

“If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates State and Federal Fair Housing Laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.”

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**THIS INSTRUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:**

Brownstein Hyatt & Farber, P.C.
Nicole R. Ament, Esq.
410 17th Street, 22nd Floor
Denver, CO 80202

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
MOUNTAIN SHADOWS NORTH HOMEOWNERS ASSOCIATION**

THIS DECLARATION (the "Declaration") made this 30th day of OCTOBER, 2003, by NEUMANN HOMES OF COLORADO LLC, a Colorado limited liability company (hereinafter referred to as the "Declarant").

PREAMBLES:

- A. Declarant is the owner in fee simple of a certain parcel of real estate in the Town of Firestone, Colorado, legally described in Exhibit A, attached hereto and incorporated herein (the "Property");
- B. Declarant and Developer (hereinafter defined) desire to develop a single family residential development on the Property to be known as Mountain Shadows (the "Development"); and
- C. Declarant is desirous of submitting the Property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, transferred, occupied and conveyed subject to the following covenants, conditions, easements and restrictions, all of which shall run with the Property, and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE 1
DECLARATION PURPOSES AND
PROPERTY SUBJECT TO DECLARATION

1.1 Purpose. The Declarant desires to create on the Property a single family development for future owners of Lots (as hereinafter defined) for the following general purposes:

(a) The Declarant, by the imposition of covenants, conditions and restrictions and the reservation of certain powers unto itself, does intend to provide for the Property a plan for development which is intended to enhance and to protect the values of Declarant's single-family residential community; and

(b) The Declarant desires to provide for the maintenance of the Common Area (as hereinafter defined) portions of which may be owned by the Association (as hereinafter defined) and used in common by the Owners (as hereinafter defined) of the Property.

1.2 To further the general purposes herein expressed, the Declarant, for itself, its successors and assigns, hereby declares that the Property at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions herein set forth.

1.3 The Common Interest Community. The name of the Common Interest Community is Mountain Shadows. It is a planned community.

1.4 The Association. The name of the Association is Mountain Shadows North Homeowners Association, Inc.

1.5 Maximum Number of Lots and Units. The Declarant reserves the right to create a maximum of 259 Lots.

1.6 Identification of Lots. The identification number of each Lot is shown on the Plat.

1.7 Lot Boundaries. The boundaries of each Lot are located as shown on the Plat.

ARTICLE 2
DEFINITIONS

The following words, when used in this Declaration or in any supplemental Declaration shall, unless the context shall prohibit, have the following meanings:

2.1 "Act" shall mean the Colorado Common Interest Ownership Act, as it may be amended from time to time.

2.2 "Additional Parcel" shall mean that portion of the additional lands legally described in Exhibit D attached hereto and by reference made a part hereof which Declarant may elect to annex to the Property and subject to the Declaration pursuant to the terms of Article 5 hereof. The Additional Parcel shall include the Cavalli-Dotson Parcel pursuant to the terms hereof. The Additional Parcel includes all rights and easements, if any, appurtenant to the real property described in Exhibit A, attached hereto. The use and enjoyment of any such rights and easements by any person shall be subject to the terms and provisions of this Declaration from and after the date upon which any portion of the Additional Parcel has been annexed to this Development as hereinafter provided.

2.3 "Annexing Amendment" shall mean and refer to an amendment to Declaration to be prepared by the Declarant and recorded in the office of the Clerk and Recorder of Weld County, Colorado, together with any annexing map or other documents as required by the Act.

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

2.5 "Architectural Committee" shall mean the committee selected in accordance with Section 9.1 hereof.

2.6 "Association" shall mean and refer to the Mountain Shadows North Homeowners Association, a Colorado nonprofit corporation, its successor and assigns.

2.7 "Board" shall mean and refer to the Board of Directors of the Mountain Shadows North Homeowners Association, a Colorado nonprofit corporation; said entity shall govern and control administration and operation of the Property.

2.8 "By-Laws" shall mean and refer to the By-Laws of the Mountain Shadows North Homeowners Association, which is attached hereto and made a part hereof as Exhibit C. The By-Laws are incorporated into this Declaration by this reference.

2.9 "Cavalli-Dotson Parcel" shall mean and refer to all real property and improvements thereon described on Exhibit D as the Cavalli-Dotson Parcel.

2.10 "Common Area" shall mean and refer to all real property and improvements thereon to be owned or maintained by the Association for the common use and enjoyment of all

members of the Association. This shall include the monument sign and lighting therefor located on a Lot and the berm areas, if any, located on the rear of Lots each as described on the Plat of Subdivision for the Mountain Shadows Subdivision (as hereinafter defined), attached hereto and made a part hereof as Exhibit B.

2.11 "Common Interest Community" shall mean the real property subject to this Declaration.

2.12 "Development Rights" shall mean the rights as defined by Section 38-33.3-103(14) of the Act reserved by the Declarant under Article 5 of this Declaration.

2.13 "Declarant"/"Developer" shall mean and refer to Neumann Homes of Colorado LLC, a Colorado limited liability company. Whenever the terms Declarant and/or Developer shall be used herein the use of one shall include the other.

2.14 "Lot" shall mean and refer to any of the parcels of the Property designated as a lot on the recorded subdivision plat or plats of the Property improved or intended to be improved as set forth on Exhibit B, attached hereto.

2.15 "Owner" shall mean and refer to the record owner, whether one or more persons, individuals or entities, of a fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

2.16 "Member" or "Membership" shall mean and refer to every Person or entity who holds Membership in the Association in accordance with Section 4.1.

2.17 "Mortgage" shall mean and refer to either a Mortgage or Deed of Trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

2.18 "Person" shall mean and refer to a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

2.19 "Property" shall mean and refer to the real estate legally described in Exhibit A, attached hereto and made a part hereof.

2.20 "Single Family" shall mean and refer to one or more persons, each related to other by blood, marriage or adoption, or a group of not more than three (3) persons not all so related, maintaining a common household.

2.21 "Subdivision Plat" shall mean and refer to the Plat of Subdivision for the Mountain Shadows Subdivision as recorded with the office of the Clerk and Recorder of Weld County, Colorado, attached hereto and made a part hereof as Exhibit B.

2.22 "Turnover Date" shall mean the date which is the earlier of (i) sixty days after the conveyance of seventy-five (75%) percent of the Lots that may be created by Declarant pursuant to Section 1.5 have been transferred to Owners other than Declarant; (ii) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business; (iii) upon written notice

of election by Declarant to the Association as of the date specified in said notice, or (iv) two (2) years after any right to add new Lots was last exercised.

ARTICLE 3 **GENERAL RESTRICTIONS**

3.1 All Lots shall be used only for Single Family Dwellings. Each Owner shall maintain his Lot and all Improvements located thereon in a clean, sightly and safe condition and shall at all times cause the prompt removal of all papers, debris and refuse therefrom and the removal of snow and ice from paved areas when and as required.

3.2 No noxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No plants or seed or other conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Lot.

3.3 No temporary building, trailer, mobile home, recreational vehicle, tent, shack or other similar Improvement shall, except as otherwise herein provided, be located upon the Lots.

3.4 No person shall accumulate on his Lot abandoned or junked vehicles, litter, refuse or other unsightly materials. Vacant Lots shall not be used for the purpose of raising crops thereon.

3.5 Trucks, boats, recreational vehicles or trailers shall at all times be parked in the garage of a dwelling located on a Lot, unless otherwise approved by the Board. The repair or maintenance of any motorized vehicle shall not be permitted except within the confines of the garage of a dwelling.

3.6 There shall be no obstruction in the driveways or other portions of the Common Area nor shall ready access to a garage or entrance to a Lot be obstructed or impeded in any manner.

3.7 No animals, livestock or poultry of any kind shall be raised, bred, or kept upon any Lot, except that dogs and cats (not to exceed a total of four (4) such pets) or other common household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes.

3.8 The operation of a "ham" or other amateur radio stations or the erection of any communication antennae or similar devices (other than simple mast antennae located on the roof of a Dwelling) shall not be allowed unless completely screened from view from all streets and approved in writing in advance by the Developer prior to the Turnover Date or by the Board or the Architectural Control Committee (as hereinafter defined) thereafter.

3.9 All areas of the Lots designed or intended for the proper drainage or retention of storm water, including swale lines and ditches, shall be kept unobstructed and shall be mowed regularly. Trees, plantings, shrubbery, fencing, patios, structures, landscaping treatment or other like improvements may be planted, placed or allowed to remain in any such areas so long as they do not substantially obstruct or alter the rate or direction of flow of storm water from any Lot.

No Owner shall alter the rate or direction of flow of storm water from any Lot by impounding water, changing grade, blocking or redirecting swales, ditches or drainage areas or otherwise. Each Owner acknowledges, by acceptance of a deed to a Lot, that each drainage or detention area is for the benefit of the entire Property.

3.10 No Owner shall permit anything to be done or kept on his Lot or in the Common Area which will increase the rate charged for or cause the cancellation of insurance carried by the Association on the Common Area improvements or contents thereof, or which would be in violation of any law, nor shall any waste be committed in the Common Area.

3.11 The covering of windows and other glass surfaces, whether by shades, draperies or other items visible from the exterior of any dwelling, shall be subject to the rules and regulations of the Board.

3.12 The restriction in Paragraph 3.1 shall not, however, be construed in such a manner as to prohibit an Owner from: a) maintaining his personal professional library therein; b) keeping his personal business records or accounts therein; or c) handling his personal or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said paragraph.

