, but not limited to, assessment collection, bank account management, lien filing, accounts payables, account receivables, preparing financials, transfer of titles, status letters, welcome packets, association mailings and disclosures, community site visits, coordination with contractors, providing expertise on applicable laws, and planning, attending and facilitating meetings. Neither the Board nor any officer of the Association will be liable for any omission or improper exercise by a manager of any such duty, power or function so delegated. The Management Company can not make decisions on behalf of the Association or the Executive Board but rather takes direction from the Executive Board.

4.3. Association Documents. The Community is governed by various documents. These documents are referred to in this Declarations as the Association Documents, and include the documents described in Table 1.1, as they may be amended. If there is any conflict or inconsistency between or among the Association Documents, they shall control in the following order: the Plat; the Articles, the Declaration, the Bylaws, the Rules and Regulations, and the Policies.

The Community is also subject to any applicable federal, state, local laws and regulations, including the Colorado Common Interest Ownership Act, Senate Bills 05-100 and 06-089, HB 1359, the Colorado Nonprofit Corporation Act, and the City of Windsor Municipal Code.

4.4. Books and Records and Disclosures. Upon request, the Association shall allow

<b>ASSOCIATION DOCUMENTS</b>	
<b>Plats:</b>	The Fossil Ridge Subdivision Plat recorded on November 22, 2004 at Reception No. 2004-0111862, and any other recorded plats or amendments or supplements thereto affecting any of the Property now or hereafter included in the Community
<b>Declarations:</b> (recorded with the County Clerk and Recorder)	This Declaration, which creates obligations that are binding upon the Association and all present and future owners of property in the Community.
<b>Supplement:</b> (recorded with the County Clerk and Recorder )	A recorded supplement to this Declaration, which submits additional property to this Declaration, creates easements over such property, imposes additional obligations or restrictions on property described in the Supplement.
<b>Articles of Incorporation or Articles:</b> (filed with Secretary of State)	The Articles of Incorporation of the Association, as they may be amended, which establish the Association as a nonprofit corporation under Colorado law.
<b>Bylaws:</b> (Adopted by the Executive Board)	The Bylaws of the Association, adopted by its Executive Board, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc.
<b>Design Guidelines:</b> (adopted by the Executive Board)	The design guidelines of the Association adopted pursuant to Article IX, concerning the approval of improvements and landscaping within the Community.
<b>Rules and Regulations:</b> (adopted by the Executive Board)	The rules and regulations of the Association adopted pursuant to Article X, which regulate use of property, activities, and conduct within the Community.
<b>Board Resolutions:</b> (adopted by the Executive)	The resolutions which the Association's Executive Board adopts to establish rules, guidelines, policies, and procedures for internal governance and Association activities and to regulate the operation and use of the property which the Association owns or controls.

Table 1.1  
Owners and Mortgagees and their respective agents to inspect current copies of the Association

Documents and the books, records, budgets and financial statements of the Association per the Association's adopted and or amended Inspection of Books and Records Policy.

The Association shall furnish to all Owners, in writing, at least once per year the following, by a means permitted by the Act and chosen by the Executive Board:

- (a) Current contact information for the Association and its management company or agent.
- (b) The date on which its fiscal year commences.
- (c) Its operating budget for the current fiscal year.
- (d) A list of the Association's current Assessments, including both General and Special Assessments.
- (e) Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure.
- (f) The results of its most recent available financial audit or review.
- (g) A list of all Association insurance policies, including, but not limited to, property, general liability, association, director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.
- (h) All of the Association's Bylaws, Articles, Rules and Regulations and Policies.
- (i) The minutes of the Executive Board's and Owner's meetings for the fiscal year immediately preceding the current fiscal year.
- (j) Any other documents required by the Act or deemed appropriate by the Executive Board.

**ARTICLE V  
MEMBERSHIP AND VOTING**

5.1. Membership. There shall be one Membership appurtenant to each Lot. The Membership appurtenant to a Lot shall be held by the Owner(s) of that Lot (sometimes referred to herein as the "Member" with respect to such Membership) and may not be separated from the Lot to which it is appurtenant. A Membership may be transferred or encumbered only in connection with the conveyance or encumbrance of a fee simple interest in the Lot to which the Membership is appurtenant. Any transfer or encumbrance of a Membership other than as permitted in this Section 5.1 shall be void and have no force or effect.

5.2. Voting. The total number of votes in the Association shall be equal to the total number of Lots included in the Community from time to time. Each Lot shall be entitled to one vote. Cumulative voting shall not be allowed for the election of Directors or any other purpose. The Association shall have no voting rights for any Lot owned by the Association. An Owner may assign its voting rights to any Person by duly executed proxies as set forth in the Bylaws.

5.3. Matters Requiring Vote of Members. The Executive Board is the primary entity responsible for managing the Community and generally may exercise the Association's rights and powers without a vote of the membership. However, the following items require action by the Members:

- (a) Election of the Executive Board as described in the Bylaws;
- (b) Termination of and certain amendments to this Charter as described in Section 17.3(a);
- (c) Veto of any Association budgets as described in Section 6.3(d);
- (d) Veto of any Special Assessment as described in Section 6.5;
- (e) Any other matters requiring a vote of the Members as set forth in the Act, or the Association Documents.

**ARTICLE VI  
ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS**

6.1. Obligations for Assessments.

(a) Each Owner by accepting a deed to a Lot (regardless of whether it shall be expressly stated in such deed), shall be deemed to have covenanted and agreed to pay to the Association all General Assessments, Special Assessments, Default Assessments and other charges that the Association is required or permitted to levy or impose on such Owner or such

Owner's Lot pursuant to this Declaration or any other Association Document, except for the Declarant and the Declarant designees.

(b) No Owner shall be exempt from liability for any such Assessment or other charges by waiving the use or enjoyment of any Common Element or by abandoning a Lot against which such Assessments or other charges are made.

(c) Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Lot during the period of such Owner's ownership of the Lot. If there is more than one Owner of a Lot, each Owner shall be jointly and severally liable with the other Owners of the Lot for all Assessments and other charges levied on the Lot or any Owner of the Lot during the period of such Owner's ownership of the Lot.

(d) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other amount, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, may be recovered pursuant to the Association's Collection Policy adopted by the Board.

6.2. Allocation of Common Expenses.

(a) Each Lot shall be responsible for payment of an equal share the Common Expenses. Each Lot's Share of Common Expenses shall be a fraction, the numerator of which is one, and the denominator is which is the total number of Lots included in the Community at the relevant time.

(b) If any Lots are added to or withdrawn from the Community, each Lot's Share of the Common Expenses after such addition or withdrawal shall be recalculated in accordance with the formula set forth in Section 6.2 (a).

