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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
OF  
VERANDAH COURT HOMEOWNER'S ASSOCIATION**

Indexing Note: Please Index in the grantee's index under  
"Verandah Court Homeowner's Association, Inc." and in the  
grantor's index under "The Ryland Group, Inc."

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
VERANDAH COURT HOMEOWNER'S ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VERANDAH COURT HOMEOWNER'S ASSOCIATION is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by THE RYLAND GROUP, INC. a Maryland corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the Owner of that certain real property situated in the County of Douglas, State of Colorado, which is described on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Declarant desires to subject and place upon the real property described on the attached Exhibit A certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth therein for the purpose of protecting the value and desirability of said real property and for the purpose of furthering a plan for the improvement, sale and ownership of said real property, to the end that a harmonious and attractive development of said real property may be accomplished and the health, comfort, safety, convenience and general welfare of owners in said real property, or any portion thereof, may be promoted safeguarded; and

WHEREAS, a common interest community may be created pursuant to the Act (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the Association and in the grantor's index in the name of each person executing the Declaration.

NOW THEREFORE, Declarant hereby declares that all of the real property described on the attached Exhibit A and any additional real property which becomes subject to this Declaration shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein which are for the purpose of protecting the value and desirability of, and which shall run with, the above-described real property and be binding on all parties having any right, title or interest in the above-described real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

1. “Act” means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 TO 319, as amended.
2. “Agencies” collectively means the Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHL, MC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA) or any other governmental or quasi-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 any of such entities.
3. “Allocated Interest” means the Common Expense Liability and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time. The Allocated Interest for each Lot is subject to decrease with the annexation of additional property, if any, to the Community as provided in Article XII, Section 5 hereof.
4. “Architectural Review Committee” or “committee” means the committee appointed by the Declarant or by the Association to review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.
5. “Association” means Verandah Court Homeowner’s Association, Inc., a nonprofit corporation and a unit owners’ association organized under Section 38-33.3-301 of the Act.
6. “Board of Directors” or “Board” means the body, regardless of names, designated in this Declaration and the Bylaws of the Association to act on behalf of the Association.
7. “Builder” means any Person who acquires from Declarant one or more Lots for the purpose of constructing thereon a residential dwelling and selling such dwelling unit, together with the Lot upon which it is situated to any member of the general public.
8. “Common Elements” means any real property (which may include, without limitation, platted lots and platted tracts) owned or leased by the Association, other than a Lot (as defined below), and any easements which are held by, assigned to or established for the benefit, use or enjoyment of the Association and its Members. In addition to the easements identified in this Declaration the Common Elements at the time of recordation of this Declaration are as follows: Tract D and Tract G, Roxborough Village Commercial Subdivision – Third Amendment, County of Douglas, State of Colorado.
9. “Common Expense Liability” means the liability for Common Expenses allocated to each Lot. The Common Expense Liability for each Lot is equal to the Allocated Interest of such Lot.

10. “Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

11. “Community” means real property described in Exhibit A, as supplemented and amended from time to time, or additional real property which becomes subject to this Declaration, with respect to which a Person, by virtue of such Person’s ownership of a Lot, is obligated to pay for real property taxes, insurance premiums, maintenance or improvement of other real property described in this Declaration. The name of the Community is “Verandah Court.” The Community is a planned community under the Act. The project is owned in fee simple.

12. “Declarant” means The Ryland Group, Inc., a Maryland corporation, and any other Persons(s) acting in concert, to whom the Declarant, by recorded document, expressly assigns one of more of the Declarant’s rights under this Declaration (which shall be the extent of the Declarant’s rights to which such assignee succeeds), and who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such Declarant’s interest in a Lot not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any Special Declarant Right.

13. “Declaration” means this Declaration of Covenants, Conditions and Restrictions of Verandah Court Homeowner’s Association and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, the Plat.

14. “Development Rights” means any right or combination of rights reserved by a Declarant in this Declaration to:

(a) add real property to this Community, create Lots of Common Elements within this Community and subdivide Lots or convert Lots into Common Elements;

(b) withdraw real property from this Community and thereby decrease the number of Lots and/or Common Elements; and/or

(c) those rights granted to or reserved by Declarant, as set forth in this Declaration of the Act.

15. “First Security Interest” means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

16. “Improvements” means all exterior improvements, structures and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible

structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball hoops, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

17. “Limited Common Elements” means those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner(s) of a particular Lot or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the lots. There are no Limited Common Elements at the time of recordation of this Declaration.

18. “Lot” means each parcel of land designated a Lot and shown upon the recorded Plat as identified and described on the attached Exhibit A, as may be supplemented or amended from time to time, with the exception of the Common Elements and any publicly dedicated real property.

19. “Lots That May Be Included” means twenty-two (22) Lots, which shall be the maximum number of Lots that may be subject to this Declaration. However, the aforesaid number of Lots That May Be included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in the Community.

20. “Member” means each Owner; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

21. “Owner” means the Declarant, a Builder or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation.

22. “Period of Declarant Control” means a length of time expiring ten (10) years after initial recording of this Declaration in Douglas County, Colorado, provided that the Period of Declarant Control shall terminate no later than the first to occur of the following: (i) sixty (60) days after conveyance of seventeen (17) Lots, being seventy-five percent (75%) of the Lots That May Be Included, to Owners other than a Declarant; (ii) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or (iii) two (2) years after any right to add new Lots to the Declaration was last exercised.

23. “Person” means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture or any other entity recognized under the laws of the State of Colorado or any combination thereof.

24. “Plat” means all of the subdivision plats for any portion of the Community which may be recorded in the Office of the Clerk and Recorder of the County of Douglas, as the same may be amended or supplemented from time to time. On the date of this Declaration, the Community is depicted and described on the following recorded plat: “Roxborough Village Commercial Subdivision Third Amendment,” County of Douglas, State of Colorado. More than one Plat may be identified and recorded, and all such Plats taken together shall constitute the Plat.

25. "Security Interest" means an interest in real property or personal property in the Community, or any portion thereof, created by contract or conveyance which secures a payment of performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Article IV, Section 10 hereof, and, with respect to notice of cancellation or substantial modification of certain insurance policies, Article VI, Section 2 hereof "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of the county in which the Community is located show the Administrator as having the record title to the Lot.

26. "Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest, including, for purposes of Article IV, Section 10 hereof, and with respect to notice of cancellation or substantial modification of certain insurance policies, Article VI, Section 2 hereof, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the Said Administrator is identified as the seller, whether such contract is recorded or not and the land records of the Clerk and Recorder of the county in which the Community is located show the said Administrator as having the record title to the Lot, or any successor to the interest of any such Person under such Security Interest.

