



2643368

Page: 1 of 48
11/17/2004 03:29P
D 0.00

Boulder County Clerk, CO AMD PRO CVNT R 241.00

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE PINNACLE AT UTE CREEK HOMEOWNERS ASSOCIATION**

NOVEMBER 16, 2004

ROB



**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE PINNACLE AT UTE CREEK HOMEOWNERS ASSOCIATION**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Pinnacle at Ute Creek Homeowners Association (this "Declaration") is made on the date hereinafter set forth by Sonoma & Pinnacle, LLC, a Colorado limited liability company, whose address is 8101 E. Prentice Ave., Suite 815, Greenwood Village, CO 80111 (the "Declarant").

RECITALS:

A. Declarant is the owner of certain real estate in the City of Longmont, County of Boulder, State of Colorado, which is more particularly described as set forth in **Exhibits A and B** attached hereto and by reference made a part hereof.

B. Declarant created a residential community on the real estate described in **Exhibits A and B** under the name of "The Pinnacle at Ute Creek," by virtue of that certain Declaration of Covenants, Conditions and Restrictions of The Pinnacle at Ute Creek Homeowners Association dated April 18, 2003 and recorded on September 9, 2003 at Reception No. 2500059 in the records of the Clerk and Recorder of the County of Boulder, State of Colorado (the "Original Declaration"). The Original Declaration designated portions of the real estate described in **Exhibits A and B** for separate ownership and uses of a residential nature as well as portions designated for co-ownership by the Owners.

C. Declarant has caused "The Pinnacle at Ute Creek Homeowners Association, Inc.," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as an owners' association, for the purpose of exercising the functions as herein set forth.

ARTICLE I

SUBMISSION/DEFINED TERMS

Section 1.1 **Amendment and Restatement of Original Declaration.** Declarant hereby submits this Declaration as a replacement of the Original Declaration in its entirety. Upon the recordation of this Declaration in the records of the Clerk and Recorder of the County of Boulder, State of Colorado, the Original Declaration shall have no further force or effect.

Section 1.2 **Submission of Real Estate.** The Declarant hereby submits the real estate described in **Exhibit A**, and such additional real estate as may be subsequently added or supplemented, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "Real Estate"), to the provisions of the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, *et seq.*, as it may be amended from time to time (the "Act") and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Real Estate described in **Exhibit A**, and as added by expansion or supplementation, shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of



protecting the value and desirability of the Real Estate, that this Declaration shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof.

Declarant may annex to this Declaration, as a Development Right in accordance with the provisions of the Act, additional property within the lands described on **Exhibit B**, attached hereto and incorporated herein by this reference until that date which is seven (7) years after the date of the recording of this Declaration. Contemporaneously with the annexation of Outlots A and B (as more specifically described on **Exhibit B**) into this Declaration, Declarant shall provide a quitclaim deed conveying Outlots A and B to the Association. The Association is hereby obligated to accept such deed and such real estate for ownership by the Association as Common Elements.

Declarant may record Supplements to this Declaration and the Map, as a Development Right in accordance with the provisions of the Act, to create not more than two (2) Duplex Lots upon any of the Single Family Lots until that date which is seven (7) years after the date of the recording of this Declaration.

Section 1.3 **Defined Terms.** Each capitalized term in this Declaration or in the Plat shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration:

- (a) Act means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, *et seq.*, as it may be amended from time to time.
- (b) Allocated Interest means the ownership interest, Common Expense liability and votes in the Association allocated to each Unit.
- (c) Architectural Review Committee or Committee means the committee appointed by the Declarant or by the Association to review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.
- (d) Assessment or Common Expense Assessment shall include all common expense assessments, insurance assessments, utility assessments, and any other expense levied upon a Unit pursuant to this Declaration or the Act.
- (e) Association means The Pinnacle at Ute Creek Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors.
- (f) Common Elements means the Real Estate within this Community other than the Units, which portion of the Real Estate shall be owned by the Association and shall be as designated in a recorded Map and in this Declaration.
- (g) Common Expense shall mean any expenditure made a liability received by or on behalf of the Association, together with any allocations to reserves.
- (h) Community shall mean and refer to the planned community of The Pinnacle at



Ute Creek, which Community is a planned community as defined in the Act and which Community is also a Common Interest Community as defined in the Act.

- (i) Declarant means the Declarant named in this Declaration, and any successor and/or assignee designated by written notice or assignment executed by the Declarant designated in this Declaration and executed by the transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.
- (j) Development or Special Declarant Rights means those rights set forth in this Declaration and those rights set forth in the Act.
- (k) Duplex Lot means a physical portion of the Community, designated for separate ownership, shown as a Unit on a Supplement to this Declaration and/or the Map, the boundaries of which are defined in the Supplement and in this Declaration. A Duplex lot shall be made up of approximately one-half of a Single Family Lot. Where the context indicates or requires, the meaning herein shall include any residence, building, structure or other improvements situated on the Duplex Lot.
- (l) Eligible Holder means a holder, insurer or guarantor of a first lien Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a Security Interest.
- (m) Executive Board, Board or Board of Directors means the body, regardless of name, designated in this Declaration to act on behalf of the Association.
- (n) Governing Documents means this Declaration, the plat and map, the Articles of Incorporation, the Bylaws, and any rules and regulations of the Association, as all of the foregoing may be amended from time to time.
- (o) Improvement(s) means structures installed within or upon a Unit.
- (p) Map means the Condominium Map or Condominium Plat recorded in connection with the Community, as the same may be amended or supplemented from time to time.
- (q) Plat means the Subdivision Final Plat recorded in connection with the Community, as the same may be amended or supplemented from time to time.
- (r) Real Estate means the property described in **Exhibit A**, and such additional property described in **Exhibit B** as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the improvements erected or to be erected thereon. All easements and licenses which the Community is subject to as of the date of this Declaration are recited in **Exhibit C**.



- (s) Security Interest means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.
- (t) Single Family Lot means a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration. Where the context indicates or requires, the meaning herein shall include any residence, building, structure or other improvements situated on the Single Family Lot.
- (u) Supplement means a supplement to this Declaration and the Map whereby, once recorded, a Single Family Lot is converted into two (2) Duplex Lots.
- (v) Unit means a Single Family Lot or a Duplex Lot.
- (w) Unit Owner, Single Family Lot Owner, Duplex Lot Owner or Owner means the Declarant, or any other person or entity that owns a Unit, Single Family Lot, or Duplex Lot, respectively.

ARTICLE 2

NAMES/DESCRIPTION OF REAL ESTATE; EASEMENTS

Section 2.1 **Name and Type.** The type of Common Interest Community is a planned community. The name of the Community is "The Pinnacle at Ute Creek." The name of the Association is the "The Pinnacle at Ute Creek Homeowners Association, Inc."

Section 2.2 **Real Estate.** The Community is located in the City of Longmont, County of Boulder, State of Colorado. The initial Real Estate of the Community is described in **Exhibit A**. All easements and licenses to which the Community is presently subject are recited in **Exhibit C**. Additional easements are established in the Act. The Community may be subject to other easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established in the Act.

Section 2.3 **Utility, Map and Plat Easements.** Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat, on the recorded Map of the Community, on recorded Supplements, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.4 **Utility Easements.** There is hereby created a blanket easement upon, across, over, in and under the Real Estate for the benefit of the Common Elements and the Units and the structures and improvements situated on the Real Estate for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable TV and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the



roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Real Estate, subject to approval by the Association as to locations.

Section 2.5 **Easement for Maintenance.** Each Owner and the Association shall have the irrevocable right, to be exercised by the Executive Board or officers or employees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance of inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds under Article 9 are payable to a Unit Owner but the maintenance responsibility of the area to which such proceeds relate is the Association, the Association shall complete any such repair or replacement at the Unit Owner's cost.

Section 2.6 **Easements for Encroachments.** In the event that, as a result of the construction, reconstruction, shifting, settlement, restoration, rehabilitation, alteration or improvement of any structure located on a Duplex Lot or any portion thereof, any portion of any Duplex Lot now or hereafter encroaches upon any other Duplex Lot, Declarant hereby establishes and grants an easement for the continued existence and maintenance of such encroachment which will continue for so long as such encroachment exists and which will burden the Duplex Lot encroached upon and benefit the encroaching Duplex Lot. In no event, however, will an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Duplex Lot burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of, or with the knowledge and consent of, the Duplex Lot Owner claiming the benefit of such easement except for the following: (i) any encroachment of a driveway serving a Duplex Lot onto the adjacent Duplex Lot, to the extent and in the location such driveway was originally constructed by the Declarant or the developer of the Community; (ii) minor encroachments of structures built upon Duplex Lots and/or the boundary wall separating the Duplex Lots onto the adjacent Duplex Lot, to the extent and in the location such structures built upon Duplex Lots and/or the party wall separating the Duplex Lots was originally constructed by the Declarant or the developer of the Community; and (iii) any encroachment of the boundary wall, fencing, signage, landscaping onto an adjacent Unit, to the extent and in the location of such encroachment as of the date this Declaration or any Supplement is recorded.