3.13 Nothing shall be altered in or removed from the Common Area except upon the written consent of the Board.

3.14 No advertising sign (except one "For Sale" sign of not more than five (5) square feet), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any Lot except that during the two (2) week period prior to and during the one (1) week period subsequent to, a primary or general election, one (1) political sign may be maintained on an individual Lot.

3.15 The Declarant may maintain, while engaged in construction and sales activities, in or upon such portions of the Property as Declarant shall determine, such temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, signs, temporary fencing, monuments and sales and construction trailers, or other items as otherwise provided for in this Declaration.

3.16 All rubbish, trash, or garbage shall be kept so as not to be seen from neighboring Lots and streets; shall be regularly removed from the Property, and shall not be allowed to accumulate thereon; and shall be placed out for collection on the driveway of the Lot at no other location. Garbage shall be placed in appropriate covered containers and kept in the garage until the designated day of pick-up. Under no circumstance shall the container impede access to streets, alleys or driveways of other Owners.

3.17 Drying of clothes shall be confined to the interior of the Dwelling Units. No clothes, sheets, laundry, blankets or other articles of clothing shall be hung out in any portion of the Property.

3.18 An Owner of a Lot shall do no act nor allow any condition to exist which will adversely affect the other Lots or their Owners.

3.19 If Declarant shall install a mailbox on a Lot or for use by an Owner, the respective Owner shall be responsible for maintaining, in good condition and repair, such mailbox and to replace, if necessary, said mailbox with a mailbox of the same height, material and styling as originally installed, or a mailbox as approved by the Architectural Control Committee, as such term is defined in this Declaration.

3.20 All vehicles owned or maintained by occupant of a Lot, other than temporary guests and visitors, shall be parked in garages to the extent that garage space available, and garages shall not be used for storage or otherwise so that they become unavailable for parking cars therein. Overhead garage doors must be kept closed on a consistent basis. No part of any of the Lots or Common Area shall be used for storage use, including storage of recreational vehicles or overnight parking of mobile homes, trailers, trucks, vans, buses, commercial vehicles, snowmobiles or boats except within the confines of a garage and further excepting the temporary parking of such vehicles for no more than forty eight (48) hours, unless otherwise approved by the Board. No repair or body work of any motorized vehicle shall be permitted except within the confines of the garage. The Association is expressly authorized to enforce the provisions of this Section by ticketing and fining any Owner who violates this Section, and towing offending vehicles, trailers, boats, trucks, vans, buses or snowmobiles. All fines imposed and all expenses incurred by the Association in enforcing this Section, shall become an obligation owed by the subject Owner to the Association, and shall be a lien created and enforced as set forth in this Declaration. The Association is specifically authorized to enter into a contract with any local municipality or unit of government, or with any private firm or entity, to provide services reasonably required to enforce the terms and provisions of this Section.

3.21 No lines or wires for communication or the transmission of electric current or power shall be constructed, placed or permitted to be placed anywhere in the Property other than within buildings or structures or attached to their walls, unless the same shall be contained in conduits or approved cables constructed, placed and maintained underground.

3.22 No above-ground swimming pools are permitted within the Property, except portable child's swimming pool not greater than six (6) feet in diameter may be maintained and situated within a Lot.

3.23 A short, temporary flagpole may be attached to the front porch for the purpose of flying an approved flag. All flag poles must be approved by the Board of Directors or Architectural Control Committee prior to placement. The only flag permitted is the American Flag or such other flags as shall be approved by the Board.

ARTICLE 4 **MEMBERSHIP AND BOARD OF DIRECTORS**

4.1 Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

4.2 Voting Rights. The Association shall have one class of membership and each member shall have one vote for each Lot such member owns, provided that in no event shall

more than one (1) vote be cast with respect to any one (1) Lot. If more than one (1) person is the record owner of any Lot, or if an Owner is a trustee, corporation, partnership or other legal entity, the vote for such Lot shall be exercised as such Owner or Owners of that Lot shall designate. Such designation shall be made in writing to the Board or in such other manner as may be provided in the By-Laws.

4.3 Board of Directors. The Association shall be governed by a Board of Directors comprised of three (3) persons, or such greater number as may be determined by Board resolution. Subject to Section 4.6, the Directors shall be elected as provided in the By-Laws. The Board shall maintain and administer the Common Area and improvements thereon in accordance with the terms and provisions of this Declaration and the By-Laws.

4.4 Officers. The Association shall have such Officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly provided otherwise by the Articles of Incorporation or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in its Board, from time to time, and its officers under the direction of the Board and shall not be subject to the approval of the Members. The Articles of Incorporation and By-Laws of the Association may include such added provisions for the protection and indemnification of its Officers and Directors as shall be permissible by law. The Directors and Officers of the Association shall not be liable to the Owners or others for any mistake of judgment or any acts or omissions made in good faith as such Directors or Officers.

4.5 Director and Officer Liability. Neither the Directors nor the Officers of the Association shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless the Directors and Officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or other acts of the Directors and Officers on behalf of the Owners or the Association or arising out of their status as Directors or Officers unless any such contract or such act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such Director or Officer may be involved by virtue of being or having been such Director or Officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such Director or Officer, or (ii) any matter settled or compromised unless, in the opinion of independent counsel selected by or in a manner determined by the Board there is no reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his/her duties as such Director or Officer.

4.6 Turnover. Subject to Subsections 4.6(a) and 4.6(b), prior to the Turnover Date the Declarant or Persons designated by the Declarant, may appoint and remove the officers and



members of the Board. On or prior to the Turnover Date, the Developer shall cause Declarant to convey to the Association, and the Association shall accept, the Common Area to be owned by the Association hereunder and the Association shall undertake to maintain the Common Area pursuant to the terms hereof.

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

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

4.7 Board Powers. The Association, through the Board, shall have the following powers and duties:

(a) Own, maintain and otherwise manage the Common Area and all Improvements thereon in accordance with the final landscape development plan and own, maintain and otherwise manage all other property acquired by the Association or which the Association agrees to maintain, including any obligation to maintain any landscaping located in concrete islands, cul-de-sac and median strips in the dedicated streets which are adjacent to or within the Property and to maintain any signage and lighting located thereon;

(b) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same not later than ninety (90) days after the date of the initial meeting of the Members of the Association is held as provided by the By-Laws;

(c) Establish and maintain a working capital and contingency fund in an amount to be determined by the Board;

(d) Provide for the maintenance of landscaping, signs, monuments, fencing, retaining walls, water systems, brick pavers, lighting and other improvements located within the Common Area at the entrance ways to the Property.

(e) At its option, mow, care for, maintain vacant and unimproved portions of the Property and remove rubbish from same and to do any other things necessary or desirable in the judgment of the Board to keep any vacant portions of the unimproved portions of the Property neat in appearance and in good order. The foregoing rights shall not apply to any Lot or other portion of the Property owned by Declarant;

(f) Make such improvements to the Common Area and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two-thirds (2/3) of the Members of the Association acting in accordance with its Articles of

Incorporation and By-Laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping Mountain Shadows Subdivision a highly desirable residential community; and

(g) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by this Declaration, the Articles of Incorporation or the By-Laws.

4.8 Insurance. The Board shall also have the authority to and shall obtain comprehensive liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and worker's compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, the Association, its Officers, members of the Board, the Declarant, and their respective employees and agents from liability and insuring the Officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be common expenses payable out of the proceeds of the Assessments required by and collected in accordance with Article 7. The Association shall be further responsible for maintaining such policies of insurance for the Common Area against loss or damage by fire and such other hazards contained in the customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable and may also obtain such other kinds of insurance as the Association shall from time to time deem prudent. The coverage shall contain an endorsement to the effect that said coverage shall not be terminated for non-payment of premiums without at least 30 days prior written notice for the Association. The Insurance policies shall contain waivers of subrogation with respect to the Board, its employees, agents, owners and mortgagees.

ARTICLE 5
RESERVED RIGHTS OF DECLARANT AND
PROVISIONS COVERING DEVELOPMENT PERIOD

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

(a) The right to subject all or any part of the Additional Parcel to this Common Interest Community pursuant to the provisions of Article 5.10.

(b) The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the Property.

(c) The right to construct additional Lots and Common Elements, and to subdivide Lots or convert Lots into Common Elements.

(d) The right to withdraw and de-annex from the Common Interest Community or the Additional Parcel, any portion of the Common Interest Community in accordance with the Act ("Withdrawn Property").

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

(a) The Development Rights may be exercised at any time, but not more than twenty-five (25) years after the recording of this Declaration.

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

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

(a) To construct improvements, including landscaping, indicated on the Subdivision Plat of the Property or otherwise on any of the Common Area;

(b) To exercise any Development Right reserved herein;

(c) To maintain construction, sales and management offices, signs advertising the Common Interest Community and models in such numbers, and of such sizes at such locations as Declarant may determine from time to time. In connection with the promotion, sale or rental of any improvements upon the Property: (i) Declarant shall have the right and power, within its sole discretion, to construct such temporary or permanent improvements, or to do such acts or other things in, on or to the Property as the Declarant may, from time to time, determine to be necessary or advisable, including, without limitation, the right to construct and maintain model Units, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable in its sole and absolute discretion; and (ii) Declarant, its respective agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Common Area, at any and all reasonable times without fee or charge. The Declarant shall have the right and power to sell or lease any Unit owned or beneficially owned by it to any person or entity which it deems appropriate in its sole and absolute discretion;

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

(e) To merge or consolidate the Common Interest Community with another Common Interest Community;

(f) To amend the Declaration and the Plat and any map in connection with the exercise of any Development Rights;

(g) To appoint or remove any Architectural Review Committee member until the disposition of the last Lot to an Owner other than the Declarant; and



(h) To exercise any other Declarant right created by any other provision of this Declaration.