27. "Special Declarant Rights" means rights hereby reserved for the benefit of a Declarant to perform the following acts: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices and signs advertising the Community and sale of Lots; to use easements through the Common Elements and Lots for the purpose of making Improvements within the Community or within real property which may be added to the Community, and to grant or create easements for access, utilities, drainage, water, maintenance, and other purposes incidental to development and sale of the Community located in or across Lots owned by Declarant or Common Elements, provided that such easements do not create a permanent, unreasonable interference with the rights of any Owners at the time such easement is created; to make the Community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; to allocate any of the Common Elements or portions thereof as Limited Common Elements and to allocate such Limited Common Elements among particular Lots; to appoint or remove any officer of the Association or any member of the Board of Directors during any Period of Declarant Control; to further subdivide property in the Community to create and designate additional Lots and Common Elements; or to perform any other Declarant right set forth in this Declaration. Declarant also reserves the Special Declarant Right to convert any Lot or other portion of the property in the Community which is owned by Declarant into Common Elements or Limited Common

Elements. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of the Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically on the earlier of the following events: (a) conveyance of the last Lot That May Be Included by Declarant to an Owner other than Declarant; or (b) ten (10) years from the date of recordation of this Declaration, except that such rights shall not terminate automatically with respect to the appointment of officers and directors, which may only be exercised in accordance with Article III hereof.

## ARTICLE II

### ASSOCIATION MEMBERSHIP, VOTING RIGHTS AND CONVEYANCES

1. Association. The Association has been or will be formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws. The Association shall have a Board of Directors to manage the affairs of the Association, as more fully provided in this Declaration, and in the Association's Articles of Incorporation and Bylaws.

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

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

4. Management Agreements. Commencing upon the termination of the Period of Declarant Control and continuing thereafter for a period of not less than three years, the Association shall be managed by professional management and shall not be self-managed. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not

more than ninety (90) days' prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manger or managing agent prior to termination of the Period of Declarant Control shall be subject to review and approval by HUD or VA to the extent approval is required by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one of more Security Interests.

5. Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce Rules and Regulations as may be deemed necessary or desirable with respect to: (i) the interpretation and implementation of this Declaration; (ii) the operation of the Association; (iii) the use and enjoyment of Lots, Common Elements and any other property within the Community; (iv) the design, placement, construction and alteration of structures, landscape and other Improvements within the Community; and (v) the personal conduct of the Members, their guests and other Persons within the Community. Any such Rules and Regulations shall be reasonable and uniformly applied. Such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Copies of the currently effective Rules and Regulations shall be made available to each Owner in accordance with the requirements of the Act or upon request and payment of the reasonable expense of copying the same, Each Owner shall comply with such Rules and Regulations and shall see that Persons claiming through such Owner comply with such Rules and Regulations. The Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any such Rules and Regulations. Adopted Rules and Regulations have the same force and effect as if they were set forth in and were part of this Declaration. If there is a conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration prevail.

### ARTICLE III BOARD OF DIRECTORS, MEMBERS AND OFFICERS

1. Authority of Board of Directors. The affairs of the Association are managed by a Board of Directors. Except as provided in this Declaration or the Association Bylaws, the Board of Directors may act in all instances on behalf of the Association.

2. Election of Part of Board of Directors During Period of Declarant Control. No later than sixty (60) days after conveyance of six (6) Lots (25% of the Lots That May Be Included) to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of eleven (11) Lots (50% of the Lots That May Be Included) to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant.

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

4. Termination of Period of Declarant Control. Not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of Directors (with the exact number of members of the Board of Directors to be set forth in the Bylaws of the Association), at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers. Such Board of Directors members and officers shall take office upon election.

5. Delivery of Documents by Declarant. After the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by the Declarant, if and to the extent required by the Act.

6. Budget. The Board of Directors shall prepare and adopt a budget for the Association no less frequently than annually. Within thirty (30) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget not less than ten (10) days nor more than fifty (50) days after mailing or other delivery of the summary. The proposed Budget does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

7. Cooperation with other Associations. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other community associations(s), and any special district(s), to share facilities, to share the costs and/or responsibility for any operation, maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any person(s) in consideration of payment or reimbursement therefore, to utilize the same contractors, subcontractors, managers or others who may perform services for the Association, any other community association(s), and any district(s), or to otherwise cooperate with any other community associations(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other community associations and/or any districts, as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s) and/or any districts to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association. In any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

8. Power to Exchange Services with Special Districts. The Association may sue and/or exchange services with any special district in the furtherance or their respective obligations and may cooperate with any special district to enable the Association and any special districts to provide their respective services to Owners most efficiently and economically. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any metropolitan district, to have such district furnish covenant enforcement and other services within the Community in accordance with C.R.S. §32- 1-1004(8), as amended from time to time.

9. Notice and Comment. Whenever the provisions of this Declaration or of the other governing documents of the Association or the Act require that an action be taken after “Notice and Comment” or “Notice and Hearing,” and at any other time the Board determines, the affected Owner(s) have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice shall be given to each affected Owner in writing delivered personally or by electronic mail or by regular mail to all affected Owner(s) at such address as appears in the records of the Association, or notice shall be published in a newsletter or similar publication which is routinely circulated to all Owners. The notice shall be given not less than three (3) days before proposed action is to be taken. The notice shall invite comment (orally or in writing) to the Board before or at the scheduled time of any meeting or hearing.

#### ARTICLE IV COVENANT MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot that has been included into the Community, whether or not is has been expressed in a deed to the Lot, covenants and agrees and shall be personally obligated to pay to the Association: annual assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. The annual and special assessments and other charges, fees and fines, together with interest, late charges, costs, and reasonable attorney’s fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Lot during their ownership of such Lot. Each assessment, charge, fee and all other amounts under this Declaration, together with interest, late charges, costs and reasonable attorneys’ fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner’s successors in title unless expressly assumed by them. In addition to the foregoing assessments, charges and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental

subdivisions against the Owner's Lot, as well as all charges for separately metered utilities servicing the Owner's Lot. The association's lien on a Lot for assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said lien.

2. Purpose of Assessments. The assessments levied by the Association shall be used to pay the Common Expenses and for maintenance, repair and replacement of the Common Elements, as provided in this Declaration, to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law. Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis (including without limitation any perimeter fences and drainage facilities owned or maintained by the Association), and for the payment of insurance deductibles.

3. Initial Annual Assessment. Until the effective date of a budget adopted by the Association with a different amount for the annual assessment, as provided above, the amount of the annual assessment against each Lot shall not exceed Thirty Five Dollars ( \$35.00) per Lot per month.