Section 2.7 **Emergency Easements.** A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.8 **Ute Creek Golf Course.** Each Unit Owner acknowledges the fact that the property which comprises the Community is located near the Ute Creek Golf Course. The proximity to the Golf Course is a beneficial and desirable amenity for the Community. However, as a result of the proximity to the Ute Creek Golf Course, errant or misdirected golf balls will, from time to time, enter into or land upon the property of the Unit Owner. Such errant or misdirected golf balls may cause physical injury or damage to the person or property of Unit Owner and others including, but not limited to windows, roof shingles, walls, landscaping and other items, as well as possible damage to Common Elements.



By purchasing a Unit within the Community, Unit Owner shall be deemed to assume all risk of personal property damage or personal injury from such errant or misdirected golf balls, and neither Declarant nor Association shall have any responsibility or liability with respect to any such damage or injury. Nothing within this provision shall be deemed or construed to relieve the party responsible for hitting the errant or misdirected golf ball from liability or responsibility for any resulting damage or injury.

ARTICLE 3

THE ASSOCIATION

Section 3.1 **Membership.** Every person who is a record Unit Owner of a fee interest in any Unit which is subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such membership. Where more than one person holds an interest in any Unit, all such persons shall be members.

Section 3.2 **General Purposes and Powers of the Association.** The Association, through its Executive Board, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Units and to further the interests of the residents, occupants, tenants and guests of the Community and members of the Association. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 **Authority of the Association.** The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Map, the Plat, its Articles of Incorporation and Bylaws, and any rules and regulations adopted by the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

Section 3.4 **Specific Powers.** The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the power to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more other Owners on matters affecting the Community, provided however, that the Association may not institute any such proceeding against any party alleging a defect in the design, workmanship, construction, drainage or other alleged defect relating to the Common Elements except in accordance with Article 13 hereof. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Unit Owners present at a meeting called for that purpose.

Section 3.5 **Allocated Interests.** The ownership interest, Common Expense liability and votes in the Association allocated to each Unit are set as follows:

- (a) the percentage of ownership of the Common Elements, equally;



- (b) the percentage of liability for Common Expenses, equally;
- (c) the number of votes in the Association, equally.

The Allocated Interest of each Unit at any time shall be equal to a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units within the Community. The Allocated Interest of each Unit which is subject to decrease with the annexation of additional property pursuant to expansion rights reserved in this Declaration.

Section 3.6 **Association Agreements.** Any agreement for professional management of the Community or any contract providing for services of the Declarant may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than thirty (30) days' notice to the other party thereto.

Section 3.7 **Right to Notice and Comment.** Pursuant to C.R.S. 38-33.3-205(l)(o), whenever the Governing Documents require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Unit Owner may give "Notice and Comment" to the Unit Owners of any matter affecting the Community, and Unit Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Unit Owner in writing, delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or notice shall be published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than three (3) days before proposed action is to be taken. The Notice shall invite comment (orally or in writing) to the Executive Board or a Unit Owner before the scheduled time of any meeting.

Section 3.8 **Indemnification.** To the full extent permitted by law, each officer and director of the Association shall be and are hereby indemnified by the Unit Owners and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred; except in such cases wherein such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of their duties; provided that in the event of a settlement the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Association.

Section 3.9 **Declarant Control.** The Declarant shall have the reserved power, pursuant to Section 303(5) of the Act, to appoint and remove officers and members of the Executive Board.



ARTICLE 4

UNITS AND COMMON ELEMENTS

Section 4.1 **Number of Units.** The maximum number of Units which may be subject to this Declaration is seventy one (71), including those Units which may be included if all of the property that is subject to the expansion and/or Supplement rights set forth in this Declaration is annexed or supplemented. Declarant reserves the right to create and add additional Units up to the maximum number of Units for the property subject to this Declaration as allowed by any governmental entity having jurisdiction. However, the aforesaid number of Units is not a representation or a guarantee as to the actual number of Units that will ultimately be included in or constructed as a part of the Community. Without limiting the foregoing, Declarant may create two (2) Duplex Lots on any one of the Single Family Lots depicted on the Plat by recording a Supplement.

Section 4.2 **Identification of Units/Unit Descriptions.** The identification of each Unit is shown on the Map. Every contract for sale, deed, lease, Security Interest, will or other legal instrument shall legally describe a Unit by its identifying Unit number, followed by the name of the Community, with reference to the Map and the Declaration. An illustrative description is as follows:

Lot _____ of the Pinnacle at Ute Creek community in accordance with the Condominium Plat thereof, recorded on _____, at Reception No. _____ in the records of the office of the Clerk and Recorder of the County of Boulder, State of Colorado, and as further described and defined within the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Pinnacle at Ute Creek Homeowners Association, recorded on _____, at Reception No. _____ in the records of the office of the Clerk and Recorder of the County of Boulder, State of Colorado.

Reference to the Declaration and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Map, without specific references thereto.

Section 4.3 **Unit Boundaries.** The designated boundaries of each Unit are depicted as follows:

- (a) **Single Family Lot.** The vertical planes indicated by boundary lines as shown on the Map.
- (b) **Duplex Lot.** The vertical planes indicated by boundary lines as shown on the Supplement.

Section 4.4 **Unit Owner Maintenance.** Unit Owners shall be responsible for the following:

- (a) the maintenance, repair and replacement of the Improvements and properties located within their Unit boundaries which is not specifically the obligation of



- the Association to maintain, replace and keep in good repair;
- (b) the maintenance, watering and replacement of flowers planted by Unit Owners as permitted under this Declaration if approved in accordance with Section 6.17;
 - (c) the maintenance, repair and replacement of garage door openers and mechanical devices; and
 - (d) the maintenance, repair and replacement of skylights and glass and glazing components of windows, doors and garage doors.

Section 4.5 **Association Maintenance.** The Association shall be responsible for the following:

- (a) the improvement, maintenance, repair, upkeep and reconstruction, replacement and operation of the Common Elements;
- (b) the improvement, maintenance, repair, upkeep and reconstruction, replacement and operation of monument signs (if any), fences and landscaping situated upon the Common Elements and installed by Declarant or the Association;
- (c) the improvement, maintenance, repair, upkeep and reconstruction, replacement and operation of the storm drainage and underdrain systems, including but not limited to those obligations of the developer with regard to water quality measures and storm sewers constructed as part of the Community, unless an agreement with a governmental authority provides otherwise;
- (d) the payment of expenses which may be incurred by virtue of maintenance, repair or replacement as set forth on the Plat and final development plan, agreement with or requirement of any local governmental authority, the City of Longmont and/or the County of Boulder or other government authorities;
- (e) the operational expenses of the Association;
- (f) those obligations of the Declarant as set forth in that certain Storm Channel Maintenance Agreement attached hereto as **Exhibit D**;
- (g) the maintenance, watering and replacement of all landscaping, including the maintenance of irrigation systems, equipment and time clocks, lawns, trees, shrubs, bushes, flowers and other flora, edging, retaining walls and fencing on each Unit, excluding flowers planted by Unit Owners which shall be maintained by Unit Owners pursuant to Section 4.4(b);
- (h) the maintenance, repair and replacement of exterior siding, masonry, soffits, fascia and similar exterior components of the primary residential structure on each Unit;
- (i) the maintenance and repair of exterior surfaces of garage doors, windows and



exterior doors on each Unit, but specifically excluding glass surfaces and skylights and the related glazing;

- (j) the maintenance, repair and replacement of roofs, gutters and downspouts on each Unit;
- (k) the maintenance, repair and replacement of mailboxes;
- (l) the maintenance, repair and replacement of exterior lighting;
- (m) snow removal from driveways, front walkways and front porches on each Unit; and
- (n) the maintenance, repair and replacement of driveways, walkways, patios and other exterior concrete flatwork and paved surfaces, but excluding garage floors.

Unit Owners shall be responsible for reporting to the Association or its designated agent any observed need for maintenance.