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

5.5 Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant or any transferee of Declarant rights pursuant to Section 5.4 until the earlier of the following: as long as the Declarant or the transferee (a) is obligated under any warranty or obligation; (b) holds a Development Right to create additional Lots or Common Elements; (c) owns any Lot; (d) owns any Mortgage in any Lot; or (e) twenty-five (25) years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

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

5.7 Construction; Declarant's Easement. The Declarant reserves the right to perform warranty work, and repairs and construction work on Lots and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed without the consent or approval of the Board of Directors. The Declarant has an easement through each Lot and the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Development or Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities or metropolitan or special improvement districts, the state, the City, riparian owners or upland owners to fulfill the plan of development.

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

5.9 Additional Developer Rights. Notwithstanding anything contained in this Declaration to the contrary:

(a) Until the Turnover Date, Developer may elect to, but shall not be obligated to, maintain the Common Area and all signs and monuments located thereon and shall pay all expenses and costs in connection with the Common Area, including without limitation, the costs of improving and maintaining the Common Area (and any signs and monuments located thereon) and general real estate taxes payable in connection with the Common Area and

such payments shall be credited against any amounts due the Association from Developer. To the extent that any real property taxes payable after the Turnover Date are attributable to the period prior to the Turnover Date, Developer shall reimburse the Association, on a pro rata basis, for such real property taxes. Declarant shall, not later than the Turnover Date, convey to the Association that portion of the Common Area to be owned by the Association.

(b) Developer shall be entitled, without cost, at all times to conduct sales or leasing of Lots and residences to be located upon Lots from the Property and shall have the right, for itself and its agents, employees, guests, invitees, to utilize roads, streets, Common Area and all other portions of the Property, excluding Lots or residences conveyed to Owners (except Declarant), for such purposes, at no cost or expense, until all Lots are sold and conveyed to purchasers thereof. Developer may at all times, without cost, utilize signage, lighting and establish temporary construction and sales offices, buildings and trailers and construct model homes to conduct its construction, sales and marketing of the Property.

5.10 Annexation of Additional Parcel. All or any portion of the Additional Parcel shall become subject to the Common Interest Community and be included within the definition of Property upon earlier to occur of the recording of an Annexation Deed or the recording of an Annexing Amendment related to such portion of the Additional Parcel. Notwithstanding the foregoing, the Cavalli-Dotson Property shall only become subject to the Common Interest Community following the transfer of Cavalli-Dotson Property to Declarant or its successor.

ARTICLE 6

EASEMENTS AND PROPERTY RIGHTS

6.1 Easements and Use and Enjoyment. An Easement is hereby declared and created over and upon the Common Area for the benefit of the entire Property, and every Owner shall have a right and easement of use and enjoyment and a right of access to and of ingress and egress on, over, across, in, upon and to the Common Area, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its By-Laws, to adopt rules and regulations governing the use, operation and maintenance of the Common Area.

(b) The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Area. Notwithstanding the foregoing, no mortgage shall be placed upon the Common Area unless such mortgage is approved by the Board and by a majority of the Members, voting at a general or special meeting duly called and held in accordance with the By-Laws.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area or any utility system thereon to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by two-thirds (2/3) of the Members of the Board of Directors, has been recorded.

(d) The right of the Association, pursuant to its Articles of Incorporation and Bylaws, to suspend the voting rights and/or enjoyment rights to the Common Area of any Member for any period during which any assessment remains unpaid, also for a period, not to exceed sixty (60) days, for any violation or infraction of the Association's Bylaws and published rules and regulations adopted pursuant thereto, after ten (10) days' prior written notice.

6.2 Rights of Occupants. All persons who reside on a Lot shall have the same rights to use and enjoy the Common Area and all improvements situated thereon as the Owner of that Lot, as provided in the By-Laws.

6.3 Utility Easements. The suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair and replace conduits, cables, pipes, wires, transformers, mains, switching apparatus and other equipment, including housings for such equipment, into, over, under, on and through the Property for the purpose of providing utility services to the Property or to any portion of Additional Property, whether or not annexed hereto. Every Owner is also hereby granted an easement of ingress and egress over and upon the Common Area and any other Lot for any and all purposes arising out of the construction, installation, repair, maintenance, replacement and inspection of utilities servicing such Owner's Lot.

6.4 Construction Easement. There is also reserved to the Developer, its agents and prospective purchasers and lessees, the right of ingress and egress in and through the Common Area and to park in the outdoor parking areas incident to such sales or leasing purposes designated by Developer and, during construction by the Developer, the right of ingress and egress in and through the Common Area and Property in connection with such construction.

6.5 Easements Run With the Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and binding upon any owner, purchaser, mortgagee or to the person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation to the easements and rights described in this Article or in any other part of this Declaration shall be sufficient to create and reserve such easements as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

ARTICLE 7 **COVENANT FOR ASSESSMENTS**

7.1 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any such deed or other covenants, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Lot owned by such Owner, all assessments and charges levied pursuant to this Declaration. Such assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when such assessment fell due.

7.2 Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and, in particular, without limiting the foregoing, for maintenance, repair, replacement, improvement and additions of and to the Common Area and the improvements thereon, for all taxes, insurance, utilities, professional and other services, materials, supplies, equipment and other costs and expenses incident to the ownership of the Common Area and all facilities and improvements thereon, for certain maintenance, and for otherwise carrying out the duties and obligations of the Board and of the Association as stated herein and in its Articles of Incorporation and By-Laws.

7.3 Assessment Procedure - Annual Assessments.

(a) Each year, on or before November 1, the Board shall prepare a budget for the Association for the ensuing twelve (12) months which shall include estimated cash expenditures and reasonable amounts as a reserve for repairs to and replacement of the improvements on the Common Area, and for such other contingencies as the Board may deem proper, and shall, on or before December 15, notify each Owner in writing of the amount of such estimate, with reasonable itemization thereof. The budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Board shall mail first class or deliver a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) or more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting at least sixty-seven percent (67%) of all Owners vote to reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners continues until the Owners ratify a new budget proposed by the Board. In lieu of a budget-ratification meeting, action may be taken by written ballot in accord with C.R.S. Section 7-127-109 within the above-stated timetable.

(b) On or before the next January 1, following the preparation of the budget, each Owner, jointly and severally, shall be personally liable for and obligated to pay to the Association the annual assessments in a manner as shall be approved and directed by the Board, which may be in one yearly installment, quarterly, monthly or other incremental installments. On or before May 1 of each year following the initial meeting, the Board shall supply to all Owners an itemized accounting, on an accrual or cash basis, of expenses for the preceding twelve (12) months together with a tabulation of the assessments and showing net excess or deficit, on an accrual or cash basis, of income over the sum of expenses plus reserves. Any such excess may, at the discretion of the Board, be retained by the Association and shall be placed in a reserve account.

(c) If said annual assessments prove inadequate for any reason, including non-payment of any Owner's assessment, the Board may, subject to the limitations on the use of capital reserves in Paragraph 7.5, charge the deficiency against existing reserves, or levy a further assessment which shall be assessed equally against all Lots subject to assessment. The Board shall serve notice for such further assessment on all Owners by a statement in writing showing the amount due and reasons therefor, and such further assessment shall become



effective with the monthly installment which is due more than ten (10) days after delivery or mailing of such notice of further assessment. All Owners shall be personally liable for and obligated to pay their respective adjusted monthly assessment.

(d) The failure or delay of the Board to prepare or serve the annual or adjusted estimate on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided. Whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay his monthly installment at the then existing rate established for the previous period until the monthly installment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

7.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital improvement upon or to the Common Area and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-Laws, any such assessments which in one (1) year exceed Five Thousand and No/100 Dollars (\$5,000.00) for all Lots involved shall first be approved by a majority of the Board and thereafter by a majority of the votes cast by the Members present at a general or special meeting duly called for that purpose or, in lieu of such Member's meeting, by an instrument signed by the Members owning two-thirds (2/3) of the Lots. Special assessments levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board or, where applicable, as approved by the members, and shall be used only for the specific purpose for which such assessment was levied.

7.5 Capital Reserves. To the extent the annual budget includes or establishes a reserve portion thereof or an amount specifically designated as a capital reserve, then that proportion of each installment of the annual assessments paid to the Association as the amount so designated as a capital reserve bears to the total annual budget shall be segregated and maintained by the Association in a special capital reserve account to be used solely for making repairs and replacements to the Common Area and the improvements thereon which the Association is obligated to repair and replace in accordance with the provisions of this Declaration, and for the purchase of equipment to be used by the Association in connection with its duties hereunder.

7.6 Initial Operating Contribution. Developer shall collect from each initial purchaser of a Lot, at the closing of the sale of such Lot, a sum equal to two (2) months assessments to be used for the operating needs of the Association.

7.7 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing special assessments which requires approval of the Members shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of voting Members in person or by proxy having sixty percent (60%) of the votes entitled to be cast shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at

the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.8 Uniform Assessments. Both annual and special assessments shall be fixed at a uniform rate for all Lots.

7.9 Collection of Assessments. Any installment of an assessment which is not paid when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may, upon notice to such Owner of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year, and the total amount shall become immediately due and payable and commence to bear interest from the date of acceleration at the maximum rate permitted by law. The Board may determine a late charge not to exceed Fifty and No/100 Dollars (\$50.00) per month for all delinquent assessments. The Association may bring an action against the Owner personally obligated to pay assessments and recover the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in any such action. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and any such accelerated installments, together with interest, late charges as determined by the Board, costs and attorneys' fees as above provided, shall be and become a lien or charge against the delinquent Owner's Lot when payable and may be foreclosed by any action brought in the name of the Association. To the extent permitted by statute, the Board may bring an action in Forcible Entry and Detainer to collect any delinquent assessments.