4. Rate of Annual and Special Assessments. Annual and special assessments shall be fixed at a rate sufficient to meet the expected needs of the Association. All annual and special assessments shall be assessed against all the Lots in accordance with the Allocated Interests set forth in this Declaration, except as specifically elsewhere provided in this Declaration. If the Common Expense Liability is reallocated, annual assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liability. If any Common Expense or portion thereof benefits fewer than all of the Lots, then the Board may, by a majority of the voting Directors, assess the Common Expense or portion thereof exclusively against the Lots benefited.

5. Date of Commencement of Annual Assessments. Until the Association makes an annual assessment, which shall commence at such time as the Board of Directors may determine in its discretion, the Declarant shall pay all Common Expenses. After any annual assessment has been made by the Association, annual assessments shall initially be no greater than the amount set forth in Section 3 of this Article, and thereafter shall be based on a budget adopted by the Association as provided in this Declaration. A budget must be adopted by the Association no less frequently than annually. The annual assessments are due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time; but the first annual assessment must be adjusted

to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

6. Special Assessments. In addition to the annual assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon the Common Elements of any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any operating deficit incurred by the Association. Special assessments must be set against each Lot in accordance with the Allocated Interest set forth in this Declaration. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 7 of this Article IV. Special assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

7. Notice and Quorum for Any Special Assessments. Within thirty (30) days after adoption of any proposed special assessment for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the special assessment to all the Owners and shall set a date for a meeting of the Owners to consider the special assessment not less than ten (10) days nor more than fifty (50) days after mailing or other delivery of the summary. The special assessment proposed by the Board does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by Owners of Lots voting in person or by proxy to which at least sixty-seven percent (67%) of the votes in the Association are allocated, whether or not a quorum is present.

8. Charges for Services to Less than All of the Lots. The Association may, at any time from time to time, provide services not otherwise required or described in this Declaration to less than all of the Lots, and the Owners of such Lots shall pay the Association for such services as, when and in such manner as may be determined by the Board of Directors in its discretion from time to time, which amounts shall be in addition to the annual and special assessments, and which amounts shall include overhead expenses of the Association. If such services are not funded by the annual assessment or special assessments then any such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Lots for which such service is to be provided, with such agreement to include a statement of the costs, fees and expenses reasonably expected to initially be incurred by the Association in providing such service(s).

9. Lien for Assessments.

(a) The Association has a statutory lien on a Lot for any assessment levied against that Lot or fines imposed against its Owner. Fees, charges, late charges, attorneys' fees, fines and interest charged pursuant to this Declaration or the Act are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an assessment is payable in installments,

each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments become due.

(d) If the Association and any other common interest community association have liens for assessments created at any time on the same property, the liens shall have equal priority.

10. Priority of Association Lien.

(a) A lien under this Article IV is prior to all other liens and encumbrances on a Lot except:

(i) Liens and encumbrances recorded before the recordation of the Declaration.

(ii) A First Security Interest on the Lot, which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent; and

(iii) Liens for real estate taxes and other governmental assessments or charges against the Lot.

(b) A lien under this Section is also prior to the First Security Interests described in the preceding subsection (a)(ii) to the extent, if any, provided in the Act.

(c) This Section does not affect the priority of mechanic's or materialmen's liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S. 1973, as amended, or to the provisions of §15-11-201, C.R.S. 1973, as amended.

11. Receiver. In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments the court may appoint a receiver of the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by

the receiver to the Association during the pending of the action to the extent of the Association's assessments.

12. Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or Security Interest Holder or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

13. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date thereof may bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such other lawful rate as may be set from time to time by the Board of Directors, and the Board of Directors may charge a late charge thereon in an amount the Board determines from time to time to be sufficient to cover the extra costs and expenses involved in handling such delinquent payment. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include a reasonable attorneys' fee to be fixed by the court, together with the costs of the action, and may include interest and late charges as above provided. No Owner may be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the assessments are made. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

14. Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as reserves or in other such funds as the Board may direct and need not be paid to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future assessments.

15. Working Capital Fund. The Association or Declarant shall require the first Owner of any Lot who purchases that Lot from Declarant or a Builder to make a non-refundable contribution to the Association in an amount equal to three (3) times the then current monthly installment of the annual assessment (regardless of whether or not annual assessments have commenced as provided in Section 5 of this Article). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase equipment, property or services. The contribution

does not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of a Lot, the Owner is not entitled to a credit from the Association for any unused portion of the contribution to the working capital fund.

16. Assessments for Misconduct. If any Common Expense is caused by the misconduct of any Owner or occupants or guests of the Owner's Lot, the Association may assess that Common Expense exclusively against such Owner and the Owner's Lot.

17. Other Charges. The Association may levy and assess charges, costs and fees for the following matters, among others, in such reasonable amount(s) as the Board of Directors may determine in its discretion at any time from time to time, including charges to the Association by its managing agent or other Person; copying of Association or other documents; return check charges; charges for telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; charges for notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees are additional to the assessments levied by the Association, and subject to all of the Association's rights with respect to the collection and enforcement of assessments.

#### ARTICLE V ARCHITECTURAL REVIEW COMMITTEE

1. Composition of Committee. The Architectural Review Committee shall consist of three (3) or more persons appointed by the Board of Directors, which persons may be directors; provided, however, that until all of the Lots That May Be Included have been conveyed to the first Owner thereof (other than Declarant or Builder), Declarant may appoint the Architectural Review Committee in which case the Architectural Review Committee shall consist of at least one but not more than three persons as determined by Declarant. The power to "appoint," as provided herein, shall include without limitation the power to: constitute the initial membership of the Architectural Review Committee; appoint member(s) to the Architectural Review Committee on the occurrence of any vacancy therein, for whatever reason and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal as may be set from time to time in the discretion of the appointor.

2. Review by Committee; Requirement for Approval By Governmental Entities.

(a) Other than as to the Declarant and the Association, no exterior Improvements shall be constructed, placed, planted, applied or installed by an Owner on a Lot or on any Common Elements, nor shall any structural alteration be made to any Improvement on a Lot or any Common Elements, unless plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, and type of landscaping, and fencing, as well as such other materials and information as may be required by the Committee), shall have been first submitted to and approved in writing by the Architectural Review Committee: provided, however, that the Declarant and Builders whose plans and specifications have received Declarant's prior written

approval shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's or such Builder's development of, construction on, or sales of any Lot or residences on any Lot. The Architectural Review Committee shall exercise its reasonable judgment to the end that all Improvements comply with any architectural standards promulgated for the Community and conform to and harmonize with the existing surroundings, residences, landscaping and structures. The Architectural Review Committee may require that the applicant(s) of each submission pay a review fee(s) and/or the costs of the Association relative to the review, approval, approval with conditions, and inspection process processes, with such fee(s) and/or costs to be in such amount(s) as may be set by the Committee in its discretion from time to time; provided that such fee(s) and/or costs shall be uniform for submissions of a similar nature or cost. Such amounts, if any, shall be levied in addition to the assessments against the Lot for which the request for Architectural Review Committee approval was made, and shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection of such assessments, as more fully provided in this Declaration.