(c) The Association may begin levying Assessments on the date that the first Lot within the Community is transferred to a Purchaser. Until the Association commences Assessments, all expenses of the Association shall be paid by the Declarant. Once levying of Assessments is commenced, all Owners (including the Declarant) shall bear their share of Assessments as set forth in this Article VI except that, to the extent permitted by the Act and approved by the Executive Board. The Declarant may (but is not obligated to) provide development advancements to the Association, if needed. All developer advancements will be considered a loan to the Association with an agreement between the Association and the Declarant on the terms of the loan.

6.3. Budgets.

(a) Prior to the first levy of a General Assessment, and thereafter at least sixty (60) days prior to the expiration of the Association's fiscal year, the Executive Board shall adopt a proposed annual budget for the Association for the following fiscal year that sets forth:

(i) the Executive Board's estimates of Common Expenses for the next fiscal year;

(ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through General Assessments; and

(iii) the amount of funds, if any, for such Common Expenses that the Executive Board proposes to raise through Special Assessments.

(b) The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a capital reserve fund for major repair, replacement, and maintenance of any capital items to be maintained by the Association. In determining the amount of such reserve contribution, the Executive Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement costs, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset. The Executive Board shall obtain a reserve study from time to time to determine an appropriate level of reserves and the required frequency of extraordinary repair, replacement and maintenance activities. The reserve funds shall be held in an account separate from the Association's normal working capital.

(c) Within ninety (90) days after adoption by the Executive Board of any proposed budget for the Community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget adopted by the Executive Board does not require approval from the Owners and it will be deemed approved by the Owners except as set forth in subsection (d) below.

(d) The budget for Common Expenses shall be deemed approved in the absence of a veto at the noticed meeting by sixty-seven percent (67%) of the votes held by all Owners, whether or not a quorum is present. In the event that a proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Owners.

(e) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under Section 6.3(d) above, the Executive Board may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners, and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed amendment. Unless at that meeting a sixty-seven percent (67%) of the votes, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

6.4. General Assessments.

(a) After the Owners ratify an annual budget pursuant to Section 6.3 above, the Association shall levy a General Assessment on each Lot. The General Assessments shall be allocated among the Lots as set forth in Section 6.2 above.

(b) The Owners shall pay the General Assessments levied against their respective Lots in such periodic installments as may be required by the Association.

(c) If the Owners ratify an amendment to the General Assessment portion of an annual budget, the amount of the General Assessment levied against each Lot shall be adjusted accordingly.

(d) If the Owners fail to ratify an annual budget prior to the commencement of the Association's fiscal year, the Owners shall continue to pay periodic installments of the General Assessment to the Association at the rate payable during the prior fiscal year until such time as the Owners ratify a new annual budget for the then current fiscal year. Once the Owners ratify a new annual budget, the Association shall levy against each Lot the General Assessment for the then current fiscal year and each Owner's periodic installments shall be adjusted as necessary to pay the new General Assessment in equal periodic installments over the remainder of such fiscal year, giving the Owners credit, in such manner as the Executive Board deems necessary or appropriate, for any installments that the Owners have previously paid to the Association during such fiscal year.

(e) The failure of the Association to levy a General Assessment for any fiscal year shall not be deemed a waiver, modification or release of an Owner's liability for the Share of Common Expenses allocated to such Owner's Lot.

6.5. Special Assessments.

(a) The Assessments that the Association may levy pursuant to this Section 7.5 are referred to in this Declaration as "Special Assessments."

(b) The Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for any purpose deemed necessary or advisable by the Executive Board, including but not limited to the repair or reconstruction of any damaged or destroyed Improvements within the Association Common Elements, or for the funding of any operating deficit incurred by the Association in connection with the Common Expenses. Any such Special Assessment shall be approved by the Executive Board. Within ninety (90) days of approval of a Special Assessment by the Board, the Board shall mail, by ordinary first-class mail, to all Owners notice of the Special Assessment and the reasons therefor. The notice shall set a date for a meeting of the Owners to consider the Special Assessment. Such meeting shall occur within a reasonable time after mailing of the notice. The Special Assessment shall be deemed approved in the absence of a veto at the noticed meeting by sixty-seven percent (67%) of the votes held by all Owners, whether or not a quorum is present.

(c) Special Assessments levied pursuant to Section 6.5 shall be paid as and when required by the Association.

6.6. Default Assessments. Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by the negligence or misconduct of an Owner or an Owner's Guest, or a violation of any covenant or condition of an Association Document by an Owner or an Owner's Guest, the Association may levy an Assessment for such Common Expense against such Owner and such Owner's Lot. Any such Assessment levied by the Association and each fine, penalty, fee or other charge imposed upon an Owner for the Owner's violation of any covenant or condition of any Association Document are each referred to herein as a "Default Assessment."

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget.

(c) With respect to any Default Assessment or portion thereof levied other than as a late charge, the Owner of the Lot against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity for hearing as set forth in the Bylaws, as amended from time to time. Owners of Lots against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Association.

6.7. Assignment of Assessments. The Association shall have the unrestricted right to assign or pledge its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment or pledge is approved by sixty-seven percent (67%) of the votes in the Association at a meeting at which a quorum is present.

6.8. Assessment Lien.

(a) The Association shall have a lien on each Lot for any Assessment levied against that Lot and for any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against the Owner of such Lot under any Association Document (the "Assessment Lien"). The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) An Assessment Lien is prior to all other liens and encumbrances on a Lot except as set forth in the Colorado Common Interest Ownership Act (See C.R.S. §38-33.3-316(2)), as amended from time to time.

(c) The recording of this Declaration constitutes record notice and perfection of an Assessment Lien on each Lot. No further recordation of any claim of any Assessment Lien is required, but the Executive Board shall have the right, but not the obligation, to record a notice of a specific Assessment Lien if it so desires.

(d) An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six years after the full amount of the Assessment secured thereby becomes due.

(e) This Section 6.8 does not prohibit actions or suits to recover sums secured by an Assessment Lien or the Association from taking a deed in lieu of foreclosure.

(f) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.

(g) An Assessment Lien may be foreclosed in like manner as a mortgage on real estate. Periodic Assessments shall be payable during the period of foreclosure of an Assessment Lien.

6.9. Waiver of Homestead Exemptions. By acceptance of the deed or other instrument of conveyance of a Lot, an Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended, or any similar exemption now or hereafter in effect, as the same may apply to the Assessment Lien.

6.10. Estoppel Certificates; Notices to Mortgagees.

(a) The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board and every Owner. If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its Assessment Lien upon the Lot for unpaid Assessments which were due as of the date of the request.

(b) If a First Mortgagee delivers to the Association a written request for notice of unpaid Assessments levied against a Lot subject to a First Mortgage held by that First Mortgagee, the Association shall report to the First Mortgagee any unpaid Assessments levied against such Lot that remain unpaid for more than sixty (60) days after the same shall have become due. The First Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such First Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

6.11 Initial Working Capital. In order to create an initial working capital fund for unanticipated Common Expenses during the initial years of the Association before operating reserves have otherwise been established through Assessments, at the closing of the sale of a Lot with a home on it by the Declarant to the initial Purchaser (homeowner), the Purchaser shall pay to the Association an initial, non-refundable working capital contribution in an amount equal to three (3) months of Common Expenses for the fiscal year in which the sale of the Lot occurs. Payments by Purchasers of working capital under this Section shall not be refundable, and shall not be credited against or relieve purchasers from their obligation to pay other Assessments levied against Lots by the Association.