7.10 No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Any claim by an Owner against the Association shall be by separate action and shall not be used as a defense or counterclaim to an action by the Association to collect assessments.

7.11 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed at any time on a Lot by a bona fide lender. Each holder of a first mortgage on a Lot who obtains title or comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments or charges which become payable prior to such acquisition of title, possession, or the filing of a suit to foreclose the mortgage.

ARTICLE 8

RIGHTS OF FIRST MORTGAGEES

8.1 In addition to all other rights of first mortgagees pursuant to this Declaration, and notwithstanding any other provisions herein to the contrary:

Unless at least fifty-one (51) percent of the first mortgagees (based upon one vote for each first mortgage owned) of individual Lots (hereinafter referred to as "First Mortgagees") have given their prior written approval, the Association shall not be entitled to:



(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvement thereon which are owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. The granting of easements for public utilities or for other purposes consistent with the intended use of such property by the Association shall not, for purposes of the foregoing, be deemed to be a transfer.

(b) Change the method of determining the obligations, assessments, dues, reserves for maintenance, repair and replacement of Common Areas, or other charges which may be levied against a Lot and the Owner thereof as provided in Article 7, subject, however, to the provisions in Paragraph 8.5 hereof.

(c) By act or omission waive, abandon or materially change any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of any dwelling or garage on a Lot, the exterior maintenance of any such dwelling or garage, the maintenance of common fences and driveways, if any, or the upkeep of lawns and plantings on the Property.

(d) Fail to maintain fire and extended coverage insurance on the insurable improvements in the Common Area in an amount not less than one hundred percent (100%) of the full insurable replacement cost.

(e) Use hazard insurance proceeds for losses to any improvements to the Common Area for other than the repair, replacement or reconstruction of such improvements.

(f) Change the responsibility for maintenance and repairs of the Common Area and/or Lots thereof as provided in Article 7.

(g) Change the interests in the Common Area or rights to their use.

(h) Change the voting rights of any Member of the Association.

(i) Impose any restrictions on a Lot Owner's right to sell or transfer his or her Lot.

(j) By act or omission, seek to terminate the legal status of the Association after substantial destruction or condemnation.

8.2 First Mortgagees shall have the right to examine the books and records of the Association at reasonable times upon reasonable notice.

8.3 First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

8.4 Any First Mortgagee, at its written request, shall be entitled to written notice from the Board of any default by the mortgagor of such Lot in the performance of such mortgagor's

obligations hereunder or under the By-Laws or rules and regulations of the Association which is not cured within thirty (30) days.

8.5 First Mortgagees are entitled to timely written notice, if requested in writing of:

(a) Any condemnation or casualty loss that affects either a material portion of the project or the lot securing its mortgage;

(b) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;

(c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owners' association; and

(d) Any proposed action that requires the consent of a specified percentage or eligible mortgage holders.

The request must include the Owners' Association, stating both its name and address and the Lot address of the Lot it has a mortgage on.

This Article 8 may be amended only with the written consent of fifty percent (50%) of the First Mortgagees (based upon one vote for each first mortgage owned).

ARTICLE 9 **ARCHITECTURAL CONTROL**

9.1 General Review and Approval. Except for improvements constructed by Developer, no building, fence, wall, or other structure shall be commenced, erected or maintained upon the Property or upon any Lot, dwelling, garage or other improvement thereon, nor shall any exterior addition to or change or alteration therein be made, except such as are erected or approved by the Developer, until written plans and specifications showing the nature, kind, shape, height, materials, color scheme and location of the same and the approximate cost thereof shall have been submitted to and approved in writing by the Board or by an architectural committee composed of three (3) or more representatives appointed by the Board. Prior to the Turnover Date Developer shall have the right to exercise all matters with regard to the Architectural Committee.

9.2 Television Antenna. Notwithstanding the provisions of paragraph 9.1 herein, no outdoor television antenna shall be affixed to or placed upon the exterior walls or roof of any dwelling, garage or other improvement on a Lot or upon any other portion of a Lot, or on any portion of the Common Area, except for a single television mast antenna, without express written consent of the Board.

9.3 Devices Designed for the Air Reception of Television Broadcast Signals. In compliance with Section 207 of the Telecommunications Act of 1996, and the rules and regulations promulgated thereby, devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution services or direct broadcast satellite services (collectively "Dishes") which promote a viewer's ability to receive video programming

services, shall be permitted and may be affixed to or placed upon the exterior walls or roof of any dwelling, garage or other improvement on a Lot; provided, however, Dishes shall be placed, to the extent feasible, in locations that are not visible from any street, provided, that this placement permits reception of any acceptable qualify signal. Any and all Dishes permitted pursuant to this Section shall be installed in full compliance with all health, safety, fire and electrical codes, rules, regulations, ordinances, statutes and laws of the Federal Government, State of Colorado, Weld County and local municipalities and the Association (collectively "Health and Safety Laws"). All Dishes installed shall be properly grounded and installed in full compliance with all installation requirements of the manufacturer and all Health and Safety Laws. No Dishes shall be installed within the close proximity of any power lines. All Dishes installed, to the extent feasible, shall be painted or of such color so that the Dish blends into the background against which it is mounted, provided, however, said painting requirement does not prohibit or unreasonably interfere with the reception or signal received by the viewer, and such Dishes shall be no greater in size than one meter in diameter. Notwithstanding anything contained herein to the contrary, the installation of any Dish shall be at the Owner's sole risk and sole cost and expense and, in the event the installation of any Dish causes any damage or destruction to any dwelling or other improvement installed by Developer or any Lot or voids or impairs any warranty which runs for the benefit of the Developer, other Lot Owners or the Association, the Owner installing and owning aid Dish shall be liable and responsible for and shall pay for any and all costs, expenses, fees and damages and repair any and all damage or destruction created thereby, including reasonable attorneys' fees and court costs. No Dish shall be affixed to, installed or placed upon the Common Area except upon the prior written consent of the Developer, not to be unreasonably withheld, and shall only be installed, affixed or placed upon the Common Area in conjunction with the Association's duly adopted rules and regulations. Notwithstanding anything contained herein to the contrary, any Owner installing and affixing any Dish to a Lot, improvement, dwelling or the Common Area hereby agrees to and shall indemnify, defend and hold Developer and the Association harmless from and against any and all costs, expenses, suits, damages, destruction to any real property or any person, including attorneys' fees and court costs, caused by, either directly or indirectly, the installation, affixing and maintaining, whether by said Owner or a third party contractor, of a Dish pursuant to this Declaration. This Section 9.3 shall be binding upon and inure to the benefit of each Owner and his/her heirs, successors and assigns and shall be effective upon recordation in the Office of the Weld County Recorder of Deeds.

9.4 Repair and Reconstruction. In the event of damage to or destruction of any dwelling, garage or other improvement installed by Developer on any Lot, the Owner or Owners from time to time of any such improvement covenant and agree that they will, within a reasonable time after such destruction, repair or rebuild the same in a substantial and workmanlike manner with materials comparable to those used in the original structure, and shall conform in all respects to the laws or ordinances regulating the construction of such structures in force at the time of such repair or reconstruction. The exterior of such structure, when rebuilt, shall be substantially the same as and of architectural design conformable with the exterior of such structure immediately prior to such damage or destruction. If an Owner fails to make the necessary repairs or reconstruction within thirty (30) days after written notice is sent, the Board may cause the same to be done and the cost thereof shall be charged to such Owner as his personal obligation and shall be a lien on his Lot.

ARTICLE 10
LEASE OF LOTS

Any lease agreement between an Owner and a lessee shall be in writing and shall provide that the term of such lease shall not be less than one year, that the terms of such lease are subject in all respects to the provisions of this Declaration, the Articles of Incorporation, By-Laws and rules and regulations of the Association, and that failure by the lessee to comply with the terms of such documents shall be a default under the lease. To verify this, a Rider, which can be obtained from the Board, must be signed and attached to every lease and returned to the Board. Notwithstanding the foregoing, Declarant or Developer shall be entitled to enter into lease agreements with any duration of term. Except as set forth herein, there is no restriction on the right of any Owner, including Declarant or Developer, to lease any Lot it owns.

ARTICLE 11
RIGHTS OF TOWN OF FIRESTONE, COLORADO

11.1 Easements. The Town of Firestone, Colorado is hereby granted an easement into, over, under, on and through the Common Areas and Lots for the purpose of repair, maintenance and replacement of the Common Areas. Such easement shall run with the land and shall remain in full force and effect.

11.2 Repair of Common Areas. In the event the Association fails to maintain, repair and/or replace the Common Areas as set forth in this Declaration, the Town of Firestone, Colorado ("Municipality") shall have the right, but not the obligation, to maintain, repair and replace the Common Areas. In the event the Municipality takes on the responsibility of repairing, maintaining or replacing any portion of the Common Areas, the Municipality shall have the right to charge the costs thereof back to the Association. In addition, the Municipality shall have the right to record a lien upon the Property with the Office of the Recorder of Deeds of Weld County, Colorado in the event the Association fails to pay or reimburse the Municipality for the costs expended by the Municipality in accordance with the terms and conditions of this Section. In addition, the Municipality shall have the right to collect its reasonable attorney's fees and court costs in enforcing the terms and conditions of this Declaration as well as charge interest on monies advanced by the Municipality at the rate of eighteen percent (18%) per annum from the date incurred through the date in which the Municipality has been fully reimbursed.

