

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE
AUDUBON SPRING HOMEOWNERS ASSOCIATION, INC.

This AMENDMENT AND RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE AUDUBON SPRING HOMEOWNERS ASSOCIATION, INC, is made pursuant to Article X, Section 3 of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE AUDUBON SPRING HOMEOWNERS ASSOCIATION, INC., filed for record May 17, 2004, at Reception Number 204080720 of the records of the El Paso County Clerk and Recorders office, in the County of El Paso, State of Colorado, and is made on the date hereinafter set forth by TODAY'S HOMES, INC., a Colorado Corporation, hereafter referred to as "Declarant" and those Lot Owners whose names and signatures appear on Schedule A attached hereto, collectively hereafter referred to as Consenting Lot Owners, who collectively are the owners of at least 75% of the Lots identified in the Declaration of Covenants, filed for record at Reception Number 204080720. This Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Audubon Spring Homeowners Association, Inc. replaces in its entirety the Declaration of Covenants, Conditions and Restrictions for the Audubon Spring Homeowners Association, Inc. recorded May 20, 2004, at Reception Number 204080720.

WHEREAS, Declarant and Consenting Lot Owners are the owner of more than 75% of the Lots within that certain property in El Paso County, Colorado, which is more particularly described as:

Audubon Spring Filing No. 1, filed for record at Reception Number 204103022 on June 22, 2004, in the Records of the El Paso County Clerk and Recorder's Office, in the County of El Paso, State of Colorado;,

And,

Audubon Spring Filing No. 2 filed for record at Reception Number _____ on _____, 2006, in the records of the El Paso County Clerk and Recorders office, in the County of El Paso, State of Colorado; and,

WHEREAS, Declarant Today's Homes, Inc. identified property now known as Tracts A, B, C and D, Audubon Spring Filing No. 2, in the legal description of the property subject to the Declaration of Covenants filed for record at Reception Number 204080720, as anticipated Tracts C, D and E in that Declaration of Covenants, and the City of Colorado Springs has requested

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El Paso County, CO



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M.V.E., Inc.
1903 Lelaray Street, Suite 200
Colorado Springs, CO 80909

that the tracts in Audubon Spring Filing No. 2 be identified as Tracts A, B, C, and D; and,

WHEREAS, Declarant desires to amend the Declaration of Covenants to limit the average annual expense liability of each Lot owner in accordance with the provisions of 38-33.3-116, Colorado Revised Statutes, as amended; and,

WHEREAS, in the platting and planned development of the property encompassed within Audubon Spring Filing No. 2, it has become necessary to create a private maintenance easement along the west side of Lots 1 – 19, inclusive, for maintenance of the retaining wall and contiguous property west of the retaining wall, which maintenance will benefit all Lot owners in this development and thus should be an expense shared by all Lot owners through the Audubon Spring Home Owners Association;

NOW, THEREFORE, Declarant and Consenting Property Owners hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to the Audubon Spring Homeowners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" or "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. Types of Common Areas:

- (a) "Common Area" shall mean all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the members, as described and identified as areas to be owned by Audubon Spring Homeowners Association, Inc., on the plats of Audubon Spring Filings No. 1 and No. 2 mentioned above, and also described as Tracts A and B of

Audubon Spring Filing No. 1 and Tracts A, B, and C of Audubon Spring Filing No. 2.

- (b) "Limited Common Area" shall mean any private maintenance easements owned by or dedicated to the Association for the benefit of the members, as described and identified as areas to be owned by or dedicated to Audubon Spring Homeowners Association, Inc., on the plats of Audubon Spring Filings No. 1 and No. 2 mentioned above. Access to Limited Common Areas shall be available only to the respective Lot Owners for all purposes, and to the Association for maintenance purposes. While Limited Common Areas are for the benefit of the members, members, other than those owning the Lots subject to the private maintenance easements, shall not be entitled to access to the property subject to such private maintenance easements without the consent of the Lot Owner.

Section 5. "Lot" shall mean and refer to any plot of land shown upon the attached map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Today's Homes, Inc., its successors and assigns.