Section 4.6 **Common Elements.** The Common Elements are depicted and shown upon the Plat. The Declarant reserves, for itself, for seven (7) years after the recording of this Declaration, the right to allocate areas as Common Elements. The Declarant or the Association may allocate or assign Common Elements (i) in a recorded instrument, (ii) by recording an appropriate amendment or supplement to this Declaration, or (iii) by recording a supplement to the Plat. Such allocations by the Declarant may be made as a matter of reserved right by the Declarant or the Association.

Section 4.7 **Unit Owners' Easements of Enjoyment.** Every Unit Owner shall have a right and easement access to, and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- (a) the right of the Association to promulgate and publish rules and regulations with which each Unit Owner and their tenants, invitees, licensees and guests shall strictly comply;
- (b) the right of the Association to suspend the voting rights and rights to use the Common Elements by a Unit Owner for any period during which any Assessment against their Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act;
- (d) the right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common



Elements;

- (e) the right of the Association to maintain, replace and repair the underdrain system, Unit landscaping and related sprinkler systems; and
- (f) the Development and Special Declarant Rights of the Declarant reserved in this Declaration.

Section 4.8 **Delegation of Use.** Any Unit Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Unit.

ARTICLE 5

COMMON EXPENSE ASSESSMENTS

Section 5.1 **Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.** Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, Unit maintenance assessments; insurance assessments (assessed in proportion to risk); utility assessments (assessed in proportion to usage or some other means established by the Association), and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Unit at the time when the assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such assessment or charge is made. If any assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 5.2 **Apportionment of Common Expenses.** Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance with the formula for liability for the Common Expenses as set forth in this Declaration. Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided equally among the Units.

Section 5.3 **Annual Assessment/Commencement of Common Expense Assessments.** The Common Expense Assessment may be made on an annual basis against all



Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The initial Common Expense Assessment for the Association shall commence in January 2005. For subsequent years, the budget shall be submitted to the Unit Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by votes of Owners representing a majority of the votes in the Association. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 5.4 **Effect of Non-Payment of Assessments.** Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Executive Board, shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or such lesser rate as may be established by the Executive Board, and the Association may assess a late charge thereon in the amount of \$25.00 per month, or such greater or lesser amount as is set forth by the Association from time to time. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any assessment lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.5 **Lien Priority.** The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association



under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Unit shall not affect the lien for said assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 5.6 **Working Fund.** The Association or Declarant may require the first Unit Owner of each Unit (other than Declarant) to make a non-refundable payment to the Association in an amount equal to one-sixth (1/6) of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the initial sale by Declarant of each Unit, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve a Unit Owner from making regular payments of assessments as the same become due.

Section 5.7 **Owner's Negligence or Misconduct.** In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, tenants, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner, and if not repaid to the Association within seven (7) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Section 5.7, such expenses, costs, and fees shall automatically become a default assessment determined and levied against such Unit, and the Association may proceed in accordance with the applicable provisions of Article 5 hereof.

ARTICLE 6

RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

All Real Estate within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Executive Board or by an appropriate committee (subject to review by the Executive Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

Section 6.1 **Use/Occupancy.** No Unit within the Community shall be used for any purpose other than as allowed by the local zoning codes. Units shall not be used for any purpose other than a residential dwelling. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Community as a first class residential



community, as reasonably determined by the Executive Board of the Association, are prohibited, unless approved by the Declarant or the Association, and allowed pursuant to restrictions of record and by local zoning ordinances and regulations.

Section 6.2 **Leasing and Occupancy.** Any Unit Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Unit Owner may deem advisable, subject to restrictions of record and the terms of this Declaration. Any lease or rental agreement (with a term exceeding thirty (30) days) shall be in writing, a copy of which shall be delivered to the Executive Board or the Association's managing agent prior to the effective date of the lease, and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the rules and regulations of the Association. All leases and rental agreements of Units shall state that the failure of the tenant, renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the rules and regulations of the Association shall constitute a default of the lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them. All occupants of a Unit shall be subject to the right of the Association to remove and/or evict the occupant for failure of the occupant to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation or the rules and regulations of the Association.

Except as restricted in this Declaration, and such rules and regulations as the Association may promulgate, the right to lease or allow occupancy of a Unit shall not be restricted.

Section 6.3 **Units to be Maintained.** Unit Owners are responsible for the maintenance, repair and replacement of the properties located within their Unit boundaries unless such responsibilities are otherwise allocated to the Association pursuant to this Declaration. Each Unit at all times shall be kept in a clean, sightly, and wholesome condition. No bicycles, kayaks, sport or recreational equipment, trash, litter, junk boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon or within any Unit so that the same are visible from any neighboring Unit, the Ute Creek Golf Course or any street. The Association and its agents shall have the authority to enter, replace, maintain, repair and clean up Units which do not conform to the provisions of this Section and to charge and collect from the Unit Owners thereof all reasonable costs related thereto as an Assessment hereunder.

Section 6.4 **Restrictions on Animals and Pets.** The Association shall have the right to place any limit upon the number and type of animals or pets which a Unit Owner may keep within the Community as well as any other regulation with respect to animals or pets within the Community. Animals may not be kept for any commercial purposes. Unit Owners shall hold the Association harmless from any claim resulting from any action of their animals. The Association shall also have the right to establish specified dog run areas on the Units, as well as rules, regulations and limitations on the location, character, use, size and any other aspect of such dog run area.

Section 6.5 **Antennae.** Subject to federal statutes or regulations governing residential communities, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or



maintained on the Common Elements of the Community. Any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type erected, installed or maintained by an Owner shall be subject to the prior written approval of the Executive Board of the Association, reasonable and valid safety restrictions, and reasonable restrictions as to screening of the device from view by neighboring Units. All costs associated with the installation or maintenance of any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type by an Owner, including costs of repair, replacement, improvement and maintenance of the structure to which such exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type is affixed, erected and/or installed upon, shall be the sole responsibility of that Owner.

Section 6.6 **Nuisances.** No nuisance shall be permitted within the Community, nor shall any use, excessive noise, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Community by Unit Owners be permitted within the Community or any portion thereof. Further, no unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed. As used herein, the term nuisance shall not include any activities of Declarant or its assignees which are reasonably necessary to the development and construction of Improvements within this Community; provided, however, that such activities shall not unreasonably interfere with any Unit Owner's use and enjoyment of their Unit, or any Unit Owner's ingress and egress to or from their Unit and a public way.

Section 6.7 **Vehicular Parking, Storage, and Repairs.**

- (a) The following vehicles may not be parked or stored within the Community, unless such parking or storage is within a garage of a Unit, or unless authorized in writing by the Executive Board of the Association: oversized vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience (for up to four (4) hours) for loading, delivery of goods or services, or emergency. Overnight parking of these vehicles is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of the Common Elements, Units, or any Improvement located thereon.
- (b) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Unit or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes or municipal ordinances governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Executive Board of the Association. In the event that the Association shall determine that



a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Unit Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within seventy two (72) hours after providing such notice, the Association shall have the right to remove the vehicle and the owner thereof shall be solely responsible for all towing and storage charges.

- (c) No automobile shall be parked on a Unit or within the Community in a manner which would restrict or impair the vehicular or pedestrian access to any other Unit.
- (d) The Association shall be able to determine reasonable restrictions on the number of vehicles that may be parked on a permanent or long-term basis within the Community and upon the Units.
- (e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat may be performed or conducted outside of the garages.
- (f) Garages, carports, and designated parking spaces are restricted to use for access or as a parking space for vehicles.
- (g) The conversion or alteration of garages into living areas, storage areas, workshop areas, or any other modification or alteration of the garages, which would hinder, preclude or prevent the parking of the number of vehicles for which the garage was originally designed, is prohibited.
- (h) Each Owner shall keep any garage door of their Unit closed as frequently as possible, such that the visual effects of open garage doors are avoided and the contents therein are concealed from view from other Units and the streets, all for the purpose of preserving the value and appearance of the Community.
- (i) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

Section 6.8 **Use of Common Elements.** There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

Section 6.9 **No Annoying Lights, Sounds or Odors.** No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Executive Board.