11.3 Amendments. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may not be modified or amended without the prior written consent of the Municipality, which consent shall not be unreasonably withheld or delayed.

ARTICLE 12
GENERAL PROVISIONS

12.1 Enforcement. In addition to all other rights herein granted to the Association, the Association may enforce the provisions of this Declaration, the Articles of Incorporation, By-Laws and rules and regulations of the Association by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, and

failure of the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in connection with any such proceedings, including court costs and attorneys' fees, together with interest thereon at the highest interest permitted by law, shall be charged to and assessed against any Owner violating any such provisions and shall be added to and deemed a part of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 7. If any Owner, or his guests, violates any provisions of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations of the Association, the Board may, after affording the Owner an opportunity to be heard, levy a reasonable fine against such Owner, and such fine shall be added to and deemed a part of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 7.

12.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision hereof, all of which shall remain in full force and effect.

12.3 Title in Trust. In the event title to any Lot is conveyed to a trust under the terms of which all powers of management, operation and control of the Lot remain vested in the trustee of the trust or the beneficiary or beneficiaries, then the trustee of the trust or the beneficiary or beneficiaries thereunder from time to time as designated in writing to the Board by the trustee of the trust shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Lot. Notwithstanding the foregoing claims shall be made against such trust for payment of any lien or obligation hereunder created. The amount of such lien or obligation shall continue to be a charge or lien upon the Lot as the personal obligation of such trust, notwithstanding any transfer of the Lot.

12.4 Amendments. The provisions of Article 6 and Paragraph 7.1, and this paragraph may be amended only by an instrument in writing setting forth such amendment signed and acknowledged by all Owners. Subject to the Act and Article 8 hereof, the remaining provisions of this Declaration may be amended by an instrument in writing setting forth such amendment signed and acknowledged by the voting Members having at least sixty-six and two thirds (66.67%) percent of the total votes of the Members or that is approved at a duly called and held general or special meeting of Members by the affirmative vote, either in person or by proxy, of the voting Members having at least sixty-six and two thirds (66.67%) of the total votes of the Members and containing a certification by an officer of the Association that said instrument was duly approved as aforesaid. No amendment shall be effective until duly recorded in the Office of the Recorder of Deeds of Weld County, Colorado.

12.5 Special Amendment. Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make,

purchase, sell, insure, or guarantee first mortgages encumbering any Lot, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elects to record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the expenses to be borne by the Owners hereunder. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and irrevocably granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservations of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. Notwithstanding anything herein to the contrary in this Declaration, no amendment may be made to this Declaration which effects any of the rights or obligations of the Declarant and/or Developer without the prior written consent of the Declarant.

12.6 All headings set forth herein are intended for convenience only and shall not be given or construed to have any substantive effect on the provisions of this Declaration. The singular shall include the plural wherever the Declaration so requires, and the masculine the feminine and neuter and vice versa.

12.7 Notwithstanding anything herein to the contrary, Declarant and/or Developer reserve(s) the right to transfer, assign, mortgage or pledge any and all of either respective privileges, rights, title and interests hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of Weld County, Colorado. Upon such assignment, Declarant and/or Developer, as the case may be, shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording of such assignment. No such successor assignee of the rights of Declarant and/or Developer shall have or incur any liability for the obligations or acts of any predecessor in interest.

12.8 Each Owner of a Lot shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address; provided, however, that if any Owner shall fail to so notify the Association, the mailing address for such Owner shall be the common street address of the Lot owned by such Owner. The Association shall maintain a file of such addresses. A written or printed notice, deposited in the United States mails, postage prepaid, and addressed to any Owner at the last address filed by such Owner with Declarant shall be sufficient and proper notice to such Owner shall be deemed delivered on the third (3rd) day after deposit in the United States mails.

12.9 Notices. Any notice required or desired to be given under the provisions of this Declaration to any Owner shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the person who appears as the Owner at his last known address, all as shown on the records of the Association at the time of such mailing.

12.10 Binding Effect. Except for matters discussed in Article 8 of this Declaration, the easements created by this Declaration shall be of perpetual duration unless cancelled in a written

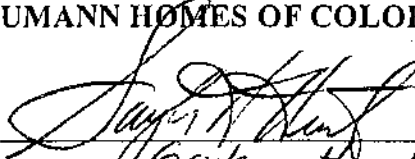


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document signed by ninety percent (90%) of the Owners. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

IN WITNESS WHEREOF, Neumann Homes, Inc. has executed this Declaration as of the date and year first above mentioned.

NEUMANN HOMES OF COLORADO LLC

By: 
Name: Gaylen H. Hynt
Its: Division President

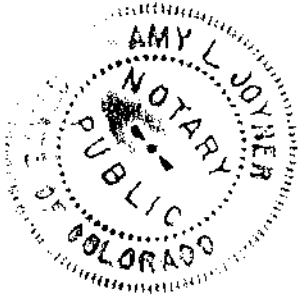
STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

I, Amy L. Joyner, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gaylen H. Hunt, Division President of NEUMANN HOMES OF COLORADO LLC, a Colorado limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing Declaration of Covenants, Conditions, Easements and Restrictions for the Mountain Shadows North Homeowners Association, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said Declaration, on behalf of the corporation and as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 30th day of October, 2003.

My Commission Expires
10/03/2007

Amy L. Joyner
Notary Public





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EXHIBIT A

LEGAL DESCRIPTION

Lots 10, 11 and 12, Block 5, Mountain Shadows Subdivision Filing No. 1, as recorded by the Weld County Clerk and Recorder under Reception #3037982, being located in the East Half (E1/2) of Section One (1), Township Two North (T.2N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), Town of Firestone, County of Weld, State of Colorado; and

Lots 3, 4, 5, 6 and 7, Block 9, Mountain Shadows Subdivision Filing No. 1, as recorded by the Weld County Clerk and Recorder under Reception #3037982, being located in the East Half (E1/2) of Section One (1), Township Two North (T.2N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), Town of Firestone, County of Weld, State of Colorado; and

Tracts K and L Mountain Shadows Subdivision Filing No. 1, as recorded by the Weld County Clerk and Recorder under Reception #3037982, being located in the East Half (E1/2) of Section One (1), Township Two North (T.2N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), Town of Firestone, County of Weld, State of Colorado.



3122860 11/03/2003 12:03P Weld County, CO
28 of 44 R 221.00 D 0.00 Steve Moreno Clerk & Recorder

EXHIBIT B

(SUBDIVISION PLAT)

TO BE RECORDED WITH THE RECORDER OF DEEDS
OF WELD COUNTY, COLORADO AS DOCUMENT
NUMBER: _____

EXHIBIT C

BY-LAWS OF THE
MOUNTAIN SHADOWS NORTH HOMEOWNERS ASSOCIATION

1. **GENERAL.**

1.1 **Purpose of Bylaws.** These bylaws ("Bylaws") are adopted for the regulation and management of the affairs of Mountain Shadows North Homeowners Association, Inc. (the "Association"). The Association has been organized as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act, Colorado Revised Statutes 7-121-101 et seq. as amended (the "Nonprofit Act"), to act as the Association under the Declaration of Covenants, Conditions, Easements and Restrictions of Mountain Shadows North Homeowners Association (the "Declaration"). The Declaration has been executed by Neumann Homes of Colorado LLC, a Colorado limited liability company. The Declaration relates to real property in the County of Weld, State of Colorado, which is subject to the Declaration.

1.2 **Terms Defined in the Declaration.** Capitalized terms used in these Bylaws which are defined in the Declaration shall have the same meaning and definition as in the Declaration.

1.3 **Controlling Laws and Instruments.** These Bylaws are controlled by and shall always be consistent with the provisions of the Nonprofit Act, the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 et seq. as amended (the "Common Interest Act"), the Declaration and the Articles of Incorporation of the Association filed with the Secretary of State of Colorado, as any of the foregoing may be amended from time to time. To the extent there is any conflict between these Bylaws and the Declaration, the Declaration shall control.

2. **OFFICES.**

2.1 **Principal Office.** The Board of Directors, in its discretion, may fix and may change, from time to time, the location of the principal office of the Association provided that, until further notice, the principal office of the Association shall be located at 5670 Greenwood Plaza Boulevard, Suite 115, Greenwood Village, CO 80111.

2.2 **Registered Office and Agent.** The Nonprofit Act requires that the Association have and continuously maintain in the State of Colorado a registered office and a registered agent whose business office is identical with such registered office. The registered office need not be the same as the principal office of the Association. The initial registered office and the initial registered agent are specified in the Articles of Incorporation but may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law in the Office of the Secretary of State of Colorado.

3. **MEMBERS.**

3.1 **Members.** A "Member" of the Association, shall mean and refer to any person or entity who holds membership in the Association, including Declarant.

3.2 Memberships Appurtenant to Lots. Membership in the Association is appurtenant to the Lot of an Owner and the ownership of such membership shall automatically pass with the conveyance of title to the Lot. Members shall be entitled to the benefits, and subject to the burdens relating to membership in the Association. Membership in the Association shall not be assignable separate and apart from title to a Lot, except as may be expressly permitted in the Declaration.

3.3 Voting Rights of Members. The Owner of a Lot shall be entitled to cast one (1) vote in all matters requiring or permitting a vote of Members or Owners.