(b) In addition to the required approvals by the Architectural Review Committee, as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements on any Lot shall also require the applicant to obtain any necessary or required approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permits as required by the governmental entity having jurisdiction shall be a precondition to commencement of any construction or alteration of any structure(s) on each Lot.

3. Procedures. The Architectural Review Committee shall approve, approve with conditions or disapprove all requests for approval within forty-five (45) days after the complete submission of the plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Architectural Review Committee fails to approve, approve with conditions or disapprove any request within forty-five (45) days after the complete submission to the Committee of the plans, specifications, materials and other information with respect thereto, and if the applicant can prove that the complete submission was received by the Committee (with such proof to be in the form of a signed receipt or a signed return receipt from a registered or certified mail), approval shall not be required and this Article shall be deemed to have been fully complied with.

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

therefor submitted to the Board of Directors within thirty (30) days after such decision by the Architectural Review Committee.

5. Architectural Standards. The Architectural Review Committee, with the advice of the Board of Directors, may, at any time from time to time, enact, issue, promulgate, modify, amend, repeal, re-enact and enforce architectural standards and guidelines for the Community, or other standards, to interpret and implement the provisions of this Article and the Declaration, including, without limitation, those relating to procedures, materials to be submitted, specifications of items, types or kinds of decks, fencing or landscaping improvements, and other matters. The architectural standards and design guidelines may specify acceptable Improvements that may be installed or constructed without prior approval of the Architectural Review Committee. Any standards so adopted by the Committee shall be consistent, and not in conflict, with this Article and the Declaration.

6. Records. The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection in accordance with the Association's governance policies.

7. Liability. Neither the Board of Directors, nor the Architectural Review Committee, nor any members thereof, nor any representative of the Committee appointed to act on its behalf, shall be liable in damages to any Person, or to any Owner, by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

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

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

## ARTICLE VI INSURANCE

1. Insurance. The Association shall maintain insurance in connection with the Common Elements and any easement areas or other areas or Improvements for which the Association has maintenance, repair or replacement obligations. The Association shall

maintain insurance as required by applicable law or applicable regulation, including the Act, which insurance shall include, without limitation, property insurance, commercial general liability insurance and fidelity coverage as more particularly described below. In addition, the Association may maintain insurance against such other risks as the Board of Directors may elect from time to time, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association, worker's compensation insurance, and may maintain insurance on such other property and/or against such other risks as the Board of Directors may elect, in its discretion from time to time. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any of the Agencies with respect to their insurance, guaranty or purchase of Security Interests.

(a) Property insurance on the Common Elements for broad form covered causes of loss, which shall be primary insurance; except that the total amount of insurance must not be less than the full insurable replacement costs of all the insured property less applicable deductibles at the time the insurance is purchased and at such renewal date, exclusive of land, foundation, excavations, paved surfaces and other items normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of the Common Elements and other property for which the Association has maintenance, repair or replacement obligations under this Declaration, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board of Directors, the Association, any managing agent and their respective employees, agents and all Persons acting as agents. The Declaration must be included as an additional insured in the Declarant's capacity as an Owner and member of the Board of Directors. The Owners must also be included as additional insured but only for claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of the Common Elements, and other property for which the Association has maintenance, repair or replacement obligations. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time: provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. If the Association delegates some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its

own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subsection (c).

(d) If any Common Elements are located within an area identified by the Federal Emergency Management Agency as having special flood hazards and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

(i) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(ii) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

(c) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

2. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

3. Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustments.

(a) To the extent the Association settles a claim for damages, it shall have the authority, but not the obligation, to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Lot is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro-rata share of any deductible paid by the Association.

(b) Any determination by the Association that a loss either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, his tenants, family members, guest or invitees may be made only after notice and hearing to the Owner in question. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

4. Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 1 of Article VII of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

5. Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

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

7. Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot and the Improvements thereon, including but not limited to flood insurance, and the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot.

8. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any Security Interest Holder shall be furnished with a copy of such appraisal upon request.

9. Notice of Cancellation. If the insurance described in Section 1 of this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States Mail, to all Owners. If the insurance described in Section 1 of this Article is not reasonably available, the Association may carry any other insurance it considers appropriate.

10. Indemnification. To the extent permitted by law, the Association agrees to indemnify, defend and hold each Owner harmless from and against all losses, claims, damages, liabilities or expenses, including reasonable attorney's fees, which arise out of or are connected to the Association's use of the easements granted in this Declaration by the Association, its Members, invitees, agents, employees, contractors, successors and assigns, if such loss, damage, liability or expense was caused in whole or in part by the act, omission, error, negligence, or other fault of the Association, its agents, employees, contractors, successors or assigns.

## **ARTICLE VII** **DAMAGE OR DESTRUCTION**

### 1. Damage or Destruction.

(a) Any portion of the Community which is covered by a policy of insurance which is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(i) The Community is terminated,

(ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(iii) Sixty-seven percent (67%) of the Owners, including every Owner of an assigned Limited Common Element that will not be rebuilt, vote not to rebuild; or

(iv) Prior to the conveyance of any Lot to a Person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a Common Expense. The insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Common Expense Liability of all the Lots.

2. Lots. Any damage to or destruction of any structure located on a Lot shall, except as hereafter provided, be promptly repaired and reconstructed by the Owner thereof using insurance proceeds and personal funds of such Owner. "Repaired and reconstructed," as used in this Section 2, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. However, if a residence located on a Lot shall be destroyed or so damaged that the residence is no longer habitable, then the Owner of such Lot shall, within a reasonable time not to exceed one hundred twenty (120) days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the residence or demolish the same. Demolition of a residence shall include removal of any foundation slab, basement walls and floors, re-grading of the Lot to a level condition, and the installation of such landscaping as may be required by the Board of Directors pursuant to a plan submitted to the Board by the Owner of the Lot. If the Owner of a Lot does not either commence repair, reconstruction or demolition activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Board, then the Association may, in its reasonable discretion, after providing the notice required in Article VIII, Section 2 hereof, enter upon the Lot for the purpose of demolishing the residence and then landscape the Lot in conformance with approved plans. The cost related to such demolition and landscaping is the personal obligation of the Owner of the Lot on which such work is performed and is subject to all the terms and provisions applicable to assessments as provided in Article IV hereof, including without limitation, interest, late charges and lien rights.