Section 6.10 **Restrictions on Clotheslines and Storage.** No clotheslines, drying racks, service yards, shops, equipment, storage sheds or storage areas shall be installed, allowed, kept, maintained or permitted in the Community unless the same, in each instance, is expressly permitted in writing by the managing agent of the Community (the "Managing Agent") or if there is no Managing Agent, then by the Executive Board of the Association. Where such written permission is granted, such permission is revocable if the item or condition becomes obnoxious to other Owners, in which event the Unit Owner or person having the item or condition complained of shall be given a written notice to correct the problem or, if not corrected, the Unit Owner, upon written notice, will be required to remove the item/condition from their Unit and from the Community. The written notices provided for herein shall be issued by the Managing Agent as the authorized representative of the Association or, if there is no Managing Agent, then by one (1) or more of the members of the Executive Board of the Association. Unit Owners shall hold the Association harmless from any claim resulting from any clotheslines, drying racks, service yards, shops, equipment, storage sheds or storage areas maintained on their Unit.

Section 6.11 **No Hazardous Activities.** No activity shall be conducted on any portion of the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no fireworks or firearms shall be discharged upon any portion of the Community and no open fires shall be lighted or permitted on any portion of the Community.

Section 6.12 **Compliance with Insurance Requirements.** Except as may be approved in writing by the Executive Board, nothing shall be done or kept on the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 6.13 **No Unsightliness.** All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

Section 6.14 **Restriction on Signs and Advertising Devices.** No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community except such sign or signs as may be approved in writing by the Executive Board.

Section 6.15 **No Restrictions on Sale of a Unit.** The right of a Unit Owner to sell, transfer or otherwise convey their Unit shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

Section 6.16 **No Restrictions on Mortgaging of a Unit.** There are no restrictions on the right of the Unit Owners to mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 6.17 **Restrictions on External Alterations and Improvements.** No external alterations to any Unit or any Common Elements shall be undertaken by or on behalf of any Owner without the prior written approval of the Architectural Review Committee. No Improvement to the exterior of a Unit or to the Common Elements or to any landscaping shall be



constructed, erected, placed or installed within the Community unless complete plans and specifications thereto shall have been first submitted to and approved in writing by the Architectural Review Committee. No structural alterations to any building erected on a Duplex Lot shall be done by any Owner, without the prior written approval of the Association.

Section 6.18 **Plat Restrictions.** The restrictions, if any, included on the Plat are incorporated herein by this reference.

Section 6.19 **Rules and Regulations.** In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Executive Board or its successors and assigns. The Executive Board may establish and enforce penalties for the infraction thereof.

Section 6.20 **Declarant's Use.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, to perform such reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Units in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

ARTICLE 7

ARCHITECTURAL REVIEW COMMITTEE

Section 7.1 **Composition of Committee.** The Architectural Review Committee shall consist of three (3) or more persons appointed by the Executive Board. The power to "appoint," as provided herein, shall include, without limitation, the power to: constitute the initial membership of the Architectural Review committee; appoint member(s) to the Architectural Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor.

Section 7.2 **Review by Committee; Requirement for Approval by Governmental Entities.**

- (a) No Improvements shall be constructed, erected, placed, planted, applied or installed within the Community unless plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee), shall have been first submitted to and approved in writing by the Architectural Review Committee; provided, however, that the Declarant shall be exempt from seeking or obtaining



Architectural Review committee approval during Declarant's development of, construction on, or sales of any Units. The Architectural Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. The Architectural Review Committee may require that the applicant pay a submission fee to the Association for the review and approval process in such amount as may be set by the Committee in its discretion from time to time; provided that such fee shall be uniform for submissions of a similar nature. Such amounts, if any, shall be levied in addition to the assessments against the Unit for which the request for Architectural Review Committee approval was made, but shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection of such assessments, as more fully provided in this Declaration.

- (b) In addition to the required approvals by the Architectural Review Committee, as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements within the Community shall also require the applicant to obtain the approval, prior to submission of the application to the Architectural Review Committee, of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permits by the City of Longmont, Colorado, shall be a precondition to commencement of any construction or alteration of any structure within the Community.

Section 7.3 **Procedures.** The Architectural Review Committee shall approve or disapprove all requests for approval within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the committee may require in conjunction therewith. If the Architectural Review Committee fails to approve or disapprove any request within sixty (60) days after the complete submission to the Committee of the plans, specifications, materials and other information with respect thereto, and if the applicant can prove that the complete submission was received by the Committee (with such proof to be in the form of a signed receipt or a signed return receipt from a registered or certified mailing), then approval shall not be required and this Article shall be deemed to have been fully complied with.

Section 7.4 **Vote and Appeal.** A majority vote of the Architectural Review Committee is required to approve a request for approval, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Committee approves or denies a request for architectural approval, any Owner shall have the right to an appeal of such decision to the full Committee, upon a request therefor submitted to the Committee within thirty (30) days after such approval or denial by the Committee's representative.

Section 7.5 **Architectural Standards.** The Architectural Review Committee, with the advice of the Executive Board, may, at any time from time to time, enact, issue, promulgate, modify, amend, repeal, reenact, and enforce architectural or other standards for the Community to interpret and implement the provisions of this Article and this Declaration, including, without



limitation, those relating to procedures, materials to be submitted, specifications of items, types or kinds of Improvements, and other matters. Any standards so adopted by the Committee shall be consistent and not in conflict with this Article and this Declaration.

Section 7.6 **Records.** The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon and such records shall be available to Owners for inspection at reasonable hours of the business day.

Section 7.7 **Liability.** The Architectural Review Committee and the members thereof, as well as any representative of the Committee appointed to act on its behalf, shall not be liable in damages to any person, or to any Owner, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to any matter within its jurisdiction hereunder.

Section 7.8 **Variance.** The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 6 hereof in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the neighborhood and shall not violate the general intent and purpose hereof.

Section 7.9 **Waivers; No Precedent.** The approval or consent of the Architectural Review Committee or any representative thereof to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee or any representative thereof as to any other application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

ARTICLE 8

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 8.1 **Development Rights and Special Declarant Rights.** The Declarant reserves, through the maximum period of time allowed by law, but in all events, not more than seven (7) years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

- (a) the right to redesignate uses, to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements, as the same may be indicated on the Plat, Supplements or plats filed of record or filed with the Declaration;
- (b) the right to create or construct additional Units and/or Common Elements, to subdivide Units and to convert Units into Common Elements or to convert any of the Single Family Lots into not more than two (2) Duplex Lots by the recordation of a Supplement;



- (c) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions, as permitted under the Act;
- (d) the right to withdraw all or any part of the Real Estate from the Community;
- (e) the right to make amendments to the Declaration or other Governing Documents to meet or comply with any requirements of FHA or VA;
- (f) the right to exercise any development rights reserved or allowed in the Act;
- (g) the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary;
- (h) the right to merge or consolidate the Community with another community;
- (i) the right to appoint or remove any officer of the Association or any Director during the Declarant Control period;
- (j) the right to exercise any additional reserved right created by any other provision of this Declaration;
- (k) the right to amend the Declaration in connection with the exercise of any Development Right; and
- (l) the right to amend the Plat or Map in connection with the exercise of any Development Right.

Section 8.2 **Additional Reserved Rights.** In addition to the rights set forth above, Declarant also reserves the following additional rights:

- (a) **Sales.** The right to maintain mobile and other sales offices, parking areas, management offices and models in Units or on the Common Elements.
- (b) **Signs.** The right to maintain signs and advertising on the Community to advertise the Community or other communities developed or managed by, or affiliated with, the Declarant.
- (c) **Dedications.** The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to, public access, access paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.
- (d) **Use Agreements.** The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community.



- (e) Construction Easement. Declarant and its assignees expressly reserve the right to perform warranty work, and repairs and construction work and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Unit Owner or holder of a Security Interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate.
- (f) Access Easement. Declarant, and its successors and assigns, shall have an access easement to and from any real property accessible through the Community.
- (g) Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

Section 8.3 **Rights Transferable/Rights Transferred.** Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the County of Boulder. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. 38-33.3-210 and C.R.S. 38-33.3-209(6) without the consent of the Association, any Unit Owners or any holders of a Security Interest in a Unit. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred and recorded in the real property records of the County of Boulder. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. 38-33.3-210 and C.R.S. 38-33.3-209(6) with the consent of the appropriate Unit Owner(s) or any holders of a Security Interests in the Unit(s).

Section 8.4 **No Further Authorizations Needed.** The consent of Unit Owners or holders of Security Interests shall not be required for exercise of any reserved rights and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

Section 8.5 **Amendment of the Declaration, Map or Plat.** If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

Section 8.6 **Interpretation.** Recording of amendments or Supplements to the Declaration and the Plat or Map pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically (a) vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit, and (b) vest in each existing Security Interest a perfected security



interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any amendment of the Declaration or the Plat. Reference to the Declaration and Plat in any instrument shall be deemed to include all amendments to the Declaration, and the Plat without specific reference thereto.