3.4 Voting by Joint Owners. If there is more than one person who constitutes the Owner of a Lot, all Owners shall be entitled to attend any meeting of Members, but the voting power attributable to the Lot shall not be increased. In all cases in which more than one person constitutes the Owner of a Lot, including instances in which a Lot is owned by joint tenants or tenants in common or a Lot has been subdivided, only one such person shall be entitled to cast, in person or by proxy, the vote attributable to the Lot. If more than one person constituting such Owner attends a meeting in person or by proxy, then such Owners shall designate one person to vote on behalf of such Owners, and the vote of such person shall be the vote attributable to such Lot.

3.5 Voting Disputes. No dispute as to the entitlement of any Member to vote shall postpone or delay any vote for which a meeting of Members has been duly called pursuant to the provisions of these Bylaws and at which a quorum is present.

3.6 Determination of Member Voting Percentage. Any provision contained herein requiring the approval of a requisite percentage of Members of the Association shall be deemed satisfied when the requisite percentage of Members entitled to vote has been met, or in the case of provisions requiring unanimous consent, when all Members entitled to vote approve the action or, through a failure to act after appropriate notice, have been deemed to have approved the action.

3.7 Transfer of Memberships on Association Books. Transfers of membership in the Association shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Lot to which the membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the membership as the owner of the membership entitled to all rights in connection therewith, including the rights to vote and to receive notice.

4. MEETINGS OF MEMBERS.

4.1 Place of Members' Meetings. Meetings of Members shall be held at the principal office of the Association or at such other place as may be fixed by the Board of Directors and specified in the notice of the meeting.

4.2 Annual Meetings of Members. Annual meetings of the Members shall be held in January of each year beginning in 2003 on such day and at such time of day as is fixed by the Board of Directors and specified in the notice of meeting. The annual meetings shall be held to transact such business as may properly come before the meeting.

4.3 **Special Meetings of Members.** Special meetings of the Members may be called by the Board of Directors of the Association, the president of the Association or by Members holding not less than sixty percent (60%) of the total votes of all Members entitled to vote. No business shall be transacted at a special meeting of Members except as indicated in the notice thereof.

4.4 **Record Date.** For the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose, the Board of Directors of the Association may fix, in advance, a date as the record date for any such determination of Members. The record date shall be not more than 50 days prior to the meeting of Members or the event requiring a determination of Members.

4.5 **Notice of Members' Meetings.** Written notice stating the place, day and hour of any meeting shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by first class or registered mail, by or at the direction of the President or the Secretary of the Association or the officers or persons calling the meeting, to each Member entitled to vote at such meeting. The notice of an annual meeting shall identify any matter which it is known may come before the meeting including, but not limited to, the general nature of any proposed amendment to the Declaration or Bylaws, any General Budget changes, and any proposal to remove an officer or member of the Board of Directors. The notice of a special meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid. Such notice may be posted in a conspicuous place in the Project, such as on a notice board outside the principal office of the Association, and such notice shall be deemed to be delivered to any Member upon such posting if such Member has not furnished an address for mailing of notice to the Association.

4.6 **Proxies.** A Member entitled to vote may vote in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the chairman of the meeting prior to the time the proxy is exercised. Any proxy may be revocable by attendance of a Member in person at a meeting or by revocation in writing filed with the chairman of the meeting prior to the time the proxy is exercised. A proxy shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the membership on the books of the Association. No proxy shall be valid: (a) 60 days after the date of its execution unless otherwise provided in the proxy; and in any event, for no more than 11 months after the date of its execution; (b) unless the signatures of the Members providing the proxy are notarized; (c) unless the proxy contains the signature of all Members entitled to vote such interest; and (d) unless the proxy states the specific purpose and the specific meeting for which it was granted. Any form of proxy furnished or solicited by the Association and any form of written ballot furnished by the Association shall afford an opportunity thereon for Members to specify a choice between approval and disapproval of each matter or group of related matters which is known at the time the form of proxy or written ballot is prepared, may come before the meeting and shall provide, subject to reasonably specified conditions, that if a Member specifies a choice with respect to any such matter, the vote shall be cast in accordance therewith.

4.7 Quorum at Members' Meetings. Except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the presence, in person or by proxy, of Members entitled to cast at least sixty percent (60%) of the votes of all Members entitled to vote shall constitute a quorum at any meeting of Members. Members present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum.

4.8 Adjournments of Members' Meetings. Members present in person or by proxy at any meeting may adjourn the meeting from time to time, whether or not a quorum shall be present in person or by proxy, without notice other than announcement at the meeting, for a total period or periods of not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally called.

4.9 Vote Required at Members' Meetings. At any meeting of Members, if a quorum is present, a majority of the votes present in person or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation or these Bylaws; provided, however, that a failure to vote at a meeting shall be deemed approval of the matter.

4.10 Order of Business. The order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; and (d) the conducting of the business for which the meeting was called.

4.11 Chairman of Meetings. At any meeting of Members, the President shall serve as chairman of the meeting and shall select a person to serve as secretary of the meeting.

4.12 Expenses of Meetings. The Association shall bear the expenses of holding all annual meetings of Members and of special meetings of Members. The Association shall not bear the expenses of Members' travel to the meetings.

4.13 Waiver of Notice. A waiver of notice of any meeting of Members, signed by a Member, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Member. Attendance by a Member at a meeting, either in person or by proxy, shall constitute waiver of notice of such meeting except when the Member attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

4.14 Action of Members Without a Meeting. Any action required to be taken or which may be taken at a meeting of Members, including at the annual meeting, may be taken without a meeting if a consent, in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

5. **BOARD OF DIRECTORS.**

5.1 **General Powers and Duties of Board.** The Board of Directors shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board of Directors shall have the power to exercise or cause to be exercised for the Association, all of the powers, rights and authority of the Association not reserved to Members and provided in the Declaration, the Articles of Incorporation, these Bylaws, the Nonprofit Act or the Common Interest Act, as the same may be amended from time to time. The Board of Directors shall have the power to delegate any of its powers to a committee of the Board, to a professional property management company, to an on-site manager, or to any other managing agent.

5.1.1 If the Association delegates powers of the Board of Directors or Officers relating to the collection, deposit, transfer or disbursement of Association funds to other persons or to a managing agent, then the Association shall require (i) that the other persons or managing agent maintain fidelity insurance coverage or a bond in an amount not less than fifty thousand dollars (\$50,000.00) or such higher amount as the Board of Directors may require, (ii) that the other persons or managing agent maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other persons or managing agent and maintain all reserve accounts of each association so managed separate from operational accounts of the association and (iii) that an annual accounting for Association funds and a financial statement be prepared and presented to the Association by the managing agent, a public accountant or a certified public accountant.

5.2 **Qualifications of Directors.** A Director may be any natural person and need not be an Owner of a Lot. A Director may be reelected and there shall be no limit on the number of terms a Director may serve.

5.3 **Number of Directors.** The number of Directors of the Association shall be five. The initial Directors shall be appointed by the incorporator.

5.4 **Term.** The term for each Director shall be three (3) years, unless a Director resigns or is removed.

5.5 **Removal of Directors.** Any Director may be removed by a sixty (60%) vote by the Owners, with or without cause.

5.6 **Resignation of Directors.** Any Director may resign at any time by giving written notice to the Board of Directors and to the Owners who appointed such Director stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

5.7 **Vacancies** Any vacancy occurring in the Board of Directors shall be filled by the Owners. A Director appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office.

6. **MEETINGS OF DIRECTORS.**

6.1 **Place of Directors' Meetings.** Meetings of the Board of Directors shall be held at the principal office of the Association or at such other place as may be fixed by the Board of Directors and specified in the notice of the meeting.

6.2 **Annual Meeting of Directors.** Annual meetings of the Board of Directors shall be held on the same date as, or within 10 days following, the annual meeting of Members. The business to be conducted at the annual meeting of Directors shall consist of the appointment of officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board of Directors shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of Members at which the Board of Directors is elected or if the time and place of the annual meeting of the Board of Directors is announced at the annual meeting of such Members.

6.3 **Other Regular Meetings of Directors.** The Board of Directors may hold regular meetings quarterly or on such schedule as the Board of Directors may determine, and may, by resolution, establish in advance the times and places for such regular meetings. No prior notice of any regular meetings need be given after establishment of the times and places thereof by such resolution.

6.4 **Special Meetings of Directors.** Special meetings of the Board of Directors may be called by the President or any two members of the Board of Directors.

6.5 **Notice of Directors' Meetings.** In the case of all meetings of Directors for which notice is required, notice stating the place, day and hour of the meeting shall be delivered not less than nor more than twenty (20) days before the date of the meeting, by first class mail, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board of Directors. If mailed, such notice shall be deemed to be delivered at 5:00 p.m. on the second business day after it is deposited in the mail addressed to the Director at his home or business address as either appears on the records of the Association, with postage thereon prepaid. If by telephone, such notice shall be deemed to be delivered when given by telephone to the Director. If given personally, such notice shall be deemed to be delivered upon delivery of a copy of a written notice to, or upon verbally advising the Director. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of such meeting.

6.6 **Quorum of Directors.** Three Directors shall constitute a quorum for the transaction of business.

6.7 **Proxies.** A Director shall be entitled to vote by written proxy to another Director at a meeting of the Board of Directors.

6.8 **Adjournment of Director's Meetings.** Directors present at any meeting of Directors may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than an announcement at the meeting, for a total period or periods not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not

be reduced or changed, but if the originally required quorum is present, any business may be transacted which may have been transacted at the meeting as originally called.

6.9 Vote Required at Directors' Meeting. At any meeting of Directors, if a quorum is present, a majority of the votes present in person or by proxy and entitled to be cast in a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

6.10 Order of Business. The order of business at all meetings of Directors shall be as follows: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees if any; (f) unfinished business; and (g) new business.