6.12 Surplus. Any surplus funds of the Association remaining after payment or provision for all Association Common Expenses may be used to reduce the Assessments that would otherwise be levied pursuant in the succeeding year, or used for capital improvements to the Community, or be put in reserve funds, all at the discretion of the Executive Board .

## **ARTICLE VII UTILITIES**

7.1. Owners Responsibility. Subject to Section 7.3 below, each Owner shall be responsible for the provision of utilities to its Lot, including but not limited to, water, sewer, electric, gas, phone, cable, and internet.

7.2 Association Responsibility. The Association shall be responsible for the provision of utilities to the Association Common Elements, the costs and expenses of which shall be considered Common Expenses.

7.3 Master Services Agreement. Upon the approval of sixty-seven percent (67%) of the votes in the Association, the Executive Board may enter into master service or franchise agreements whereby all of the Lots in the Community are obligated to receive one or more utilities or services from a given provider. In that event, the charges for such master service shall either be included in the Common Expenses or billed by the service provider directly to the Owner, as determined by the vote approving such agreement.

## **ARTICLE VIII MAINTENANCE OF PROPERTY AND IMPROVEMENTS**

8.1. Community-Wide Standard. All property and Improvements within the Community shall be maintained to the Community-Wide Standard. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the Executive Board's discretion. The Community-Wide Standard may or may not be set out in writing. The Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Community matures.

8.2. Maintenance Responsibilities. The Owner of a Lot shall be solely responsible for the maintenance and repair of the Residence and all other Improvements on his or her Lot. The Owner is responsible for snow and ice removal on any sidewalk located within his Lot, but the Town of Windsor is responsible for repair of public sidewalks. The streets within the community have or will be dedicated to and maintained by the Town of Windsor.

8.3 Tortious Activities. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any Common Elements of the Association or the Master Association is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family or by a Guest of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall assessed to such Owner as a Default Assessment pursuant to Section 6.6 of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a Guest of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at after notice and opportunity for a hearing, as provided in the Bylaws.

8.4 Association Cure Rights. In the event that portions of a Lot or Improvements thereon are not properly maintained and repaired, or such Lot or Improvements are damaged or destroyed by an event of casualty, and the Owner does not take reasonable measures to diligently pursue a repair and reconstruction of the damage or destroyed Improvement to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after written notice to the Owner and the expiration of a thirty (30) day cure period, and with the approval of the Executive Board, shall have the right to enter upon the Lot to perform such work as is reasonably necessary to restore the Lot and its Improvements to a condition of good order and repair; provided, however, if such repair and reconstruction cannot be reasonably performed within such thirty (30) day cure period, the Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work is commenced within such cure period and is diligently pursued to completion. All costs incurred by the Association in connection with the restoration shall be assessed against such Owner as a Default Assessment.

8.5. Limited Warranty.

(a) Declarant hereby warrants to the Association that any improvements made or to be made in the Common Elements by Declarant will be free from defect in workmanship or material for a period beginning with the completion of such improvement and ending one (1) year after substantial completion of construction or installation of the particular improvement. Declarant's sole liability in the event of a breach of such limited warranty is to repair or replace the defective improvement. For purposes of this warranty, each tree or shrub installed by Declaration is a separate improvement. Declarant's warranty with respect to landscaping shall not apply in cases of failure by the Association or the Master Association to properly irrigate or otherwise maintain such landscaping, but shall be applicable only to defective landscaping materials installed by Declarant. The warranty to the Association in this Section 9.5 is the only warranty, express or implied, made by Declarant to the Association or to Owners with respect to

such improvements. EXCEPT FOR SUCH WARRANTY, ANY AND ALL WARRANTIES WITH RESPECT TO SUCH IMPROVEMENTS EXPRESS OR IMPLIED, WHETHER ARISING UNDER FEDERAL OR STATE LAW, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY SPECIFICALLY DISCLAIMED. The provisions of this Section 9.5 shall not limit any warranties made by third parties not affiliated with Declarant, such as nurserymen supplying landscaping materials.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS DECLARATION, THE ASSOCIATION AND EACH OWNER ACKNOWLEDGES AND AGREES THAT DECLARANT'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, IS LIMITED TO THE LIMITED WARRANTY AND REMEDY SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL DECLARANT BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIM OF DIMINUTION IN THE VALUE OF ANY LOT, EVEN IF THE DECLARANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF DECLARANT'S LIMITED WARRANTY MAY BE BROUGHT BY AN OWNER OR THE ASSOCIATION MORE THAN ONE (1) YEAR AFTER SUBSTANTIAL COMPLETION OF CONSTRUCTION OR INSTALLATION OF THE PARTICULAR IMPROVEMENT, REGARDING OF WHEN THE CAUSE OF ACTION HAD ACCRUED OR IS DISCOVERED. ANY SUCH CLAIMS BY THE ASSOCIATION OR AN OWNER MAY ONLY BE BROUGHT AGAINST DECLARANT IN AN ACTION BY THE ASSOCIATION AS PROVIDED FOR IN SUBSECTION (C) BELOW.

(c) ALL CONTROVERSIES AND DISPUTES RELATED TO DECLARANT'S LIMITED WARRANTY ABOVE, AND ALL CLAIMS BY AN OWNER OR THE ASSOCIATION ARISING OUT OF OR RELATED TO DECLARANT'S DESIGN, CONSTRUCTION, OR SUPERVISION OF CONSTRUCTION OF THE PROJECT, INCLUDING ANY IMPROVEMENTS, SHALL BE SUBMITTED BY THE ASSOCIATION TO AND SETTLED BY CONCLUSIVE BINDING ARBITRATION UNDER THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. THIS ARBITRATION PROVISION IS IRREVOCABLE AND PROVIDES THE EXCLUSIVE FORUM FOR THE RESOLUTION OF ALL SUCH CONTROVERSIES, DISPUTES AND CLAIMS. THE RESULTS OF THE ARBITRATION SHALL BE FINAL AND BINDING UPON ALL PARTIES TO THE ARBITRATION, AND JUDGMENT MAY BE ENTERED UPON SUCH RESULTS IN ACCORDANCE WITH APPLICABLE LAW IN ANY COURT OF COMPETENT JURISDICTION. NO DEMAND FOR ARBITRATION HEREUNDER, REGARDLESS OF THE NATURE OF THE CLAIM FOR RELIEF, MAY BE HAD OR MAINTAINED UNLESS SUCH DEMAND FOR ARBITRATION IS MADE AND PROCESS SERVED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION RELATING TO THE DISPUTE, CLAIM OR CONTROVERSY HAS ACCRUED (OR IF EARLIER, ONE (1) YEAR AFTER SUBSTANTIAL COMPLETION OF THE IMPROVEMENT INVOLVED). ANY ACTION BY DECLARANT TO INSPECT, REPAIR OR REPLACE ANY CLAIMED DEFECT SHALL NOT ACT TO EXTEND THE

TIME LIMIT SET FORTH ABOVE. THE PREVAILING PARTY IN ANY SUCH ARBITRATION SHALL PAY ANY AND ALL EXPENSES ASSOCIATED WITH THE ARBITRATION, INCLUDING BUT NOT LIMITED TO THE ARBITRATOR'S EXPENSES AND THE OTHER PARTY'S REASONABLE ATTORNEYS' FEES, IN ADDITION TO ANY OTHER RELIEF AFFORDED.