Section 8.7 **Construction.** Subsequent to the initial Real Estate and Improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Real Estate or any part thereof may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or type as the Improvements previously constructed on the Real Estate, nor of the same size, style or configuration. The Improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Real Estate as may be added or as shown on the Plat or Map.

Section 8.8 **Termination of Reserved Rights.** The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant; (ii) extended as allowed by law; or (iii) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of the County of Boulder, Colorado.

Section 8.9 **Additions by Others.** Additions of Units to the Community may be made by persons other than the Declarant, upon approval of the Association pursuant to a vote of a majority of a quorum of its members. Two-thirds (2/3) of the Eligible Holders of first lien Security Interests may disapprove additions of Units to the Community. Such approval by the members shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, both recorded in records of the Clerk and Recorder of the County of Boulder.

ARTICLE 9

INSURANCE/CONDEMNATION

Section 9.1 **Insurance Carried.** The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, or the first occupancy of a Unit. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

- (a) All policies of insurance shall contain waivers of subrogation and waivers of any



defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days' prior written notice to all of the Unit Owners, holders of first lien Security Interests and the Association;

- (b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien Security Interests at least ten (10) days prior to the expiration of the then current policies;
- (c) All liability insurance shall be carried in blanket form, naming the Association, the Board, the manager or Managing Agent, if any, the officers of the Association, the Declarant, holders of first lien Security Interests (if notice is properly given to the Association of the existence of the Security Interest by the holder thereof pursuant to this Declaration), their successors and assigns and Unit Owners as insureds;
- (d) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost;
- (e) Unit Owners may carry and are advised to carry other insurance for liability, damage and loss to the Improvements and personal property in their Unit for their benefit and at their expenses. In this regard, Declarant discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not provide any coverage with regard to any Unit or Unit Owner, and specifically does not obviate the need for Unit Owners to obtain insurance for their own benefit; and
- (f) All policies of insurance obtained by the Association shall provide that the insurance thereunder shall be invalidated or suspended only with respect to the interest of any particular Unit Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 9.2 **Hazard Insurance on the Common Elements.** The Association shall



obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to the Common Elements and the other property of the Association. If obtainable, the Association shall also obtain the following and any additional endorsements deemed advisable by the Executive Board: (a) an inflation guard endorsement, (b) a construction code endorsement, (c) a demolition cost endorsement, (d) a contingent liability from operation of building laws endorsement, (e) an increased cost of construction endorsement, and/or (f) any special PUD endorsements.

Section 9.3 **Liability Insurance.** The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering the Common Elements in such limits as the Board may determine from time to time, but not in any amount less than One Million Dollars (\$1,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Association as the insured.

Section 9.4 **Fidelity Insurance.** The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of Declarant or any officer, director, agent or employee of any independent, professional manager or Managing Agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 9.5 **Worker's Compensation and Employer's Liability Insurance.** The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 9.6 **Officers' and Directors' Personal Liability Insurance.** The Association may obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association. Neither the term "officers" nor the term "directors" shall include any officer, director, agent or employee of Declarant nor any officer, director, employee or agent of any professional manager or Managing Agent heretofore or hereafter employed by the Association.

Section 9.7 **Other Insurance.** The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 9.8 **Insurance Premium.** Insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual assessments levied



by the Association.

Section 9.9 **Managing Agent Insurance.** The manager or Managing Agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association. The Association may indemnify its Managing Agent, except for that agent’s intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.

Section 9.10 **Waiver of Claims Against Association.** As to all policies of insurance maintained by or for the benefit of the Association and Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insured damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 9.11 **Annual Insurance Review.** The Board shall review the insurance carried by and on behalf of the Association at least annually for the purpose of determining the amount of insurance required.

Section 9.12 **Adjustments by the Association.** Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien Security Interest. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of first lien Security Interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Unit Owners and holders of first lien Security Interest are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 9.13 **Duty to Repair.** Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Unit Owner, at the Unit Owner’s option on whether the repair is done by the Association or the Unit Owner, except as provided in the Act.

Section 9.14 **Condemnation and Hazard Insurance Allocations and Distributions.** In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

ARTICLE 10

SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 10.1 **General Provisions.** The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien Security Interests recorded within the Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles of Incorporation and Bylaws of the Association. A holder, insurer or guarantor of a first lien Security Interest on a Unit shall be considered an “Eligible Holder.” Eligible insurers and guarantors of a first lien Security Interest shall have the



same rights as an Eligible Holder.

Section 10.2 **Special Rights.** Eligible Holders shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the rules and regulations of the Association, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statements; (d) receive written notice of all meetings of the Executive Board or members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) thirty (30) days' written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Community or by an Eligible Holder; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or to the Unit on which the Eligible Holder holds a Security Interest, if the cost of reconstruction exceeds Twenty Thousand Dollars (\$20,000.00) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Unit.

Section 10.3 **Disapproval Rights.** Eligible Holders of first lien Security Interests shall, upon the notice of disapproval of at least sixty-seven percent (67%) (based on one (1) vote per unit secured by a first lien Security Interest) of Units in the Association and requisite Unit Owners, have the right to prohibit the Association or any of its members from the following: (a) by act or omission seeking to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such Real Estate by the Association shall not be deemed within the meaning of this provision); (b) changing the method of determining the obligations, Assessments or other charges which may be levied against members of the Association or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission changing, waiving or abandoning any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) taking action to terminate the legal status of the Community after substantial destruction or condemnation occurs; and (e) amend any material provision of this Declaration. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien Security Interest receives written notice of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within thirty (30) days, it shall be deemed to have approved such request.



Section 10.4 **Right to Pay Taxes and Insurance Premiums.** Any holder of a first lien Security Interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units, and the holder of a first lien Security Interest making such payments shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE 11

MEMBERSHIP AND VOTING RIGHTS

Section 11.1 **Membership.** The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Community, of all former owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

Section 11.2 **One Class of Membership.** The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Unit owned in accordance with the Allocated Interest attributable to each Unit, except that no votes allocated to a Unit owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Units then existing within the Association. Except as otherwise provided in Article 3 of this Declaration, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and members of the Executive Board, and may remove all officers and members of the Executive Board which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

ARTICLE 12

EXECUTIVE BOARD MEMBERS AND OFFICERS

Section 12.1 **Authority of Executive Board.** Except as provided in this Declaration or the Association Bylaws, the Executive Board may act in all instances on behalf of the Association.

Section 12.2 **Period of Declarant Control.** The Period of Declarant Control means the length of time expiring seven (7) years after the initial recording of this Declaration in the County of Boulder; provided, that the Period of Declarant Control shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Units, two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or two (2) years after any right to add new Units to the Declaration was last exercised.

Section 12.3 **Election of Part of Executive Board During Period of Declarant**



Control. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be included to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be included to owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Owners other than the Declarant.

Section 12.4 **Authority of Declarant During Period of Declarant Control.** Except as otherwise provided in this Article, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and directors of the Association and may remove all officers and directors of the Executive Board appointed by it.

Section 12.5 **Termination of Period of Declarant Control.** Not later than the termination of the Period of Declarant Control, the Owners shall elect an Executive Board of at least three members, at least a majority of whom must be owners other than the Declarant or designated representatives of owners other than the Declarant. The Executive Board shall elect the officers. Such Executive Board members and officers shall take office upon election.

Section 12.6 **Delivery of Documents by Declarant.** After the Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, if and as required by the Act.

Section 12.7 **Budget.** Within thirty (30) days after adoption of any proposed budget for the Community, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the Association budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) days nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the budget is rejected by the vote or agreement of owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, then the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

ARTICLE 13

CONSTRUCTION LITIGATION PROCEDURES

Section 13.1 **Association's Enforcement Rights.** In the event of any alleged defect in: (i) the soils of any portion of the Community or any of the Improvements thereon; (ii) the physical condition of any Common Element or any Improvement thereon; or (iii) any improvement to the Real Estate (collectively, a "Defect"), or in the event of any other claim for any other alleged matter whatsoever, including but without limitation, a breach of this Declaration or the Articles of Incorporation or Bylaws of the Association (collectively, a "General Claim"), brought by the Association against Declarant or its contractor, Chateau Development Company, the Board of Directors shall have the right, after compliance with the



procedures set forth within this Article, to proceed with a cause of action against the Declarant or its contractors for any of the foregoing reasons.