## **ARTICLE VIII** **EXTERIOR MAINTENANCE**

### 1. General.

(a) Maintenance repair and replacement of all Common Elements, the underdrain system that has been installed in the Community, and any other drainage structure or facilities that are maintained by the Association or other public Improvements or publicly dedicated property required by the local governmental entity as a condition of development of the Community or any part thereof shall be the responsibility of the Association unless such Improvements or property have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed and has been accepted by a special district or other municipal or quasi-municipal entity. Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors deems appropriate from time to time. The costs, expenses, fees and other amounts to be expended for

the maintenance and repair provided for in the subsection (a) shall, subject to Section 4 of this Article, be collected by the Association as assessments pursuant to Article IV hereof.

(b) Following completion of the original construction of the dwelling units on the Lots, the Association shall provide for the maintenance, repair and replacement of (i) the drainage channel that is located within the drainage easement on and adjacent to the real property lines of Lots 1 through 9 and 14 through 18, as shown on the Plat, to ensure that this drainage improvement functions properly, and (ii) Tract D and Tract G. "Roxborough Village Commercial Subdivision Third Amendment," County of Douglas, State of Colorado: (iii) other maintenance, repair and replacement undertaken by the Association as deemed appropriate by the Board of Directors. The Association shall have right, but not the obligation, to provide snow removal for the sidewalks located adjacent to the street, in accordance with such policies as may be adopted by the Association from time to time. The Association shall have no responsibility for maintenance, repair and/or replacement or any landscaping or other landscape Improvements on a Lot. The costs to be expended for services provided by the Association will, subject to Section 4 of this Article, be collected by the Association as assessments and paid as Association expenses.

(c) Except as provided in Section 1(b) above, each Lot Owner shall be responsible for the maintenance, repair and replacement of the exterior of the Owner's Lot and the Improvements thereon, including without limitation any portion of any perimeter fence located along the boundaries of the Community as originally installed as part of the development of the Community. Each Owners maintenance obligation shall include, but shall not be limited to, the maintenance, repair and replacement of the exterior components of each residence and exterior elements of the Lot. The Association is granted an easement for the purpose of maintenance, replacement and repair on, over, across, under and through any Lot upon reasonable notice to the Owner thereof. Any damage occurring to a Lot or the Improvements thereon in performing such repairs or maintenance is the responsibility of the party performing or authorizing such repairs or maintenance.

(d) Commencing upon the termination of the Period of Declarant Control, the Board shall develop and observe a regular, periodic maintenance schedule for all aspects of the Common Elements and other maintenance obligations of the Association, and shall no less than annually submit to the Members, and to the Declarant a report specifying in detail the regular maintenance conducted in the previous year or such shorter period since the last report was submitted to the Members and Declarant. The Declarant shall be entitled to receive the annual maintenance report until the termination of the Special Declarant Rights or until ten years from the date of recordation of this Declaration, whichever last occurs.

2. Association's Right to Repair, Maintain, Restore and Demolish. In the event any Owner shall fail to perform the Owner's maintenance, repair, reconstruction and/or demolition obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or restoration or, pursuant to Article VII, Section 2, hereof, to demolish a residence. The cost of such maintenance, repair, reconstruction and/or demolition shall be the personal obligation of the Owner of the Lot on

which such work is performed, and shall be subject to all of the terms and provisions applicable to assessments as provided in Article IV hereof including, without limitation, interest, late charges and lien rights.

3. Maintenance, Repair and Replacement Easement. Each Lot shall be subject to a perpetual non-exclusive easement in favor of the Association, and its employees, contractors, successors and assigns, in, on, to, through, over, and across those portions of the Lot not covered by a dwelling unit for performing maintenance, repair and/or replacement or other services as provided in this Declaration. Pursuant to this easement, each Owner shall afford to the Association and to its employees, contractors, successors and assigns, access through such Owner's Lot reasonably necessary for maintenance, repair and replacement of any Common Elements, and any other property or Improvements maintained, repaired or replaced by the Association. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Association if it is responsible, is liable for the cost of prompt repair. Further, the easement for performing maintenance, repair and/or reconstruction as provided in this Article may be exercised during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot, except that no such notice shall be required in connection with any exterior, non-intrusive maintenance, and except that in emergency situations, entry upon a Lot may be made at any time provided that the Owner or occupants of each affected Lot shall be notified of the emergency entry as soon as is reasonably possible. The interior of any residence shall not be subject to such easements as provided for in this Section.

4. Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of or within any property for which the Association has an obligation to maintain, repair or reconstruct, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article IV of the Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

## **ARTICLE IX** **RESTRICTIONS**

1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lots, all in order to enhance the value, desirability and attractiveness of the Lots and subserve and promote the sale thereof.

2. Restrictions Imposed. This Community is subject to the recorded easements, licenses and other matters listed on Exhibit B attached hereto and incorporated herein by this reference. In addition, the Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Architectural Review Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

3. Residential Use. Subject to Section 4 of this Article, Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner may use the Lot for professional or home occupation(s) so long as the applicable zoning permits such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Lots is created thereby.

4. Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and/or a Builder, and its employees, agents and contractors, to perform such reasonable activities, and to maintain upon portions of the Lots such facilities as they deem reasonably necessary or incidental to the development, construction and sale of Lots, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, maintaining management sales offices, in such numbers, of such sizes, and at such locations as they determine in their reasonable discretion from time to time. Further, nothing contained in the Declaration shall limit the right of the Declarant or require Declarant or a Builder to obtain approvals: (a) to excavate, cut, fill or grade any property owned by Declarant or a Builder to construct, alter, demolish or replace any Improvements: (b) to use any structure on any property owned by Declarant or a Builder as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or (c) to require Declarant to seek or obtain the approval of the Architectural Review Committee or the Association for any such activity or Improvement by Declarant on any property owned by Declarant or a Builder. Notwithstanding the foregoing, Declarant and Builders shall not perform any activity or maintain any facility on any portion of the Lots in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees, of and to his Lot and to a public right-of-way.

5. Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots: provided, however, that the Owners of each Lot may keep a reasonable number of dogs, cats or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Lots. Owners shall keep their dogs on a leash at all times when outside and not otherwise confined within the boundaries of the Owner's Lot. The Association shall have, and

is hereby given the right and authority to determine that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Section, and to take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article IV hereof.