(d) NO ARBITRATION OR LITIGATION ARISING OUT OF OR RELATING TO ANY CLAIM THAT THE ASSOCIATION MAY ASSERT AGAINST DECLARANT WITH RESPECT TO DECLARANT'S LIMITED WARRANTY SET FORTH IN THIS SECTION 8.5 SHALL INCLUDE, BY CONSOLIDATION OR JOINDER OR CLASS CERTIFICATION OR IN ANY OTHER MANNER (INCLUDING WITHOUT LIMITATION, INCLUSION AS AN ORIGINAL OR ADDITIONAL THIRD PARTY) ANY PERSON OR ENTITY OTHER THAN THE ASSOCIATION ITSELF AND THE DECLARANT. DECLARANT HAS THE RIGHT TO SPECIFICALLY ENFORCE THIS PROVISION.

## **ARTICLE IX ARCHITECTURAL REVIEW**

9.1. Approval Required. No Person may alter the exterior of any Improvement, including a Residence, fence or landscaping, or construct or place any Improvement on a Lot, without first complying with this Article IX. No prior approval is necessary to repaint the exterior of an Improvement using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a Residence; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure may require prior approval. Notwithstanding the above, this Article shall not apply to the initial design and construction of Improvements by the Declarant or a builder approved by the Declarant, to other design and construction activities by or on behalf of the Declarant, or to any design, maintenance, repair, construction or reconstruction undertaken by the Association.

### 9.2. Architectural Review Committee.

(a) The Association shall have an Architectural Review Committee (the "ARC"). The Executive Board shall serve as the ARC until such time, as ever, that the Executive Board determines to create a separate ARC. In the event that the Executive Board determines to appoint a separate ARC, the ARC shall consist of between three (3) and five (5) Owners (or designees of Owners), as determined by the Executive Board, who shall be appointed by and serve at the pleasure of the Executive Board. Notwithstanding the foregoing, until such time as all Lots planned for the property described in Exhibits "A" and "B" have been improved with Residences for which a certificate of occupancy has been issued, the Declarant shall serve as the ARC.

(b) The ARC, if separate from the Executive Board or Declarant, shall select its own chairman from among its members. The chairman shall be the presiding officer at its meetings. Meetings shall be held upon call of any member of the ARC. A majority of members shall

constitute a quorum for the transaction of business. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date. The affirmative vote of a Majority of the members of the ARC shall constitute the action of the ARC. The ARC may adopt its own Rules and Regulations that shall be filed with the Association, maintained in the records of the Association, and subject to inspection and copying by all Owners and Mortgagees.

(c) Subject to budgets established by the Executive Board, the ARC is hereby authorized to retain the services of one or more consulting architects, landscape architects, structural engineers, or other professionals to advise and assist it in performing the design review functions described in this Article IX.

(d) The ARC may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Executive Board may include the compensation of such persons in the Association's annual operating budget.

### 9.3 Design Guidelines.

(a) The Executive Board may adopt and amend Design Guidelines to provide guidance to Owners and contractors regarding obtaining ARC approval. The Design Guidelines need not be the exclusive basis for ARC decisions, and compliance with the Guidelines does not guarantee approval. The Declarant shall have sole and full authority to amend the Guidelines for so long as it has review authority under Section 10.2(a) above. Thereafter, the ARC may amend the Guidelines with the Executive Board's consent from time to time by a unanimous vote of the Board, which modification may, but need not be recorded to be effective.

(b) Amendments to the Guidelines shall apply prospectively only and shall take effect fourteen (14) days after notice of their adoption is given to the Members in the manner directed by the Board. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Guidelines as amended. There shall be no limitation on the scope of amendments to the Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Guidelines less restrictive.

### 9.4 ARC Procedures.

(a) Unless the Design Guidelines provide otherwise, no improvement activities within the scope of this Article or the Guidelines may begin on any portion of the Community until a written application is submitted to and approved by the ARC. The application must be accompanied by plans and specifications and such other information as the ARC or the Guidelines require. In reviewing each application, the ARC may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

(b) The ARC shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to review so long as they are made in good faith and in accordance with required procedures. The ARC shall make a determination on each application after receipt of a completed application with all required information per this Article and the Guidelines. The ARC may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The ARC may (i) approve the application with or without conditions/requirements; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

(c) The ARC shall notify the applicant in writing of the final determination on any application no later than forty five (45) days after its receipt of a completed application and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

(d) As part of any approval, the ARC may require that work on Improvements commence within a specified time period. If work does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once commenced, approved work shall be diligently pursued to completion. All approved work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the ARC, in its discretion, grants an extension in writing. The ARC may exempt certain activities from the application and approval requirements of this Article, if such activities are undertaken in compliance with the Guidelines and the Community-Wide Standard.

9.5 Appeals Process. If and after the Declarant or the Executive Board no longer serves as the ARC, an applicant may appeal any disapproval of its application by the ARC to the Executive Board, or any terms and conditions the ARC has imposed on its approval. To request an appeal, the applicant must submit to the Executive Board, no later than fifteen (15) days after the delivery of the notification of the ARC's approval or disapproval, a copy of the original application, the notification of disapproval or approval, and a letter requesting review of the decision. The appeal request shall also describe the specific actions or terms or conditions of the ARC that are being appealed, and the grounds for such appeal. The Executive Board may (i) affirm the ARC's decision, (ii) affirm a portion and overturn a portion of the ARC's decision, (iii) impose or delete terms and conditions or (iv) overturn ARC's entire decision. The Executive Board shall notify the applicant and the ARC in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Executive Board's decision shall include a description of its reasons for its actions. During the appeal process the Owner shall not commence any work requiring approval hereunder.

9.6 No Waiver of Future Approvals. The members of the ARC will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the ARC may elect not to require

changes to objectionable features. However, the ARC may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

9.7 Variances. The ARC may authorize variances from compliance with any of the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require or justify a variance; however, the ARC is not obligated to grant a variance under any circumstances. No variance shall (a) be effective unless in writing; or (b) prevent the ARC from denying a variance in other circumstances. A variance requires the Executive Board's written consent.