Section 13.2 **Written Notice.** The Association shall be required to give written notice to the Declarant by certified mail, return receipt requested, or by personal service, specifying the particular Defect which is the subject of the claim, including identification of the affected portion of the property or Improvements, and specifying the facts and circumstances supporting any General Claim. Within thirty (30) days following receipt of the notice, Declarant shall make a written request to inspect and evaluate the alleged Defect or the General Claim. Such request shall have the effect of tolling any then existing statute of limitations to a noticed claim until thirty (30) days after the Declarant delivers written notice to the Association responding to the claim and canceling the tolling.

Section 13.3 **Declarant Inspections.** The Association shall allow the Declarant to inspect all conditions and areas identified in the Association's notice. A majority of the Board shall be required to meet and confer with the Declarant on at least one occasion in order to discuss the alleged Defect or General Claim. Either party may be represented at such meeting by their attorneys and independent consultants. The Association shall be required to make arrangements for the Declarant, at Declarant's cost, to perform reasonable destructive testing, provided that the Declarant shall pay all costs and expenses necessary to restore the area of the testing to its original condition, and indemnify the Association against any liability for such destructive testing. All inspections and destructive testing must be completed within thirty (30) days following the affected portions of the Community and Improvements being made available to the Declarant or its contractor for inspections and/or testing.

Section 13.4 **Settlement Proposal.** Within thirty (30) days following inspections and any destructive testing, Declarant shall submit a written statement to the Association setting forth Declarant's proposed settlement of each claim of Defect and/or General Claim and stating whether Declarant intends to perform any remedial work or pay the Association a cash sum in lieu thereof. A majority of the Board shall be required to meet with the Declarant on at least one occasion in order to discuss the proposed settlement, if any. Either party may be represented at such meeting by their attorneys and independent consultants. If the Declarant does not provide the Association with a written statement within thirty (30) days following the completion of any inspections and/or destructive testing, the Association shall then have the right to institute a cause of action against the Declarant in accordance with the procedures set forth herein.

Section 13.5 **Litigation.** The affirmative consent of a majority of the Owners of the Association entitled to vote thereon must be obtained before the Association shall have the power to institute a case of action against any alleged or potentially culpable party (the "Culpable Party") for a Defect or General Claim. However, such consent must be obtained by the Association only after it delivers ballots to all Owners within the Association in accordance with the notice procedures set forth in the Bylaws of the Association with respect to special meetings. Such delivery shall also include written materials which provide:

- (a) a statement describing the Defect or General Claim;



- (b) a copy of the Culpable Party's written response thereto, including any proposed settlement;
- (c) a statement advising Owners of their duty to disclose to prospective purchasers and lenders the Defect or General Claim which the Association will assert against the Culpable Party;
- (d) a statement that recovery from litigation may not result in receipt of funds to pay all costs of repairing the alleged Defect or correcting the General Claim as estimated by experts retained by the Association;
- (e) an estimate of the cost to the Association in prosecuting the cause of action; and
- (f) a description of the agreement with the attorney whom the Board proposes to retain to prosecute the cause of action.

Section 13.6 **Alternative Dispute Resolution**. Any claim of a Defect or General Claim shall, upon the demand of the Association or the Declarant or its contractor, be submitted to mediation or binding arbitration, subject to the following requirements:

- (a) if the parties cannot agree upon utilizing binding arbitration or mediation, but one of the parties wants to utilize an alternative dispute resolution method, binding arbitration shall be utilized;
- (b) the arbitrator or mediator must be a person qualified, either with applicable industry experience or legal experience with respect to the claim of Defect or General Claim, to consider and resolve the applicable claim;
- (c) if the parties cannot agree upon an arbitrator or mediator, either party may petition the Boulder County District Court to appoint such arbitrator or mediator;
- (d) the fees and costs of the arbitrator or mediator and its consultants shall be borne equally by the Association and the Declarant or its contractor;
- (e) the arbitrator or mediator shall have authority to establish reasonable terms regarding inspection, destructive testing, and retention of independent consultants;
- (f) the arbitrator or mediator shall hold at least one hearing in which the parties, their attorneys, and expert consultants may participate;
- (g) the arbitrator or mediator shall issue a written report determining all claims, including any defenses raised by the Declarant or its contractor, and which shall include a recommendation for settlement (in the case of mediation) or binding arbitration award;



- (h) all then applicable statutes of limitation on any claim subject to the mediation shall be tolled during the period of mediation or arbitration, but no longer than a period of one hundred twenty (120) days;
- (i) the Declarant or its contractor shall have the right to allow subcontractors to participate in the arbitration or mediation proceedings to determine indemnification rights and obligations, provided that the Association is not made to bear the cost of resolution of such indemnity issues; and
- (j) any arbitration shall be determined in accordance with the American Arbitration Association, Commercial Arbitration Rules with Expedited Procedures in effect on the date hereof, as modified by this Article. Any issue about whether a claim is covered by this Article shall be determined by the arbitrator. There shall be no substantive motions or discovery, except the arbitrator shall authorize such discovery as may be necessary to ensure a fair private hearing, which hearing shall be held within one hundred twenty (120) days of the demand, and shall be concluded within three (3) days. These time limits are not jurisdictional. The arbitrator shall apply substantive law and may award injunctive relief, but shall not have the power to award punitive damages.

Section 13.7 **Use of Funds from Cause of Action.** In the event the Association receives funds as a result of any settlement, arbitration or judgment based upon a cause of action, after the payment of any fees and costs incurred in connection with the prosecution of such action, the Association shall:

- (a) deposit the proceeds in a special interest-bearing account;
- (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the claim of Defect or for the purpose of correcting the General Claim; and
- (c) if any proceeds remain after satisfying Section 13.7(b) above, then such remaining proceeds may be used in any way the Association deems necessary or advisable.

ARTICLE 14

GENERAL PROVISIONS

Section 14.1 **Enforcement.** The Association or an Owner (with Owners being subject to arbitration provisions in this Declaration) may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys' fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board of Directors may adopt such rules, procedures and resolutions for carrying out its duties and to enforce such rules, procedures and resolutions.



Section 14.2 **Severability.** Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 14.3 **Term of Declaration.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 14.4 **Amendment of Declaration, Map or Plat by Declarant.** If Declarant shall determine that any amendments to this Declaration or the Plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of seven (7) years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this Section on behalf of each Unit Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 14.5 **Amendment of Declaration by Unit Owners.** Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association and with the written consent of the Association. Except to the extent expressly permitted in this Declaration or the Act, no amendment may create or increase any special Declarant's rights, increase the number of Units in the Community, or change the boundaries of any Unit or the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the County of Boulder of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 14.6 **Amendment Required by Mortgage Agencies.** Prior to seven (7) years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien Security Interest, or FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the County of Boulder, State of Colorado of a certificate setting forth the amendment or repeal in full.



Section 14.7 **Required Consent of Declarant to Amendment.** Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving development rights or for the benefit of the Declarant or its assignees, shall not be effective unless Declarant and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate seven (7) years after the recording of this Declaration, or upon conveyance of one hundred percent (100%) of the Units to Unit Owners, whichever occurs first.

Section 14.8 **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 14.9 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 14.10 **Singular Includes the Plural.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

[Signature page to follow]



IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agent this ___ day of November 2004.



SONOMA & PINNACLE, LLC
a Colorado limited liability company

By: [Signature]
Brett W. Bennett, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing Declaration was acknowledged before me on this 16th day of November 2004 by Brett W. Bennett as Manager of the Declarant, Sonoma & Pinnacle, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission Expires 4/14/07

[Signature]
Notary Public

CONSENT OF LIENHOLDER

Wells Fargo Bank, N.A., the holder of a lien encumbering the property described within this Declaration hereby consents to the filing hereof.

WELLS FARGO BANK, N.A.

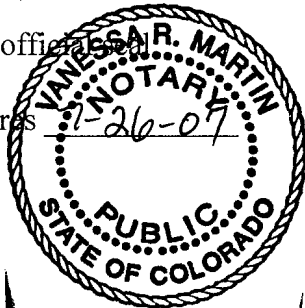
By: [Signature]
Name/Title: JAMES E DEALY / V.P.

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing Declaration was acknowledged before me on this 16th day of November 2004 by James E. Dealy as Vice President of Wells Fargo Bank, N.A.

Witness my hand and official seal.