6. Temporary Structures; Unightly Conditions. No temporary trailer, shack, storage shed or outbuilding shall be placed or erected upon any Lot; except that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by a Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be readily visible from a street or from any other Lot.

7. Miscellaneous Improvements.

(a) No advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot except for the following: (i) a name plate of the occupant and a street number; (ii) a "For Sale," "Open House" or "For Rent" sign; (iii) two (2) security system signs no larger than one hundred (100) square inches each; and (iv) "political signs" as defined in the Act which are displayed on an Owner's Lot. Notwithstanding the foregoing, reasonable signs, advertising or billboards used by the Declarant or a Builder in connection with the sale or rental of the Lots, or otherwise in connection with development of the Community or construction on the Lots, shall be permissible.

(b) No chain-linked (or other) dog runs, drying yards, service yards, wood piles or exterior storage areas shall be permitted on any Lot.

(c) No types of refrigerating, cooling or heating apparatus shall be permitted on a roof or hung on exterior walls or outside of windows, except for residential solar systems.

(d) Any exterior lighting installed or maintained on the Lots shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property.

8. Vehicular Parking, Storage and Repairs

(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (larger than 1 ton rating), self-contained motorized recreational vehicle or other type of recreational vehicle or equipment, may be parked or stored in the

Community, unless such parking or storage is within a garage, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery or emergency. This restriction, however, shall not (i) restrict trucks or other commercial vehicles that are necessary for construction or for the maintenance of any portion of the Community or any Improvements located thereon, or (ii) motor vehicles meeting the requirements of Section 38-33.3-106.5 of the Act (fire and emergency service vehicles)

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community in such a manner as to be visible from any Lot. An “abandoned or inoperable vehicle” shall be defined as any automobile, truck, motorcycle or other similar vehicle which has not been driven under its own propulsion for a period of one (1) week or longer, or which does not have an operable propulsion system installed therein, or which is not then currently licensed and registered; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned. .

(c) In the event the Association determines that a vehicle is parked or stored in violation of subsections (a) or (b) of this Section or Section 19 below, then a written notice describing said vehicle must be personally delivered or delivered by certified mail to the owner thereof (if such owner can be reasonably ascertained) or must be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association may remove the vehicle at the sole expense of the owner thereof. Any vehicle which causes a public hazard or imperils the public health and safety, such as blocking or impeding fire lanes, and access by emergency vehicles, may be immediately removed at the owner’s expense without prior notice.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent, on a Lot, washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

9. Nuisances. No nuisance is permitted in the Community or any portion thereof, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of the Community or any portion thereof. As used herein, the term “nuisance” does not include any activities of Declarant or Builder which are reasonably necessary to the development and construction of, and sales activities in, the Community; but such activities may not unreasonably interfere with any owner’s use and enjoyment of his Lot, or with any Owner’s ingress and egress to or from the Owner’s Lot and a public way.

10. No Hazardous Activities; No Hazardous Materials or Chemicals. No activities may be conducted on a Lot or within Improvements constructed on any Lot that are unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no

firearms may be discharged upon any Lot and no open fires may be lighted or permitted on any Lot except in a contained barbecue unit which is attended and in use for cooking purposes or within a fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the resident thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

11. No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot that is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot that is unreasonably loud or annoying; and no odor shall be permitted from any Lot that is noxious or offensive to others.

12. Restrictions on Trash and Materials

(a) No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate outside the residence of any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage, trash or recycling pickup. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

(b) The Board of Directors shall have the right and authority to contract for trash collection and recycling service to be provided for all those Lots within the Community upon which a completed residential dwelling has been constructed and conveyed to the first Owner thereof (other than Declarant or Builder), in which case the cost of providing trash service for such Lots will be assessed as a Common Expense against the Lots receiving such service.

13. Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provision, contained in this Declaration. A "minor violation" for the purpose of this Section, is a violation of not more than one (1) foot beyond the required setback lines or Lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of any of such structures.

14. Lots to be Maintained. Each Lot Owner shall at all times keep the Owner's Lot in a clean and slightly condition. No trash, litter, junk, boxes, containers, bottles, cans or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction or as provided in Section 12 of this Article.

15. Lease. The term "Lease," as used herein, includes any agreement for the leasing or rental of a Lot, or any portion thereof, and specifically includes, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease the Lot, but all

leases must be in writing and all leases must provide that the terms of the lease and lessee's occupancy of the leased premises are subject in all respects to the provisions of this Declaration, and the articles of incorporation, bylaws, and rules and regulations of the Association.

16. Maintenance of Grade and Drainage. Each Owner shall maintain the grading upon the Owner's Lot at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes. The Association is entitled to take necessary actions to insure proper drainage from the Lots and Common Elements. Each Owner and the Association agree, for themselves and their successors and assigns, that they will not in any way interfere with the established drainage pattern over any real property which they have a duty to maintain, from adjoining or other real property. In the event that it is necessary or desirable to change the established drainage over any Lot or Common Elements which an Owner or the Association has a duty to maintain, then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Review Committee for their review and approval in accordance with the provisions of Article V of this Declaration. For purposes of this Section, "established drainage" is defined as the drainage that exists at the time final grading of a Lot is completed.

17. Subdivision of Lots or Lot Line Adjustments. The Declarant reserves as a Special Declarant Right, the right to subdivide or replat any Lot(s) or other property owned by Declarant. The Declarant hereby reserves, as a Special Declarant Right in order to build and complete Improvements in the Community, the right to move any Lot line(s) with the consent of the Owner(s) of each Lot whose Lot line is being moved. Such Lot line adjustments may be done by the Declarant, if at all, for the purpose of accommodating Improvements which are constructed or are to be constructed, and shall not change the number of Lots in the Community.

18. Use of Common Elements. An easement is hereby granted to the Declarant through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's or Builder's obligations or exercising any Special Declarant Rights. Subject to the immediately preceding sentence:

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

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

(c) The use of the Common Elements shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors. Additionally, the Board of Directors shall be authorized to enter into any contracts, agreements or other arrangements with any other community association or metropolitan district concerning the joint use, operation and maintenance, including the allocation and sharing of costs related

thereto, of amenities of such associations, including, but not limited to, open space, landscape and park facilities, swimming pools and other recreational amenities.

(d) No use shall ever be made of the Common Elements which will deny ingress and egress to those Owners having access to their Lots only over Common Elements, and the right of ingress and egress to said Lots is hereby expressly granted.