9.8. Limitation of Liability. This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based purely on aesthetic considerations. Neither Declarant, the Association, the ARC nor any of their respective officers, directors, employees, members or agents shall be responsible or liable for any defects, errors or omissions in any plans or specifications submitted, revised or approved under this Article, nor for any defects, errors or omissions in construction pursuant to such plans or specifications. A consent or approval issued by the ARC means only that the ARC believes that the construction, alteration, installation or other work for which the consent or approval was requested complies with the requirements of this Article and the Design Guidelines. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby (a) complies with laws, rules, regulations, ordinances, or other requirements of any governmental or quasi-governmental authority, (b) does or does not require any permits from any governmental or quasi-governmental authority, or (c) lies within the boundaries of a Home. No consent, approval or permit issued by the ARC shall relieve Owners or other Persons of their obligations to comply with laws, rules, regulations, ordinances and other requirements of governmental or quasi-governmental authorities. The ARC is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners. In all matters, the Association shall defend and indemnify the Board, the ARC, and the members of each, as provided in the Bylaws.

9.9. Certificate of Compliance. Any Owner may request in writing that the ARC issue a certificate of compliance certifying that there are no known violations of this Article or the Design Guidelines. The ARC shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

9.10 Enforcement Provisions. If an Owner violates any term or condition set forth in this Article or the Design Guidelines, the Association shall have the following rights and remedies:

(a) The Executive Board may, by written notice to the Owner, revoke any approval previously granted to the Owner by the ARC, in which event the Owner, upon receipt of such notice, shall immediately cease any construction, alteration or modification covered by the approval so revoked.

(b) The Association and its contractors, may, but is not obligated, to enter into the Owner's Lot and cure such violation at the Owner's sole cost and expense. If the Association cures any such violation, the Owner shall pay to the Association the amount of all costs and expenses incurred by the Association in connection with therewith within thirty (30) days after the Owner receives a Default Assessment thereof from the Association.

(c) The Association may sue the Owner to enjoin such violation, in which case the Owner shall pay all costs and expenses incurred by the Association in connection with such suit, including the Association's reasonable attorneys' fees.

(d) The Association shall have all other rights and remedies available to it under this Declaration, its Rules and Regulations, or at law or in equity. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

**ARTICLE X  
USE RESTRICTIONS AND DISCLOSURES**

10.1. Residential Use. Residences shall be used only for residential, recreational, and related purposes or other purposes permitted by the City, except that the Declarant and its designees are authorized to undertake construction, marketing and sale activities within the Community, construct and maintain model homes and sales offices, and exercise any other rights related to the Declarant's Development Rights. The Community Manager may also maintain an office within the Community. No other business may be operated within the Community. "Business" shall have its generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

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The only business activity that shall be considered as related to a residential use and thus permitted under this Section is if conducted by a person or persons residing in the Home and only if the business activity:

- (a) is not apparent or detectable by sight, sound, or smell from outside of the Residence;
- (b) complies with applicable zoning requirements;

(c) does not involve regular visitation of the Residence by employees who do not reside in the Residence, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(d) does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines.

10.2. Leasing. Leasing a Residence or Lot for residential purposes shall be permitted. However, a Residence or Lot may be leased only in its entirety; separate rooms, floors, or other areas within a Residence may not be separately leased. All leases shall be in writing, shall be for a minimum initial term of not less than ninety (90) days, and shall disclose that the tenants and all occupants of the leased Residence are bound by and obligated to comply with the Governing Documents. However, the Association Documents shall apply regardless of whether such a provision is specifically set forth in the lease. Within 10 days of a lease being signed, the Owner of the leased Residence shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Association Documents. In addition to, but consistent with this subsection, the Association or the Board may adopt Rules and Regulations governing leasing and subleasing.

10.3. Notice of Transfer. Within ten (10) days of acquiring title to a Lot, either the new or old Owner, directly or through the title company handling the transaction, shall inform the Association of the name and mailing address of the new Owner. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

10.4. Rules and Regulations. The Association Documents establish a framework of covenants and conditions that govern the Community. The Board shall adopt Rules and Regulations as part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Executive Board or the Owners are authorized to change the Rules and Regulations in accordance with the following procedures, subject to the limitations set forth in Section 10.6. Such changes shall not be deemed an amendment of this Charter for purposes of the Act.

(a) Board Authority. The Executive Board may adopt Rules and Regulations and modify or rescind existing Rules and Regulations pursuant to the Association's Adoption and Amendment of Policy, Procedure and Rule and Regulations Policy. However, during the Development and Sale Period, any such action shall also require the Declarant's approval.

(b) Membership Authority. Owners representing two-thirds of the votes in the Association may also adopt new Rules and Regulations and modify or rescind existing Rules and Regulations at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule or Regulation was adopted. However, during the Development and Sale Period, any such action shall also require the Declarant's approval.

(c) Notice and Effective Date. A change to the Rules and Regulations adopted under this Section shall take effect 30 days after the date on which written notice of the change is given to the Owners, unless a different effective date is set forth in the notice.

10.5. Protection of Owners and Others. All Rules and Regulations shall comply with the following provisions.

(a) Similar Treatment. Similarly situated Lots and Residences shall be treated similarly.

(b) Displays. No Rule or Regulation shall prohibit an Owner or occupant of a Residence from displaying political, religious, or holiday symbols and decorations on his or her Lot or Residence of the kinds normally displayed in similar communities, nor regulate the content of political signs, except to the extent permitted by C.R.S. § 38-33.3-106.5. The Association may adopt Rules and Regulations containing reasonable time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside the Residences, to the extent permitted by C.R.S. § 38-33.3-106.5.

(c) Household Composition. No Rule or Regulation shall interfere with an Owner's freedom to determine household composition.

(d) Activities Within Residences. No Rule or Regulation shall interfere with the activities carried on within a Residence, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Residence, or that are an unreasonable source of annoyance.

(e) Abridging Existing Rights. No Rule or Regulation shall require the disposal of personal property kept in or on a Lot or Residence in compliance with the Rules and Regulations in effect at the time such personal property was brought onto the Lot. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the Rule or Regulation.

(f) Reasonable Rights to Develop. No Rule or Regulation may unreasonably interfere with the Declarant's ability to develop, market and sell property in the Community.

(g) Interference with Easements. No Rule or Regulation may unreasonably interfere with the exercise of any easement.

(h) Compliance with Laws. No Rule or Regulation shall violate the provisions of any applicable state, federal or local laws, including but not limited to the provisions of the Act and Senate Bill Nos. 05-100 and 06-89.

10.6. Owners' Acknowledgment and Notice to Purchasers. By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot and

any Residence constructed thereon is limited and affected by the Rules and Regulations, which may change from time to time. All Lot purchasers are hereby notified that the Association may have adopted changes to the Rules and Regulations and that such changes may not be set forth in a recorded document. A copy of the current Rules and Regulations and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

10.7. Changes in Development Plan. Each Owner acknowledges that the development of the Community is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, any protest, challenge, or other form of objection to changes in uses or density of property within the Community, without the Declarant's prior written consent.