My Commission Expires 1-26-07



[Signature]
Notary Public



2643368

Page: 37 of 48
11/17/2004 03:29P

Boulder County Clerk, CO AMD PRO CVNT R 241.00

D 0.00

EXHIBIT A

Real Estate

Lots 2, 3 and 4, Block 1, of Spring Valley Phase 8, Parcel P as shown upon the Final Plat recorded on May 7, 2002 at Reception No. 2285376 in the records of the office of the Clerk and Recorder of the County of Boulder, State of Colorado.



2643368

Page: 38 of 48
11/17/2004 03:29P

Boulder County Clerk, CO AMD PRO CVNT R 241.00

D 0.00

EXHIBIT B

Additional Property

Lot 1, Lots 5 through 37, inclusive, and Outlots A and B, Block 1, of Spring Valley Phase 8, Parcel P as shown upon the Final Plat recorded on May 7, 2002 at Reception No. 2285376 in the records of the office of the Clerk and Recorder of the County of Boulder, State of Colorado.

**EXHIBIT C****Easements, Licenses and Other Matters**

1. Easement and right-of-way for electric transmission line purposes as granted to Poudre Valley Rural Electric Association by instrument recorded August 08, 1972, Reception No. 29507 in which the specific location is not defined.
2. The effect of the Spring Valley Annexation Map recorded January 11, 1995, under Reception No. 1491718 in the Official Records of Boulder County, Colorado.
3. Terms, conditions and provisions of Annexation Agreement recorded January 11, 1995 at Reception No. 1491719 in the Official Records of Boulder County, Colorado.
4. Terms, conditions and provisions of Memorandum of Agreement recorded September 12, 1995 at Reception No. 1546932 in the Official Records of Boulder County, Colorado.
5. Terms, conditions and provisions of Agreement and Easement Grant recorded December 28, 2001 at Reception No. 2237313 in the Official Records of Boulder County, Colorado.
6. Easements, conditions, covenants, restrictions, reservations and notes on the Plat of Spring Valley Phase 8, Parcel P, recorded May 7, 2002 at Reception No. 2285376 in Planfile P-56, F-3, Nos. 24-26 in the Official Records of Boulder County, Colorado.
7. Effect of the City of Longmont Rezoning Ordinance 0-2002-20 recorded May 9, 2002 under Reception No. 2286017 in the Official Records of Boulder County, Colorado.
8. Construction Deed of Trust from Sonoma & Pinnacle, LLC, a Colorado limited liability company to the Public Trustee of the County of Boulder for the use of Wells Fargo Bank N. A. dated September 9, 2002, recorded September 25, 2002 as Reception No. 2335201 in the Official Records of Boulder County, Colorado.



2643368

Page: 40 of 48
11/17/2004 03:29P

Boulder County Clerk, CO AMD PRO CVNT R 241.00

D 0.00

EXHIBIT D

Storm Channel Maintenance Agreement

(See Attached)



STORM CHANNEL MAINTENANCE AGREEMENT

This Storm Channel Maintenance Agreement ("Agreement") is entered into this 25th day of July, 2003 by and between Sonoma & Pinnacle, LLC, a Colorado limited liability company ("S&P"), Western VII Investment, LLC, a Delaware limited liability company ("Western") and the City of Longmont, Colorado ("City") with respect to the following:

RECTIALS

A. Western is the owner of certain real property located immediately southeast of the intersection of Highway 66 and Pace Street in the City of Longmont, Colorado commonly known as Parcel Q of Spring Valley Phase 10 ("Parcel Q"). Parcel Q is more specifically described in Exhibit B attached hereto.

B. S&P is the owner of certain real property immediately adjacent to Parcel Q, located generally southeast of the intersection of Highway 66 and Pace Street in the City of Longmont, Colorado, and commonly known as Parcel P of Spring Valley Phase 8 ("Parcel P") and Parcel R of Spring Valley Phase 10 ("Parcel R"). Parcel P is more specifically described in Exhibit C, and Parcel R is more specifically described in Exhibit D, both of which are attached hereto.

C. City is the owner and operator of certain real property located within the City of Longmont, Colorado, and more commonly known as the Ute Creek Golf Course ("Golf Course Property").

D. The Parcel P is located immediately adjacent to the second and third holes of the Golf Course Property, with the two properties physically separated by the storm channel which is the subject of this Agreement. The location of the storm channel, and the relationship between the various properties described above, is more specifically shown on Exhibit A attached hereto.

E. As a condition to the development of any or all of the Parcels, City has required the design, construction and installation of a storm drainage channel designed to accommodate storm water runoff from each of the Parcels, as well as other sites in the area adjacent to the Parcels. The storm drainage channel is generally located along the northernmost boundary of Parcel Q and the easternmost boundary of Parcel P. A portion of the storm drainage channel is located upon the Golf Course Property.

F. In order to clarify and memorialize the duties and obligations of the parties with respect to the ongoing maintenance and upkeep of the storm channel, S&P, Western and City have entered into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, S&P, Western and City hereby agree as follows:



1. City will be responsible for the ongoing maintenance, upkeep and repair of the easternmost one-half of the storm channel in the area where the storm channel is immediately adjacent to the Golf Course property. For the purposes of this Agreement, the easternmost one-half of the storm channel shall be deemed to include all bank, slope and channel basin to the center line of the storm channel, regardless of which entity may own the portion of the property upon which the storm channel may exist.

2. Western and S&P will be responsible for the ongoing maintenance, upkeep and repair of the westernmost one-half of the storm channel in the area where the storm channel is immediately adjacent to Parcel P. Western and S&P will pay the costs and expenses relating to the ongoing maintenance, upkeep and repair of the remaining portion of the storm channel as reflected within Exhibit A, including, but not limited to, periodic mowing and cleaning of the channel, as may be required by the City of Longmont. The costs and expenses for the portion of the storm channel maintenance and repair which is the responsibility of Western and S&P shall be allocated among the parties as follows:

S&P - Parcel P	27.33%
Western - Parcel Q	37.66%
S&P - Parcel R	35.01%

To the extent that either S&P's or Western's portion of the maintenance and repair costs and expenses is advanced by the other party, the amount so advanced shall be reimbursed to the advancing party within thirty (30) days following the delivery of written verification from the project engineer that the improvements have been completed in substantial conformance with the plans and specifications therefore, and itemized invoices relating to such installation to such party.

The liability insurance policy with respect to the portion of Parcel P which is within the storm channel shall name City as an additional insured, and said policy shall not be terminated without 30 prior written notice to City. S&P shall install and maintain warning signs along the western bank of the storm channel providing notification of the dangers associated with activity within the storm channel.

3. The City of Longmont has established the following minimum maintenance requirements for the storm drainage channel:

Mowing: At least once per year (generally during late summer) to a height of approximately 6 inches. More frequent mowing may be required in order to provide weed control.



Weed control: Four applications of a broadleaf herbicide per year. One application each spring, two each summer and one each fall.

Fertilizer: One application per year (late spring) of a balanced N-P-K fertilizer at a rate of one pound of nitrogen per 1,000 square feet of area. The product used should contain at least 40% slowly available nitrogen.

Trash removal: At least once per month, or more frequently as needed. Trash shall be removed from the site and disposed of properly.

Miscellaneous maintenance: As may be required by the City from time to time.

4. Upon the formation of a homeowners association with respect to Parcel P and a homeowners association with respect to Parcel R, S&P may assign its obligations under this Agreement regarding such Parcel(s) to such homeowners association(s). Upon the sale or transfer of Parcel Q to another entity, or upon the establishment of an owner's association with respect to Parcel Q, Western may assign its obligations under this Agreement regarding Parcel Q to such entity or association. Any such assignments shall be in writing, delivered to the other parties then obligated hereunder. Any such assignments shall include a written assumption of the obligations hereunder by such association. Upon any assignment and assumption, the party making the assignment shall be discharged and released from all ongoing and future obligations under this Agreement.

5. Each party under this Agreement hereby grants to each other party permission and license to enter upon each others property to the extent reasonably necessary to carry out and perform the maintenance, upkeep and repair of the storm channel as required under the terms of this Agreement.

6. This Agreement, together with the Exhibits hereto, incorporates all of the terms and conditions of all agreements between the parties to this Agreement with respect to the subject matter hereof. Any and all prior agreements and understandings pertaining thereto, whether written or oral, have been merged and integrated into this Agreement. There are no other promises, agreements or representations with respect to the subject matter hereof, except as outlined herein. Except as expressly stated in this Agreement, no party has made any promises to induce any other party to enter into this Agreement.