6.11 Officers at Meetings. The President shall act as chairman and shall select a Director to act as secretary at all meetings of Directors.

6.12 Waiver of Notice. A waiver of notice of any meeting of the Board of Directors, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting except when the Director attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

6.13 Action of Directors Without a Meeting. Any action required to be taken or which may be taken at a meeting of Directors, may be taken without a meeting if (i) a consent in writing, setting forth the action so taken, shall be signed by a majority of the Directors, (ii) such written consent is provided to the Association within sixty (60) days and (iii) notice of such action is promptly given to those Directors which did not partake in the action.

7. OFFICERS.

7.1 Officers, Employees, Agents and Manager. The officers of the Association shall consist of a "President", a "Secretary", a "Treasurer" and such other officers, assistant officers, employees and agents as may be deemed necessary by the Board of Directors (collectively "Officers"). In addition, the Board by a majority vote may designate a manager in accordance with the Declaration. The President and Vice President shall be Directors but the Secretary, Treasurer and other Officers need not be Directors. A person may hold more than one office, except no person shall simultaneously hold the offices of President and Vice President.

7.2 Appointment and Term of Office of Officers. The Officers shall be elected by the Board of Directors at the annual meeting of the Board of Directors and shall hold office, until the next annual meeting of the Board of Directors or until their successors are appointed, whichever is later, unless the officer resigns, or ceases to serve, or is earlier removed.

7.3 Removal of Officers. Any Officer, employee or agent may be removed by the Board of Directors, with or without cause, whenever in the Board's judgment the best interests of the Association will be served thereby. The removal of an Officer, employee or agent shall be

without prejudice to the contract rights, if any, of the Officer, employee or agent so removed. Election or appointment of an Officer, employee or agent shall not of itself create contract rights.

7.4 Resignation of Officers. Any Officer may resign at any time by giving written notice to the President, to the Secretary or to the Board of Directors of the Association stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

7.5 Vacancies in Officers. Any vacancy occurring in any position as an Officer may be filled by the Board of Directors. An Officer appointed to fill a vacancy shall be appointed for the unexpired term of his/her predecessor in office.

7.6 President. The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall direct, supervise, coordinate and have general control over the affairs of the Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board of Directors. The President may prepare, execute, certify and record any amendment to the Declaration on behalf of the Association.

7.7 Vice President. The Vice President, if any, may act in place of the President in case of the President's death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board of Directors or by the President.

7.8 Secretary. The Secretary shall be the custodian of the records and the seal of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board of Directors and of committees of the Board; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to the Secretary by the Board of Directors or by the President. The Board may appoint one or more Assistant Secretaries who may act in place of the Secretary in case of the Secretary's death, absence or inability to act.

7.9 Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board of Directors; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board of Directors may, from time to time, require; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to the Treasurer by the Board of Directors or by the President. The Board may appoint one or more Assistant Treasurers who may act in place of the Treasurer in case of the Treasurer's death, absence or inability to act.

8. **INDEMNIFICATION OF OFFICIALS AND AGENTS.**

8.1 **Certain Definitions.** A "Corporate Official" shall mean any Director or Officer and any former Director or Officer of the Association. A "Corporate Employee" shall mean any employee and any former employee of the Association. "Expenses" shall mean all costs and expenses, including attorneys' fees, liabilities, obligations, judgments and any amounts paid in reasonable settlement of a Proceeding. "Proceeding" shall mean any claim, action, suit or proceeding, whether threatened, pending or completed, and shall include appeals.

8.2 **Right of Indemnification.** The Association shall indemnify any Corporate Official and any Corporate Employee against any and all Expenses actually and necessarily incurred by or imposed upon him/her to the fullest extent provided by law. The right of indemnification shall not extend to any matter as to which such indemnification would not be lawful under the laws of the State of Colorado.

8.3 **Indemnification Prohibited.** The right of indemnification shall not extend to matters as to which the Corporate Official or Corporate Employee: (i) has been adjudged liable for gross negligence or willful misconduct in the performance of the Corporate Official's or Corporate Employee's duty to the Association; or (ii) in connection with any Proceeding charging improper personal benefit to such Corporate Official or Corporate Employee, in which the party was adjudged liable on the basis that personal benefit was improperly received by such Corporate Official or Corporate Employee (even if the Association was not thereby damaged). Notwithstanding the foregoing, the Association shall indemnify such Corporate Official or Corporate Employee if and to the extent required by the court conducting the Proceeding, or any other court of competent jurisdiction to which such Corporate Official or Corporate Employee has applied, if it is determined by such court, upon application by such Corporate Official or Corporate Employee, that despite the adjudication of liability in the circumstances in clauses (i) and (ii) of this subsection 8.3 or whether or not the party met the applicable standards of conduct set forth above and in view of all relevant circumstances, the Corporate Official or Corporate Employee is fairly and reasonably entitled to indemnification for such expenses as the court deems proper in accordance with the Nonprofit Act.

8.4 **Prior Authorization Required.** Any indemnification under Section 8.2 (unless ordered by a court or in accordance with Section 8.5 below) shall be made by the Association only if authorized in the specific case after a determination has been made that the Corporate Official or Corporate Employee is eligible for indemnification in the circumstances because such Corporate Official or Corporate Employee has met the applicable standards of conduct set forth above and after an evaluation has been made as to the reasonableness of the Expenses. Any such determination, evaluation and authorization shall be made by the Board of Directors by a majority vote of such Board, or by such other person or body as permitted by law. A Director who is a party to the subject Proceeding shall not be entitled to vote on such matter.

8.5 **Success on Merits or Otherwise.** Notwithstanding any other provision of this Article 8, the Association shall indemnify such Corporate Official or Corporate Employee to the extent that such party has been successful, on the merits or otherwise, including, without limitation, dismissal without prejudice or settlement without admission of liability, in defense of

any Proceeding to which the party was a party against Expenses incurred by such party in connection therewith.

8.6 Advancement of Expenses. The Association may, but shall not be obligated to, pay for or reimburse the Expenses, or a portion thereof, incurred by a party in advance of the final disposition of the Proceeding if (a) the party furnishes the Association a written affirmation of such party's good faith belief that he or she has met the standard of conduct described above; (b) the party furnishes the Association a written undertaking, executed personally or on behalf of such party, to repay the advance if it is ultimately determined that the party did not meet such standard of conduct; and (c) authorization of payment and a determination that the facts then known to those making the determination would not preclude indemnification under this Article to have been made in the manner provided in Section 8.4. The undertaking required by clause (b) must be an unlimited general obligation of the party, but need not be secured and may be accepted without reference to financial ability to make repayment.

8.7 Payment Procedures. The Association shall promptly act upon any request for indemnification, which request must be in writing and accompanied by the order of court or other reasonably satisfactory evidence documenting disposition of the Proceeding in the case of indemnification under Section 8.4 and by the written affirmation and undertaking to repay as required by Section 8.5 in the case of indemnification under Section 8.6. The right to indemnification and advances granted by this Article shall be enforceable in any court of competent jurisdiction if the Association denies the claim, in whole or in part, or if no disposition of such claim is made within 90 days after written request for indemnification is made. A party's Expenses incurred in connection with successfully establishing such party's right to indemnification, in whole or in part, in any such Proceeding shall also be paid by the Association.

8.8 Notification to Members. Any indemnification of or advance of Expenses to a Director (but not to any other party) in accordance with this Article, if arising out of a Proceeding by or on behalf of the Association, shall be reported in writing to the Members with or before the notice of the next meeting of Members.

8.9 Authority to Insure. The Association may purchase and maintain liability insurance on behalf of any Corporate Official or Corporate Employee against any liability asserted against him or her or incurred by such party as a Corporate Official or Corporate Employee or arising out of his status as such, including liabilities for which a Corporate Official or Corporate Employee might not be entitled to indemnification hereunder.

8.10 Right to Impose Conditions to Indemnification. The Association shall have the right to impose, as conditions to any indemnification provided or permitted in this Article, such reasonable requirements and conditions as may appear appropriate to the Board of Directors in each specific case and circumstances, including, but not limited to, any one or more of the following: (a) that any counsel representing the party to be indemnified in connection with the defense or settlement of any proceeding shall be counsel mutually agreeable to the party and to the Association; (b) that the Association shall have the right, at its option, to assume and control the defense or settlement of any Proceeding made, initiated, or threatened against the party to be indemnified; and (c) that the Association shall be subrogated, to the extent of any payments

made by way of indemnification, to all of the indemnified party's right of recovery, and that the party to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Association.

8.11 Other Rights and Remedies. The indemnification provided by this Article shall be in addition to any other rights which a party may have or hereafter acquire under any law, provision of the Articles of Incorporation, any other or further provision of these Bylaws, vote of the Members or Board of Directors, agreement, or otherwise.

8.12 Applicability; Effect. The indemnification provided in this Article shall be applicable to acts or omissions that occurred prior to the adoption of this Articles, and shall continue as to any party entitled to indemnification under this Article who has ceased to be a Director, officer, or employee of the Association. The repeal or amendment of this Article or of any Section or provision hereof that would have the effect of limiting, qualifying, or restricting any of the powers or rights of indemnification provided or permitted in this Article shall not, solely by reason of such repeal or amendment, eliminate, restrict, or otherwise affect the right or power of the Association to indemnify any person, or affect any rights of indemnification of such person, with respect to any acts or omissions that occurred prior to such repeal or amendment. All rights to indemnification under this Article shall be deemed to be provided by a contract between the Association and each party covered hereby.