10.8. View Impairment. Neither the Declarant nor the Association guarantee or represent that any view over and across any property within or outside of the Community will be preserved without impairment. Neither the Declarant nor the Association shall have any obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association shall have the right to add trees and other landscaping to the Common Area. There shall be no express or implied easements for view purposes or for the passage of light and air.

10.9. Lots 8 – 19 of Block 17. Future Owners of Lots 8 through 19 of Block 17 of the Fossil Ridge Subdivision are notified that the adjacent property to the South is zoned for Limited Industrial land use.

10.10 Security. Each Owner and occupant of a Residence, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security that each person provides for himself or herself and his or her property. However, the Association, the Declarant, and the officers and directors of the same shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner assumes all risks of personal injury and loss or damage to property, including Residences and the contents of Residences, resulting from acts of third parties.

10.12 Ownership of Tracts. The following pieces of property within or adjacent to the Community are owned by the Master Association or third parties that are not owned, controlled or related to the Declarant: Tracts E through O, U, V, X, Y, Z, AA, BB, CC, and HH of the Fossil Ridge Subdivision. Some or all of these tracts may be or become subject to a use and cost sharing agreement between the Master Association and the Association. In addition, as of the date of this Declaration, Tract W of the Fossil Ridge Subdivision is owned by a third party that is

not owned, controlled or related to the Declarant. No assurances are given as to whether Declarant or Association will obtain ownership or control of any of the above tracts.

10.13 Declarant's Exemption.

Nothing contained in this Declaration or in any other Association Document shall be construed to prevent:

(a) Declarant's exercise and enjoyment of any Special Declarant Right or any other rights of Declarant under this Declaration or any other Association Document or by law; or

(b) The conduct by Declarant or its employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within or adjacent to the Condominium.

**ARTICLE XI  
EASEMENTS AND RESERVATIONS**

11.1. Declarant's Easements Over Common Elements.

(a) Declarant hereby reserves for itself, its successors and assigns a general easement over, across, through and under the Common Elements to:

(i) discharge Declarant's obligations under this Declaration,

(ii) exercise any of Declarant's rights under this Declaration; and

(iii) make improvements at the Property, or any other real estate owned by Declarant.

(b) Declarant hereby reserves for itself, its successors and assigns the right to:

(i) establish from time to time access, utility and other easements, permits or licenses over, across, through and under the Common Elements; and

(ii) create other easements, reservations, exceptions and exclusions for the best interest of Declarant and other Persons, on the conditions that (A) the parties benefited by the easement, license, permit, reservation, exception or exclusion must use reasonable efforts to locate any such easement, license, permit, reservation, exception or exclusion to minimize interference with the use of the Property by the Owners to the extent practicable; and (B) if the parties benefited by the easement, license, permit, reservation, exception or exclusion construct or install any improvements on the Property pursuant to the same, the benefited parties shall promptly repair any damage caused to the Property thereby at their sole cost and expense.

11.2. Utility Easements.

(a) Subject to the terms and conditions of this Declaration and all other Association Documents, Declarant hereby creates a general easement over, across, through and under the Property for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, gas, telecommunications, electricity and cable communication that service the Property or any portion thereof as well as any such lines and systems which service property owned by the Association or Declarant. The Association may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 11.2 upon the request of any Owner showing good cause therefor.

(b) If any utility or service company furnishing utilities or services to the Property or any portion thereof or property of the Association or Declarant as permitted under Section 11.2(a) above requests a specific easement by separate recordable document, the Executive Board shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Property, without a vote of the membership.

11.3. Association's Easement.

(a) The Association shall have a general easement over, across, through and under each Lot and each Common Element to:

(i) exercise any right held by the Association under this Declaration or any other Association Document; and

(ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document.

(b) Notwithstanding the foregoing, the Association shall not enter any Residence without reasonable prior notice to the Owner thereof, except in cases of emergency.

11.4. Owners' Easements.

(a) Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Association Common Elements, plus a right and easement of ingress and egress over, across and upon the Association Common Elements, subject to the provisions of Section 3.2.

(b) Every Owner shall have an easement over, across, under and through the Association Common Area, in the location where utilities and related facilities are originally installed by Declarant, or in such other location as may be designated from time to time by the Association, for the purpose of installation, operation, maintenance, repair and replacement of underground utilities and related surface facilities necessary for the use, enjoyment, and operation of his Residence, including but not limited to water lines, sewer lines, gas lines, telephone lines,

television and cable lines, and all equipment and facilities incidental thereto, and for access, ingress necessary for such installation, operation, maintenance, repair, and replacement.

11.5. Emergency Access Easement.

Declarant hereby grants a general easement to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

11.6 Drainage Easement. An easement is hereby created and reserved across all of the Property, including all Lots, for the drainage of water from storm events, snow melt and any other causes, whether arising within or outside the Community. Drainage has been designed for the entire Community and therefore it is not unusual for water run-off from uphill Lots to drain onto downhill Lots eventually arriving at a discharge point. During storm events, water may discharge across or along drainage easements. Such discharge may cause damage to landscaping or other improvements located within the drainage easement. Each Owner, by accepting a deed to a Lot, waives and releases the Declarant, the Association, and their respective officers and directors, from any claims for property damage arising out of the flow of drainage water across their Lot.

11.7. Recorded Easements and Licenses.

The Property shall be subject to (a) all easements and licenses as shown on any recorded Plat, and (b) any other easements or licenses of record or of use as of the date of recordation of this Declaration. The recording data for all presently recorded easements and licenses appurtenant to or included in the Community have been set forth on Exhibit "C" attached hereto. In addition, the Property is subject to all easements created or permitted by this Declaration.

**ARTICLE XII  
INSURANCE**

12.1. Property Damage Insurance.

(a) The Association shall obtain and maintain in full force and effect property damage insurance on any Improvements located on any real property owned by the Association. The insurance shall be carried in an amount equal to full replacement value (i.e., one hundred percent (100%)) of the current "replacement cost" exclusive of land, foundation, excavation, depreciation on personal property and other items normally excluded from coverage), and shall include a replacement cost endorsement and an agreed amount enforcement waiving the requirement of coinsurance.

(b) To the extent possible, such insurance shall (i) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents and member; (ii) provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees, and agents; (iii) provide that the policy of insurance shall not be terminated, canceled, or substantially modified without at least thirty

(30) days' prior written notice to the Association; and (iv) provide for the standard mortgagee's clause in favor of all First Mortgagees.

(c) Such insurance may contain such deductible provisions as the Executive Board deems consistent with good business practices. Any loss falling within the deductible portion of a policy shall be paid by the Association and become a Common Expense, but may be recovered from a particular Owner(s) pursuant to Section 6.6(a) if so determined by the Board.