19. Parking Restrictions: Use of Garage: Garages shall be used for parking automobiles and other motor vehicles only and shall not be converted for living or recreational activities or for storage which prevents the parking of a motor vehicle therein. No Owner and no invitee of an Owner shall park or permit to be parked any vehicle upon a roadway or any driveway on a Lot of the Common Elements in such a manner as to block, impair or impede access to any other Owner's garage.

## ARTICLE X EASEMENTS

1. Easement for Encroachments. To the extent that any Lot or Common Element encroaches on any other Lot or Common Element, a valid easement for the encroachment exists: to the extent any utility service extension line providing service to an individual Lot encroaches on any other Lot or Common Element, a valid easement for the encroachment exists.

2. Easements for Drainage and Utilities.

(a) Easements and rights-of-way for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the recorded Plats affecting the Lots and any amendments to such Plats or as established by any other instrument of record.

(b) There is hereby created a non-exclusive blanket easement upon, across, over and under the Common Elements for drainage and utilities and the installation, replacement, repair and maintenance of utilities. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof: provided, however, that such right and authority shall cease and terminate upon the earlier of ten (10) years after recordation of this Declaration in the County in which the Community is located, or conveyance by Declarant of the last Lot to the first Owner thereof (other than Declarant), at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

3. Association Easement. Easements to perform its maintenance, repair and replacement obligations, and enforcement duties and as necessary to exercise its powers pursuant to this Declaration are hereby granted by Declarant to the Association, its officers,

agents, employees, and assigns, upon, across, over, in and under the Community together with the right to make such use of the Community as may be necessary and appropriate in carrying out such maintenance and enforcement duties. All conveyances of Lots hereafter made whether by Declarant or other Person, shall be construed to grant and reserve the easements contained in this Declaration, whether or not specific reference to such easements or to the Declaration appears in the instrument of such conveyance.

4. Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets, driveways, common sidewalks and Common Elements of the Community in the proper performance of their duties.

## **ARTICLE XI PROPERTY RIGHTS IN THE COMMON ELEMENTS**

1. Owners' Easements. Subject to Sections 2 and 3 of this Article, every Owner and the Association shall have a non-exclusive right and perpetual easement for the purpose of access to their Lots and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

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

(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration:

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by Members casting at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant;

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure;

(d) The right of the Association to promulgate, amend, repeal, re-enact and publish rules and regulations with which each Member shall strictly comply, including, but not limited to, the right of the Association to regulate and/or restrict vehicular parking and improvements;

(e) The right of the association to suspend the voting rights of a Member for any period during which any assessment against his Lot or any other amount due from such Member to the Association remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Bylaws of the Association or the Association rules and regulations.

(f) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved by the Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by the Declarant, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection (f);

(g) The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate: and

(h) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

3. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Elements to the members of his family, his tenants, or contract purchases who reside on the Owner's Lot.

4. Conveyance or Encumbrance of Common Elements. Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only in accordance with the Act and this Declaration and if Owners entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to lots not owned by a Declarant, agree to that action.

5. Payment of Taxes or Insurance by Security Interest Holders. Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which are or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefore from the Association.

## **ARTICLE XII** **GENERAL PROVISIONS**

### 1. Enforcement and Arbitration.

(a) Except for those claims subject to subsection (c) of this Section, enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way,

liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as supplemented and amended, may be by any proceeding at law or in equity against any Person(s) (including, without limitation, the Associations violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and in accordance with the notice and hearing procedures set forth in this Declaration and/or the Bylaws the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. In addition, the Association, through the Board, may exercise self-help to cure violations and may suspend any services it provides to any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

(b) The Association shall not institute litigation or administrative proceedings for declaratory relief, injunctive relief or for claims for monetary damages in excess of Twenty-Five Thousand Dollars (\$25,000.00) in its own name, on behalf of itself or two (2) or more Owners against any Person, including Declarant, alleging a defect in the design, construction or physical condition or other alleged defect of the Common Elements, Lot or Improvements related hereto without first obtaining the affirmative vote of a majority of the Lot Owners at a meeting called for that purpose at which a quorum is present. The amount of \$25,000.00 shall be increased annually for each subsequent fiscal year of the Association beginning in the year 2009, in an amount equal to the United States Department of Labor Bureau of Labor Statistics final consumer price index for the Denver-Boulder metropolitan statistical areas for the preceding calendar year. The amount shall not be decreased if the final consumer price index for the preceding year decreases.

(c) Any claim, controversy or dispute, whether sounding in law, equity, contract or tort (excluding, however, tort claims arising from physical bodily injury between the Declarant, the Association and/or any one or more Owners over or related to: (i) the design, construction or physical condition of the Common Elements, Lots or Improvements related thereto and made against the Declarant or the Association, which shall be deemed a "Construction Dispute; or (ii) the enforcement of the provisions of the Declaration or that concerns or requires the application of any provision of this Declaration, the Bylaws or of the Act, or any related agreements, but shall expressly exclude: (v) any action by any party to seek, obtain, or enforce a temporary restraining order, a preliminary injunction or similar equitable order or decree; (w) any action by any party to compel arbitration, or any award or decision of any arbitration conducted pursuant to this Section; (x) any action to assess or collect any Assessments; or (y) any action relating to the enforcement or discharge of any mechanic's lien, shall be resolved by binding arbitration in accordance with the Uniform Arbitration Act of 1975, C.R.S. § 13-22-201, et seq., as amended (or if such Act is repealed, then such other uniform state arbitration law enacted in its place). Any such arbitration proceeding may be required by an aggrieved person upon written notice ("Arbitration Notice") delivered to the Association, the Declarant or other person(s), as the case may be,

before the date when commencement of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitations. No such demand for arbitration shall be made after the date when such proceedings would be barred by the applicable statute of limitations. The Judicial Arbitrator Group in Denver, Colorado ("JAG") (or other arbitrator mutually acceptable to the parties) shall administer all aspects of arbitrations conducted hereunder, including the selection of arbitrators, pursuant to arbitration rules agreed upon by the parties or if agreement is not reached within thirty days after issuance of the Arbitration Notice, then pursuant to arbitration rules selected by the arbitrator. Arbitration hereunder shall be before a three-person panel of arbitrators for any dispute involving claims and counterclaims in the aggregate of One Hundred Thousand Dollars (\$100,000.00) or more unless the parties agree to a single arbitrator, and shall be resolved before a single arbitrator for such disputes involving claims and counterclaims, in the aggregate, of less than One Hundred Thousand Dollars (\$100,000.00). Each arbitrator shall possess the requisite experience and expertise in respect to matters to which the controversy relates to enable him or her to perform his or her arbitral duties competently. The cost of the arbitrator(s) and of any hearing transcript shall be divided equally between the parties. Any and all discovery in conjunction with such arbitration shall be limited to information directly relevant to the controversy or claim in arbitration and shall be concluded within forty-five (45) days after the appointment of the arbitrator or arbitration panel.