7. This Agreement may be recorded against Parcels P, Q and R, in the official records of Boulder County, Colorado.

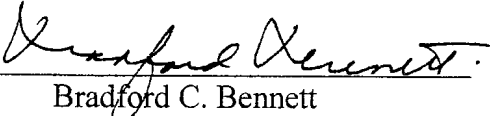


8. Notwithstanding any other term or provision of this Agreement, to the extent that any party is required to institute any action or legal proceeding in order to collect under or enforce the terms of this Agreement, such party shall be entitled to recover all costs and fees incurred in connection therewith, including, but not limited to attorneys fees.

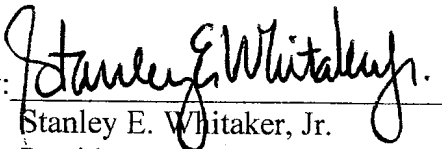
9. This Agreement is entered into for the benefit of the parties hereto, and shall not be construed or interpreted as creating any benefit for any third party.

Sonoma & Pinnacle, LLC
A Colorado limited liability company

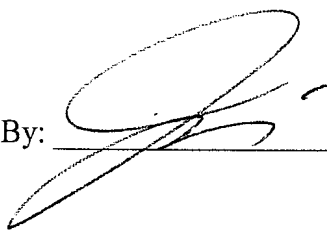
Western VII Investment, LLC
A Delaware limited liability company

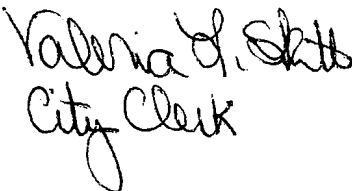

Bradford C. Bennett
Manager

By: Western Property Advisors, Inc.
a Colorado Corporation
Its Attorney-in-Fact

By: 
Stanley E. Whitaker, Jr.
President

City of Longmont, Colorado

By: 
Approved as to form:

Attest:

City Clerk



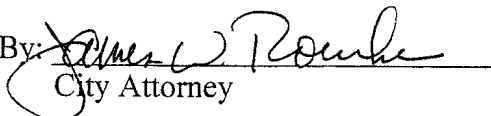
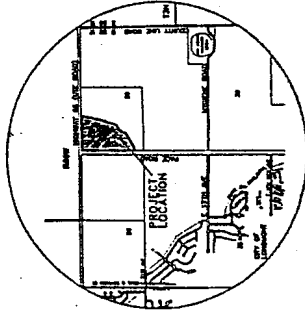
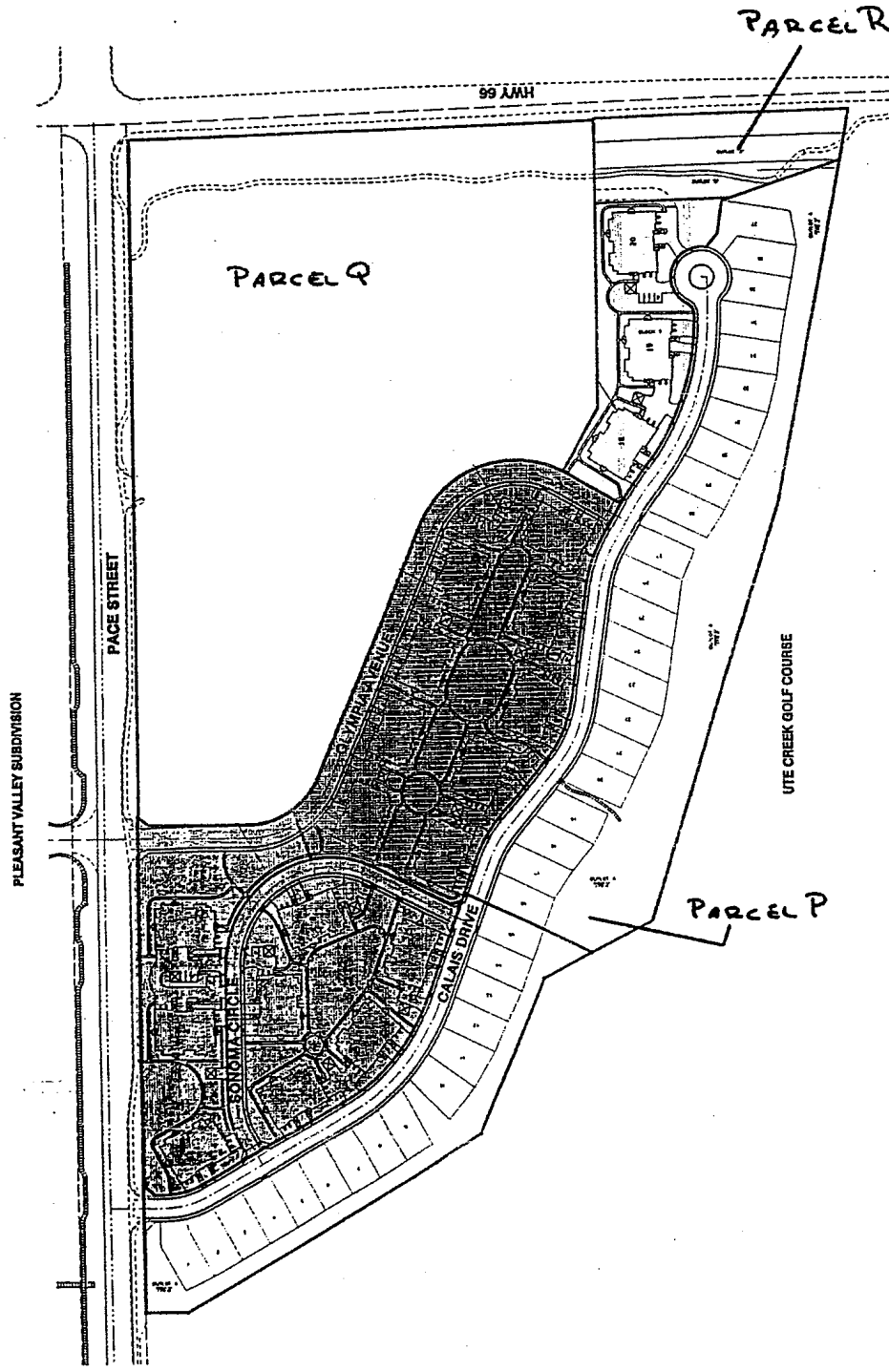
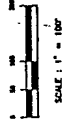
By: 
City Attorney



EXHIBIT A



VICINITY MAP
SEE THE SCALE



**EXHIBIT B****Parcel Q Legal Description**

A parcel of land located in the Northwest Quarter of Section 25, Township 3 North, Range 69 West of the 6th P.M., City of Longmont, County of Boulder, State of Colorado, Being more particularly described as follows:

Commencing at the Northwest corner of said Section 25, whence the West one-quarter corner of said Section 25 bears South 00°04'26" West 2653.38 feet, said line forming the basis of bearings for this description; thence along said line South 00°04'26" West 123.36 feet; thence South 89°55'34" East 60.00 feet to the True Point of Beginning;

Thence South 00°04'26" West 1182.08 feet; thence South 44°55'34" East 28.28 feet; thence South 89°55'34" East 191.21 feet; thence along the arc of a curve to the left (said curve having a radius of 153.00 feet, a central angle of 66°04'44", and a chord which bears North 57°02'04" East 166.84 feet) a distance of 176.45 feet; thence North 23°59'42" East 513.93 feet; thence along the arc of a curve to the right (said curve having a radius of 197.00 feet, a central angle of 93°46'20" and a chord which bears North 70°52'53" East 287.62 feet) a distance of 322.42 feet; thence North 29°47'11" East 139.72 feet; thence North 00°04'26" East 385.76 feet; thence North 88°27'39" East 249.12 feet; thence South 70°32'01" West 211.17 feet; thence North 88°27'39" East 1348.90 feet to the True Point of Beginning.

Said Parcel of Land contains 18.768 acres.



EXHIBIT C

Parcel P Legal Description

Spring Valley Phase 8, Parcel P as shown upon the Plat recorded on May 7, 2002, at Reception No. 2285376 in the records of the office of the Clerk and Recorder of the County of Boulder, State of Colorado.



2643368

Page: 48 of 48
11/17/2004 03:29P

Boulder County Clerk, CO AMD PRO CVNT R 241.00

D 0.00

EXHIBIT D

Parcel R Legal Description

Spring Valley Phase 10, Parcel R as shown upon the Plat recorded on May 7, 2002, at Reception No. 2285379 in the records of the office of the Clerk and Recorder of the County of Boulder, State of Colorado.