12.2. Liability Insurance. The Association shall obtain and maintain in full force and effect commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements in such amounts as the Executive Board may from time to time determine to be appropriate, but not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Executive Board, the Association, any managing agent, and their respective employees, agents and all Persons acting as agents. Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Executive Board. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one (1) or more insured parties against other insured parties. The liability insurance shall be in place even if there are no Association Common Elements.

12.3. Fidelity Insurance. The Association shall obtain and maintain in full force and effect a policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than three (3) months' aggregate General Assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required above and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required above. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this Section 12.3.

12.4 Worker's Compensation Insurance. The Association may obtain and maintain workman's compensation insurance and employer's liability insurance as may be necessary to comply with applicable laws.

12.5. Other Insurance. In addition to the foregoing, the Association may obtain insurance against such other risks of a similar or dissimilar nature as the Executive Board shall deem appropriate from time to time, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the

Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

12.6. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Mortgagee's clause in favor of each Mortgagee and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to the insured and each Mortgagee, insurer or guarantor of a Mortgage. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Mortgagees, upon request.

12.7 Deductibles. The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment.

12.8. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or any Owner from collecting insurance proceeds.

12.9. Insurance to be Maintained by Owners. Owners shall be solely responsible for obtaining any desired insurance on their Lot, Residence and the contents thereof. Each Owner shall also be solely responsible for obtaining any liability insurance desired by such Owner.

12.10. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making this determination, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance.

12.11. Notice of Cancellation. If the insurance described in this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

12.12. Costs of Association Insurance. The cost of any insurance obtained by the Association pursuant to this Article shall be considered a Common Expense.

### **ARTICLE XIII CONDEMNATION**

13.1. Condemnation of Common Elements. If any Common Element is taken by condemnation or similar proceeding any condemnation award payable in connection therewith shall be paid to the Association and used by the Association first to repair any damage to Common Elements resulting from the condemnation or similar taking, and second, for any other Common Expenses.

### **ARTICLE XIV RIGHTS RESERVED BY DECLARANT**

14.1. Special Declarant Rights. Declarant hereby reserves for itself, its successors and assigns, the right to perform from time to time the acts and exercise the following Special Declarant Rights during the Development and Sale Period:

- (a) to exercise any of the Development Rights described in Section 14.2 below;
- (b) to construct and complete any improvements shown on the Plat and homes within the Community;
- (c) to maintain sale offices, management offices, signs advertising the Community, and models, including lighting and flag poles;
- (d) to use easements through the Common Elements for the purpose of making improvements with the Community or within real estate which may be added to the Community;
- (e) to merge or consolidate the Community with another common interest community of the same form;
- (f) to appoint or remove any officer of the Association or any member of the Executive Board, with or without cause, during the Declarant Control Period as set forth in the Bylaws; and
- (g) the right to amend the Plat in connection with the exercise of Development Rights.

14.2 Development Rights. Declarant hereby reserves for itself, its successors and assigns, the right to perform and exercise, from time to time, the following Development Rights during the Development and Sale Period:

(a) to add to the Community and subject to the provisions of this Declaration, any or all of the Annexable Property described on Exhibit B attached hereto;

(b) to add to the Community and subject to the provisions of this Declaration, any additional real estate pursuant to Section 38-22.2-22 of the Act;

(c) to relocate and adjust boundaries between adjoining Lots that are owned by Declarant, including the right to increase or decrease the size of Lots, subdivide Lots, convert Lots into Common Elements, convert Association Common Elements into Lots, convert Association Common Elements into limited common elements, or convert limited common elements into general common elements;

(d) to withdraw real estate owned by the Declarant from the Community;

(e) to enter into cost sharing agreements with the Master Association or other entity relating to expenses and use of property of common interest;

(f) to execute and record amendments or supplements to the Declaration and Plat in connection with the exercise of any Development Rights; and

(g) to exercise all other rights reserved to Declarant under this Declaration.

In exercising any Development Right, Declarant shall execute and record an amendment to this Declaration in accordance with the requirements of the Act. In such amendment, the Declarant may include new or different covenants and conditions applicable only to such property.

14.3. Exercising Development Rights. Declarant may exercise its Development Rights at any time prior to the date that is twenty (20) years after the date on which this Declaration is recorded in the County Records. Declarant may exercise its Development Rights in any order, and no assurance is given as to the order in which Declarant will exercise its Development Rights. If Declarant exercises any Development Rights with respect to any portion of the Property, Declarant may, but is not obligated to, exercise that Development Right with respect to any other portion of the Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Development Right without the consent of the Association or any of the Owners.

14.4. No Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rule or Regulation that interferes with or diminishes any Special Declarant Right or Development Right, without Declarant's prior written consent. Any action taken in violation of this Section 14.4 shall be null and void and have no force or effect.

14.5. Rights Transferable. Declarant may transfer any Development Right or Special Declarant Right reserved to it under this Article or under any other provision of this Declaration in accordance with the terms and conditions of the Act.

## **ARTICLE XV MORTGAGEE PROTECTIONS**

15.1. Benefit of Mortgagees. This Article establishes certain standards and covenants, which are for the benefit of Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

15.2. Notice of Actions. If requested in writing to do so, the Association shall give prompt written notice of the following to each First Mortgagee making such request:

(a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Lot in which an interest is held by the First Mortgagee;

(b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by an Owner whose Lot is encumbered by a First Mortgage held by such First Mortgagee;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of First Mortgagees as set forth in this Article, and

(e) any judgment rendered against the Association.

15.3. Consent Required. Notwithstanding anything to the contrary contained in this Declaration, the Association may not take any of the following actions without the consent of sixty-seven percent (67%) of the First Mortgagees (based on one vote for each Lot covered by a First Mortgage):

(a) by act or omission seek to abandon or terminate the Community, except after condemnation or substantial casualty;

(b) except as otherwise expressly provided herein for in this Declaration, change the interests in Common Elements, allocation of Common Expense, or votes in the Association of any Lot;

(c) subdivide, partition, or relocate the boundaries of any Lot, except as permitted with respect to Development Rights;

(d) abandon, subdivide, partition, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other purposes provided for in this Declaration shall not be deemed transfers);

(e) use hazard insurance proceeds for losses to any portion of the Common Elements for other than repair, replacement, or reconstruction of such Common Elements, except as provided by the Act; or

(f) merge the Community with any other common interest community, except as permitted with respect to Special Declarant Rights.

15.4. Notice of Objection. Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within sixty (60) days following the receipt of notice of such proposed amendment or action, delivered and published in accordance with the Act, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

15.5. First Mortgagee's Rights.

(a) First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, for the Common Elements. First Mortgagees making such payment shall be owed immediate reimbursement from the Association.