(d) Except as may be provided by the Colorado Construction Defect Reform Act, no party shall be entitled to receive any award of damages in connection with the arbitration of a dispute other than such party's direct damages, and Declarant, the Association and any Owner shall be deemed to have waived their right to receive any damages in a dispute other than direct damages, including without limitation, the right to receive indirect damages such as special damages and consequential damages, and the right to receive punitive or exemplary damages. OTHER THAN AS EXCEPTED IN THE PRECEDING SENTENCE, BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER HAS WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES IN CONNECTION WITH THE ARBITRATION OF A DISPUTE OTHER THAN SUCH OWNER'S DIRECT DAMAGES. Judgment upon the arbitrator's determination shall be entered and enforced by the district court for the County in which the Community is located. In the event that any judicial proceeding is allowed or had herein, in order to expedite final resolution of the dispute, each party to the dispute waives any right to a jury trial for claims and counterclaims relating to the dispute.

(e) This Declaration and the provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado.

2. Severability. All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions that shall remain in full force and effect.

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

case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

4. Conflict with Act. In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms.)

5. Annexation.

(a) Additional property may be annexed to this Declaration with the affirmative vote of sixty-seven percent of the votes in the Association. Notwithstanding the foregoing, the Declarant may annex to this Declaration all or any portion of Lot 1, Roxborough Village Commercial Subdivision – Third Amendment, County of Douglas, State of Colorado, until that date which is ten (10) years after the date of recording of this Declaration in the County in which the Community is located, without consent of any other Owners, Security Interest Holders, or any other Person. Each such annexation shall be effected, if at all, by recording of a Plat of the property to be annexed (unless such Plat has previously been recorded) and by recording in the office of the Clerk and Recorder of the county in which the Community is located, an Annexation of Additional Land document which document provides for the annexation to this Declaration of the property described in such Annexation for Additional Land, identifies the owner and identifying designation of any Lot thereby created, describes any Common Element within the property being annexed, identifies the Plat on which the annexed property is shown, makes any necessary reallocation of the Allocated Interests among all Lots, sets forth the effective date of such annexation and reallocation of interests, and may include such other provisions as appropriate. All provisions of this Declaration, including, but not limited to, those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members shall apply to annexed property as provided for in the recorded Annexation of Additional Land with respect thereto. Such Annexation shall be deemed an amendment to the Declaration for purposes of the Act. In addition to the foregoing, the Declarant may amend this Declaration at any time during the ten (10) year period noted hereinabove, in order to add additional real estate to the Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Community pursuant to this sentence does not exceed ten percent (10%) of the total area described in the attached Exhibit A.

(b) Each portion of the Community which is annexed to this Declaration by an Annexation of Additional Land, as provided in the preceding subsection (a), or which is described in Exhibit A, is subject to a right of withdrawal by the Declarant. A withdrawal may be accomplished if at all, in accordance with the Act. The Declarant's right to withdraw each such portion of the Community expires and terminates, as to each portion of the Community which has been annexed to this Declaration, upon the first conveyance of any Lot in such portion of the Community to any Person other than the Declarant.

(c) The Declarant may exercise its Development Rights in all or any portion of the property described in the attached Exhibit A over which such rights have not already been exercised, and no assurances are made as to the boundaries or order of exercise of any such Development Rights.

6. Duration, Revocation, and Amendment

(a) Each and every provision of this Declaration runs with and binds the land in perpetuity. Except as otherwise provided in this Declaration, this Declaration may be amended by a vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

(b) Declarant reserves the right and is granted the power to make amendments to this Declaration or a Plat at any time prior to the expiration of the period of Special Declarant Rights to correct clerical, typographical or technical errors.

(c) No action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded.

(d) Every amendment to the Declaration must be recorded in every county in which any portion of the Community is located, and is effective only upon recordation.

(e) Except to the extent expressly permitted or required by other provisions of this Declaration, no amendment may create or increase Special Declarant Rights, increase the number of Lots, or change the boundaries of any Lot or the Allocated Interest of a Lot, or the uses to which any Lot is restricted, in the absence of a vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by a Declarant, are allocated.

(f) Amendments to the Declaration that are required by this Declaration to be recorded by the Association may be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

7. Registration of Mailing Address. Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association. Except as expressly required otherwise by this Declaration, annual statements, and all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be personally delivered or sent by first class mail, postage prepaid, addressed in the name of such Person at such registered mailing address, or provided by other means as permitted or required by the Act. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such

Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the Period of Declarant Control shall be sent by registered or certified mail, postage prepaid, The Ryland Group, 8100 E Maplewood Ave., Suite 100, Greenwood Village, CO 80111, unless such address is changed by the Association during the Period of Declarant Control; subsequent to the termination of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

8. HUD or VA Approval.

(a) During the Period of Declarant Control the following actions shall require, to the extent required by HUD or VA, the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more Security Interests: annexation or additional real property, amendment of this Declaration, termination of this Community or merger or consolidation of the Association.

(b) Notwithstanding the provisions hereof, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which any Government Mortgage Agency (Agencies) requires to be amended or repealed as a condition to making, purchasing, insuring or guaranteeing Mortgages, or is required in order to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, HUD, FHA or other Government Mortgage Agency, may be amended or repealed solely by Declarant and no approval, consent or vote of any other person or entity shall be required. Any such amendment or repeal shall be effective upon the recordation of a certificate, executed by Declarant, setting forth the amendment or repeal in full.

9. Termination of Community. The Community may be terminated only in accordance with the provisions of the Act.

10. Eminent Domain. The taking by eminent domain of a Lot(s) or Common Element(s), or any prortion thereof, shall be done in accordance with applicable law, including without limitation the Act.

11. Run With Land; Binding Upon Successors. The benefits, burdens and all other provisions contained in this Declaration are covenants running with and binding upon the Community and all real property and Improvements which are now or hereafter a part thereof. The benefits, burdens and all other provisions contained in this Declaration are binding upon and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, personal repretatives, successors and assigns.

12. *No Representations or Warranties.* No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, zoning, compliance with applicable laws, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing, or with respect to construction defects, except as may be provided by the Colorado Construction Defect Reform Act.

13. Disclaimer Regarding Safety. DECLARANT AND THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH REPSECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

14. Dedication of Common Elements. Declarant in recording this Declaration may have designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration. Common elements are not dedicated for use by the general public but are dedicated to the common use and enjoyment of the Owners as more fully provided for in this Declaration.