8.13 Indemnification of Agents. The Association shall have the right, but shall not be obligated, to indemnify any agent of the Association not otherwise covered by this Article to the fullest extent permissible by the laws of Colorado. Unless otherwise provided in any separate indemnification arrangement, any such indemnification shall be made only as authorized in the specific case in the manner provided in Section 8.3.

8.14 Savings Clause; Limitation. If this Article or any Section or provision hereof shall be invalidated by any court on any ground, or if the Nonprofit Act is amended in such a way as to affect this Article, then the Association shall nevertheless indemnify each party otherwise entitled to indemnification hereunder to the fullest extent permitted by law or any applicable provision of this Article that shall not have been invalidated.

9. MISCELLANEOUS.

9.1 Amendment of Bylaws. The Board of Directors shall not have the power to alter, amend or repeal these Bylaws or to adopt new Bylaws. The Members, at a meeting called for that purpose, shall have the sole power to alter, amend or repeal the Bylaws and to adopt new Bylaws by unanimous vote of the Members. The Bylaws may contain any provision for the regulation or management of the affairs of the Association not inconsistent with law, the Declaration or the Articles of Incorporation.

9.2 Compensation of Officers, Directors, Members and Managers. No Director, Officer, Member or manager shall have the right to receive any compensation from the Association for serving in such capacity except for reimbursement of expenses as may be approved by resolution, and the manager shall be entitled to recover the manager's actual, reasonable out-of-pocket expenses related to the performance of duties as manager.

9.3 Books and Records. The Association shall keep correct and complete books and records of account and shall keep, at its principal office in Colorado, a record of the names and addresses of its Members, including Declarant, and copies of the Declaration, the Articles of Incorporation and these Bylaws which may be purchased by any Member at reasonable cost. All books and records of the Association, including the Articles of Incorporation, Bylaws as amended, and minutes of meetings Members and Directors may be inspected by any Member, or his agent or attorney, and any First Mortgagee of a Member for any proper purpose. The right of inspection shall be subject to any reasonable rules adopted by the Board of Directors requiring advance notice of inspection, specifying hours and days of the week during which inspection will be permitted and establishing reasonable fees for any copies to be made or furnished.

9.4 Annual Report. The Board of Directors shall cause to be prepared and distributed to each Member and to each First Mortgagee who has filed a written request therefor, not later than 90 days after the close of each fiscal year of the Association, an annual report of the Association containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year; (c) a statement of changes in financial position for such fiscal year; and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses of current Members, may be found. The financial statements of the Association shall be reviewed by an independent public accountant and a report based upon such review shall be included in the annual report.

9.5 Statement of Account. Upon written request of an Owner or any person with any right, title or interest in a Lot or intending to acquire any right, title or interest in a Lot, the Association shall furnish a written statement of account setting forth the amount of any unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Lot, the Owner and the amount of the assessments for the current fiscal period of the Association payable with respect to the Lot. Such statement shall be issued within fourteen (14) business days after receipt of such request by the Association and, with respect to the party to whom it is issued, shall be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have then been levied. The Board of Directors may establish a reasonable fee for preparation of such statements.

9.6 Corporate Reports. The Association shall file with the Secretary of State of Colorado, within the time prescribed by law, corporate reports on the forms prescribed and furnished by the Secretary of State and containing the information required by law and shall pay the fee for such filing as prescribed by law.

9.7 Fiscal Year. The fiscal year of the Association shall begin on January 1 and end the succeeding December 31 except that the first fiscal year shall begin on the date of incorporation. The fiscal year may be changed by the Board of Directors without amending these Bylaws.

9.8 Seal. The Board of Directors may adopt a seal which shall have inscribed thereon the name of the Association and the words "SEAL" and "COLORADO."

9.9 **Shares of Stock and Dividends Prohibited.** The Association shall not have or issue shares of stock and no dividend shall be paid and no part of the income or profit of the Association shall be distributed to its Members directors or officers. Notwithstanding the foregoing, the Association may issue certificates evidencing membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

9.10 **Loans to Directors and Officers Prohibited.** No loan shall be made by the Association to any Director or Officer, and any Director or Officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

9.11 **Limited Liability.** As provided in the Articles of Incorporation and Declaration, the Association, the Board of Directors, Declarant, and any Member, agent or employee of any of the same, shall not be liable to any person for any action or for any failure to act unless the action was taken in bad faith or was the result of gross negligence.

9.12 **Special Rights of First Mortgagees.** Each First Mortgagee shall receive 30 days advance notice of any proposed material amendment to the Declaration or the Condominium Map, which notice shall include a copy of the proposed change. Any First Mortgagee being served with such notice shall be deemed to have approved such change as proposed unless it states in a timely written response to the Association its objections or comments relative to such proposed change.

Any First Mortgagee shall, upon written request and payment of a reasonable fee therefor which may be charged by the Association: (i) be permitted to inspect the books and records of the Association during normal business hours; (ii) receive copies of the most recent annual financial statements of the Association as and when the same are available to the Owners hereunder; and (iii) receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

9.13 **Minutes and Presumptions Thereunder.** Minutes or any similar record of the meetings of Members, or of the Board of Directors, when signed by the Secretary or acting secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

9.14 **Checks, Drafts and Documents.** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

9.15 **Execution of Documents.** The Board of Directors, except as these Bylaws otherwise provide, may authorize any Officer or Officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board

of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

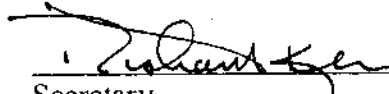
[End of Bylaws]

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of Mountain Shadows North Homeowners Association, Inc., a Colorado non-profit corporation ("Association"); and
2. The foregoing Bylaws, comprising 14 pages constitute the Bylaws of the Association duly adopted by unanimous consent of the Board of Directors of the Association.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this _____ day of _____, 2003.


Secretary

(SEAL)

EXHIBIT D

LEGAL DESCRIPTION OF ADDITIONAL LANDS

The following lots of Mountain Shadows Subdivision Filing No. 1, as recorded by the Weld County Clerk and Recorder under Reception #3037982, being located in the East Half (E1/2) of Section One (1), Township Two North (T.2N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), Town of Firestone, County of Weld, State of Colorado:

Block	Lots
1	1-12
2	1-3
3	1
4	1-32
5	1-8, 12-16
6	1-8
7	1-13
8	1-13
9	1, 2, 4, 8-13
10	1-18
11	1-2

Cavalli-Dotson Parcel:

Tract B, Mountain Shadows Subdivision Filing No. 1, as recorded by the Weld County Clerk and Recorder under Reception #3037982, being located in the East Half (E1/2) of Section One (1), Township Two North (T.2N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), Town of Firestone, County of Weld, State of Colorado.

**MOUNTAIN SHADOWS HOMEOWNERS ASSOCIATION
SUMMARY OF DECLARATION**

This document is intended only to be a summary of the Declaration of Covenants, Conditions, Easements and Restrictions for Mountain Shadows Homeowners Association recorded as Document No. _____ in the real property records of Weld County, _____, 2003, as the same may be amended from time to time. To the extent there is any conflict between this summary and the Declaration, the Declaration shall control.

Membership:	Each Owner of a lot shall be a member of the Association
Voting Rights:	All members are entitled to one vote per lot. Members holding a combined interest in a single lot shall cast only one vote.
Board of Directors:	The Association shall be governed by a Board of Directors. The Board shall initially have 3 directors. Neumann Homes shall appoint the initial Board of Directors. Once 25% of the Lots are conveyed, the other Owners shall elect one member or 25% of the Board. Once 50% of the Lots are conveyed, at least 33% of the Board shall be elected by the other Owners. Upon the end of Neumann Homes control, the Owners shall elect a Board of at least 3 Directors.
Assessments:	
<ul style="list-style-type: none"> • Association Assessment for all Members 	This assessment is levied for the coming year and is computed by dividing the total budget of common expenses by the total lots. The common expense budget shall be adopted by the Board and mailed to all Owners. Unless the budget is rejected by 67% of the Owners at a meeting of the Owners, the budget is deemed ratified, whether or not a quorum of the Owners is present.
<ul style="list-style-type: none"> • Special Assessments for Capital Improvements: 	The Association may levy assessments for nonrecurring expenses. The Board shall provide notice to the Owners prior to adoption of the special assessment at a Board meeting. Upon written request of 20% of the Members, the Board shall call a meeting of Members to consider the special assessment. Unless a majority of the Members vote to reject the special assessment, the assessment is ratified.

<ul style="list-style-type: none"> • Initial Capital Contribution: 	Each new Owner shall be required to pay an initial capital contribution in the amount of 2 times the then current monthly assessment.
Property Restrictions:	
<ul style="list-style-type: none"> • Architectural Control Committee: 	The Board may establish an Architectural Control Committee of 3-5 members. The term for each member is one year.
	No structure, landscaping or other improvement shall be commenced until approved by the committee.
<ul style="list-style-type: none"> • Use: 	Lots shall only be used as private residences.
<ul style="list-style-type: none"> • General restrictions: 	No structure of a temporary nature shall be permitted on a lot, other than temporary facilities maintained by Neumann Homes during construction and sales.
	Only common household pets may be kept -- not to exceed a total of four pets.
	No Owner shall install an in-ground pool without the approval of the committee. Above ground pools are prohibited.
	The covering of windows or other glass surface visible from the exterior of a home, shall be subject to rules and regulations of the Board.
<ul style="list-style-type: none"> • Parking Areas, Garages and Driveways: 	Garages shall not be used for storage such that they are unavailable for parking cars therein. No part of any lot shall be used for storage or overnight parking of recreational vehicles, except within the confines of the garage for a period not to exceed 48 hours.