(b) A First Mortgagee shall be entitled to cure any delinquency of the Owner of a Lot encumbered by its First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

15.6. Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

(a) deny, or delegate control over the general administrative affairs of the Association by the Owners or the Executive Board;

(b) prevent the Association or the Executive Board from commencing, intervening and/or settling any legal proceeding, or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of the Article XIII above.

15.7. Declarant Rights. No provision or requirement of this Article XV shall apply to any Development Right, Special Declarant Rights, or other rights reserved to Declarant in this Declaration.

**ARTICLE XVI  
ENFORCEMENT AND REMEDIES**

16.1. Enforcement. Each provision of this Declaration shall be enforceable by Declarant or by any Owner per the Association's Dispute Resolution Policy, as the same may be amended from time to time

16.2. Attorneys' Fees. In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

16.3. Interest. If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of eighteen percent (18%) per annum, or such other rate as the Executive Board may establish from time to time, from the due date of such unpaid amount until the date paid.

16.4. Right to Notice and Hearing. Whenever this Declaration requires that an action be taken only after "notice and hearing," or other similar phrase, notice shall be given and a hearing held in accordance with the notice and hearing provisions set forth in the Bylaws, as the same may be amended from time to time.

16.5. Nonwaiver. Failure by Declarant, the Association, or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or any other Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

**ARTICLE XVII  
TERM AND AMENDMENTS**

17.1. Term. The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until the Declaration is terminated pursuant to Section 17.2 below.

17.2. Termination. Subject to the rights of Mortgagees under Article XV above, the Owners may terminate the Community and this Declaration, by the vote of 80% of the votes in the Association. If the necessary votes are obtained, the agreement of the Owners to terminate the Community and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the Act. Upon recordation of the termination agreement in the County Records, the Community shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved. Notwithstanding the foregoing, the Owners may not terminate the Community during

the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

17.3. Amendments.

(a) Except for provisions of this Declaration regarding the rights and obligations of Declarant, which may not be amended without Declarant's prior written consent, and subject to the rights of Mortgagees under Article XV, above, Owners may amend any provision of this Declaration at any time by a vote of at least sixty-seven percent (67%) of the votes in the Association. If the necessary votes and consent are obtained, the Association shall cause an amendment to the Declaration to be recorded in the County Records. Notwithstanding the foregoing, the Owners may not amend this Declaration during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

(b) Notwithstanding the terms and conditions of Section 17.3(a) above, Declarant may amend this Declaration, without approval of the Owners:

(i) to correct clerical, typographical, technical or other errors; and

(ii) to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, Fannie Mae, Freddie Mac or similar federal mortgage institutions.

(c) as is expressly permitted elsewhere in this Declaration.

**ARTICLE XVIII  
MISCELLANEOUS**

18.1. Interpretation of the Declaration. Except for judicial construction, the Association, by its Executive Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions hereof.

18.2. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

18.3. Disclaimer of Representations. Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Community can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subject to

this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, that such use will continue in effect.

18.4. Reference to Declaration and Deeds. Deeds to and instruments affecting any Lot or any other part of the Community may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

18.5. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

18.6. Captions and Titles. All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

18.7. Exhibits. The following exhibits attached to this Declaration are a part of, and are incorporated into this Declaration:

- Exhibit A - Legal Description of the Property
- Exhibit B - Legal Description of Possible Future Property
- Exhibit C - Easements and Licenses

18.8. Governing Law. This Declaration shall be governed by and construed in accordance with Colorado law, exclusive of its choice of law provisions.

18.9. Notices. All Owners of each Lot shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Lot shall furnish such registered address to the secretary of the Association within ten (10) days after transfer of title to the Lot to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Lot or by such persons as are authorized to represent the interests of all Owners of the Lot. If no address is registered or if all of the Owners cannot agree, then the address of the Lot shall be deemed their registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Lot.

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

PREO (BELMONT RIDGE), LLC, a Colorado limited liability company

By: [Signature]  
~~AUTHORIZED SIGNATORY~~ Manager

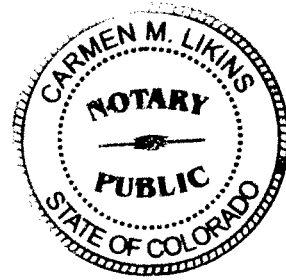
STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of Sept, 2010, by Joe Wilson as Manager of PREO (Belmont Ridge), LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:

[Signature]  
Notary Public



THE BELMONT RIDGE HOMEOWNERS  
ASSOCIATION

By: Jodi Thurman  
HOA BOARD, President

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of SEPT., ~~2009~~<sup>2010</sup>,  
by Jodi Thurman as President of THE BELMONT RIDGE HOMEOWNERS  
ASSOCIATION, a Colorado nonprofit corporation.

WITNESS my hand and official seal.

My commission expires:

Carmen M. Likins  
Notary Public

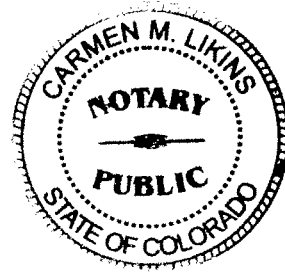




EXHIBIT "A"

LEGAL DESCRIPTION OF THE INITIAL PROPERTY

Lot 24 and 25 of Block 15 (addresses 4612 Pompano Drive and 4614 Pompano Drive) and  
Lots 18, 17, 16, 15 of Block 17 (addresses 7403, 7405, 7407 and 7409 Pimlico Drive)

In the Fossil Ridge Subdivision, Town of Windsor, County of Larimer, State of Colorado, as set  
forth in the Plat of Fossil Ridge Subdivision recorded November 22, 2004 under Reception No.  
2004-0111862.

EXHIBIT "B"

LEGAL DESCRIPTION OF ANNEXABLE PROPERTY

Any property located within or subject to the the Fossil Ridge Subdivision, Town of Windsor, County of Larimer, State of Colorado, as set forth in the Plat of Fossil Ridge Subdivision recorded November 22, 2004 under Reception No. 2004-0111862, as currently existing or hereafter amended, that is intended for residential use and is not included in Exhibit "A".

EXHIBIT "C"

EXISTING EASEMENTS AND LICENSES

Right of Way Easement as granted in instrument recorded October 18, 2000, under Reception No. 2000071615.

Right of Way Easement as granted to South Fort Collins Sanitation District in instrument recorded September 27, 2001, under Reception No. 2001086869.

Terms, conditions and provisions of Easement and Right of Way Agreement recorded September 27, 2001 under Reception No. 2001086873.

Terms, conditions and provisions of Surface Use Agreement recorded May 26, 2004 under Reception No. 20040050318.

Easements, conditions and notes as shown on the plat of Fossil Ridge Subdivision recorded November 22, 2004 under Reception No. 20040111862.

Right of Way easement to Poudre Valley Electric Association recorded December 28, 2006 under Reception No. 20060098119. Location of said easement is not defined.

Note to clerk and title examiners:

**This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing an amendment in accordance with Article XIV.**