Section 7. "Constituent Documents" of this Homeowners Association shall be:

Articles of Incorporation, By-Laws, and Declaration of Covenants, Conditions and Restrictions.

Section 8. "Unit" or "Home" shall mean a residential single family dwelling unit located on any of the Lots comprising this development.

Section 9. "Project" or "Development" shall mean all of the property described as:

Lots 1 through 42, and Tracts A and B, Audubon Spring Filing No. 1, and Lots 1 through 39, and Tracts A, B, C and D, Audubon Spring Filing No. 2, all a portion of the Southeast Quarter of Section 15, Township 14 South, Range 66 West of the 6th P.M., in the City of Colorado Springs, County of El Paso, State of Colorado.

Section 10. "Board" shall mean the Board of Managers of the Association as constituted from time to time.

Section 11. "By-Laws" shall mean the by-laws of the Association existing from time to time, whether or not recorded.

Section 12. "Articles" means the Articles of Incorporation of the Association as filed with the Office of the Secretary of State of the State of Colorado.

Section 13. "Mortgage" means and includes any Mortgage, deed of trust or other assignment or security instrument creating a lien on any Lot, and "Mortgagee" shall include any grantee, beneficiary or assignee of mortgage. "Mortgagor" means the maker of the Mortgage, deed of trust or security instrument.

Section 14. "Guest" means any agent, employee, tenant, guest, licensee or invitee of an Owner.

Section 15. "Person" means an individual, corporation, partnership, combination, Association trustee or any other legal entity.

Section 16. "Act" means the Colorado Common Interest Ownership Act, CRS 38-33-3.3-101, *et seq.*, as amended.

Section 17. "Utility Lines" shall mean all water, gas, and sewer pipelines which lie beneath the surface of the ground, and also all electric, telephone, and other wire lines with poles and other necessary appurtenances which run above or below the surface of the ground.

Section 18. "Period of Declarant Control" shall mean a length of time, expiring six years after initial recording of this Declaration with the El Paso County, Colorado Clerk and Recorder; provided that the Period of Declarant Control shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Units created to Association Owners other than the Declarant.

ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Rights and Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Association and the Common Area which shall be appurtenant to and shall pass with the title to every Lot Unit, subject to the following provisions:

- (a) Upon purchase of any Lot, the Purchaser is also acquiring title to an undivided interest and ownership in the Association. There will be not more than 81 Lots located in the Development and the interest of an owner in the Association will be equal to one divided by the total number of Lots (*for example, 1/81*). An Owner's undivided interest in the Association shall not be separated from the Lot to which it is appurtenant and shall be deemed to be

conveyed or encumbered with said Lot even though the interest is not expressly mentioned or described in a deed or other instrument. Use of the Common Area shall be administered by the Association;

- (b) Each Owner may use the Common Area in accordance with the purpose for which it is intended. The Association may from time to time adopt rules and regulations governing the use of the Common Area, but such rules and regulations shall be uniform and non-discriminatory. Each Owner, by the acceptance of his deed or other instrument of conveyance or assignment, agrees to accept and be bound by any such adopted rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area or Limited Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 80% of the Owners has been recorded;
- (d) The Association shall not have the right to abandon, partition, subdivide, or transfer the common property nor Limited Common Area owned, directly or indirectly, except as provided in (c) above unless at least 67% of the Owners have given their prior written approval.
- (e) The Association shall not have the right to encumber or sell the Common Property nor Limited Common Area owned except as provided in (c) above unless at least 80% of the Owners have given their prior written approval.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to the members of the Owner's family, the Owner's tenants, or contract purchasers who reside on the property.

Section 3. Number of Units. The Maximum number of Units to be created is eighty-one (81).

ARTICLE III THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot Unit shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Members shall automatically be entitled to the benefits and subject to the burdens appurtenant to said membership. If the fee

simple title to a Lot is held by more than one Person, each Owner shall be a member of the Association. However, when considering voting rights of the Members, each Lot shall be considered to have only one Owner (and one vote).

Section 2. General Purposes and Powers. The Association, through the Board, shall perform functions and hold and manage property as provided in this Declaration so as to further the interest of Owners of Lots in this Project. It shall have all powers necessary or desirable to effectuate such purposes.

Section 3. Board of Managers. The affairs of the Association shall be managed by a Board of Managers which may by resolution delegate any portion of its authority to an executive committee or to a director for the Association. There shall be not less than three nor more than five members of the Board of Managers, the specific number to be set forth from time to time in the By-Laws, all of whom shall be Owners elected by Owners. Regardless of the number of members of the Board of Managers, the terms of at least one-third of such Board shall expire annually. Notwithstanding anything to the contrary provided herein except as set forth below in this Section 3, the members of the Board shall be appointed by Declarant, its successors or assigns, until the earlier of either 60 days after conveyance of 75% of the Lots that are created to Lot Owners other than Declarant, or two years after the last conveyance of a Lot by Declarant in the ordinary course of business. Not later than sixty days after conveyance of twenty-five percent of the Lots that may be created to Lot Owners other than Declarant, at least one member and not less than twenty-five percent of the members of the Board must be elected by Lot Owners other than Declarant. Not later than sixty days after conveyance of fifty percent of the Lots that may be created to Lot Owners other than Declarant, not less than thirty-three and 1/3 percent of the members of the Board must be elected by Lot Owners other than Declarant.

Section 4. Voting of Owners. The Owner or Owners of each Lot shall be entitled to one vote for each such Lot owned by said Owner or Owners as set forth in Section 1 of this Article III.

Section 5. By-Laws and Articles. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified by provisions of the Articles and By-Laws of the Association. The By-Laws of the Association may be changed and/or amended by a vote of two-thirds of the Owners who are voting in person or by proxy at any duly called regular or special meeting of the Association.

Section 6. Association as Attorney-in-Fact for Owners. The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of each Owner so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder. The acceptance by any Person of any interest in any Lot

shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association is hereby granted all of the powers necessary to govern, manage, maintain, repair, rebuild, administer and regulate the Project and to perform all of the duties required of it. Unless at least 67% of the Lot Owners, (excluding Declarant) have given their prior written approval, the Association shall not be empowered or entitled to:

by act or omission, seek to abandon or terminate the Project;

change the pro rata interest or obligations of any individual Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

partition or subdivide any Lot or Common Area;

by act or omission seek to abandon, partition, subdivide, sell or transfer of any of the Common Area; and,

use hazard insurance proceeds for loss to the Project for other than repair, replacement or reconstruction thereof.

Section 7. Operation and Maintenance Responsibilities. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the Common Area and other duties as further described herein.

Section 8. Labor and Services. The Association

- (i) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration; and,
- (ii) may arrange with others to furnish water, landscaping care and maintenance, insurance, and other common services required to maintain the Common Area.

Section 9. Mortgagee Notification. The Association shall notify each first Mortgagee of any proposed material amendment of the Association's Articles or By-Laws at least ten (10) days prior to the effective date of such amendment or change. Further, upon the written request of any first Mortgagee, such first Mortgagee shall be entitled to receive the most recent annual financial statement of the Association; and such first Mortgagee shall have the right to designate a representative to attend any Association Member meetings.

Section 10. Enforcement by Association. The Board may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with the Association's rules and regulations or

with any other obligations of such Owner under this Declaration. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations herein or in the By-Laws contained or to obtain damages for noncompliance thereof, all to the extent permitted by law. The Board may impose a fine, not to exceed \$50.00, on any Owner for each violation or act of noncompliance by any such Owner or his Guest. X

Section 11. Implied Rights. The Association shall have and may exercise any right and privilege given to it expressly by this Declaration or the Articles or By-Laws, or reasonably to be implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessment or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees incurred by the Association in collecting such assessments, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made and shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and of the homes and Lots situated upon the Properties.

Section 3. Maximum Annual Assessment.

Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum Annual Assessment shall be \$300.00 per Lot.

From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than twelve percent (12%) above the maximum assessment for the previous year without a vote of the membership.

From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may

be increased above 12% by a vote of two-thirds (2/3) of the Owners who are voting in person or by proxy, at a meeting duly called for this purpose.

The Board may fix the annual assessment at an amount not in excess of the maximum.

Notwithstanding anything to the contrary contained elsewhere in this Declaration of Covenants, the average annual expense liability or maximum Annual Assessment of each Lot owner, exclusive of optional user fees and insurance, may not exceed four hundred dollars (\$400.00) as adjusted for inflation, all as set forth in 38-33.3-116(2) and 38-33.3-116(3), Colorado Revised Statutes, as amended. X

Section 4. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 of this Article IV shall be sent to all members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 60% of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement; and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 5. Allocation of Expenses. All Lots shall be assessed equally, with equivalent allocations of common expenses for annual assessments. Declarant shall have no obligation to pay the assessments on Lots owned by Declarant, imposed by the Board to meet the Common Expenses; but Declarant agrees to pay to the Association a sum equal to the difference between the monthly cost of operating and maintaining the Association, exclusive of reserves, and the amount of funds payable by the other Owners to the Association. This obligation of Declarant to subsidize the operations of the Association shall terminate when Declarant relinquishes its right to appoint the Association's Board. Subsequent to such relinquishment, Declarant shall be obligated as any other Owner in reference to Lots then owned by Declarant to pay the estimated Common Expense assessments, including Declarant's pro-rata share of the reserves, imposed by the Board to meet the Common Expenses. X

Section 6. Date of Commencement of Annual Assessments; Due Dates. All Lot Owners, except Declarant when Declarant is excused from making such payments under the terms of Section IV(5) above, shall be obligated to pay the estimated annual assessments imposed by the Board to meet the Common Expenses from and after the conveyance of the first Lot from Declarant to another party. The annual assessment shall be paid in monthly installments. Monthly installments of the annual assessment for the estimated Common Expenses shall be due monthly, in advance, on the first day of each month. The X

Board shall prepare or have prepared and deliver or mail to each Owner an itemized annual budget showing the various estimated or actual expenses for which the assessments are made. Contributions for monthly assessments shall be prorated if the ownership of a Lot commences on a day other than the first day of a month. The assessments made for Common Expenses shall be based upon the aggregate sum as the Board shall from time to time determine is to be paid or accrued to be paid to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. X

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area and common facilities or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such first mortgage or any such executory land sales contract or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any such sale or transfer or foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract. No such sales, transfer, foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sales contract shall relieve any Lot from liability for any assessment charges thereafter becoming due nor from the lien thereof.

Section 9. Homestead. The lien of the Association assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 10. Method. The Association shall not change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot owner, unless at least two-thirds of the Owners have given their prior written approval.

Section 11. Mechanics of Filing Lien. The lien of the Association assessment shall be evidenced by a written Notice of Lien Assessment prepared by the Board setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name of the Owner of the Lot and a description of the Lot. The Notice shall be signed by one of the Board members or by one of the officers of the Association or by the managing agent and shall be recorded in the office of the Clerk and Recorder of El Paso County. Such lien shall attach on the date the Notice of Assessment is recorded and may be enforced by foreclosure in like manner as a judicial foreclosure of a mortgage on real property. The Owner shall be required to pay the costs, expenses, and attorney's fees incurred in filing the lien, and in the event of foreclosure proceedings, all initial costs, expenses, and attorney's fees. The Owner of the Lot being foreclosed shall be required to pay the Association the monthly assessment for the Lot during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. Any encumbrance or holding a lien on a Lot may, but shall not be required to, pay any unpaid assessments payable with respect to such Lot; and upon such payment, such encumbrances shall have a lien on such Lot for the amounts paid as part of the lien of his encumbrance. Upon request of a Mortgagee, the Association shall report to the Mortgagee any unpaid assessment remaining unpaid for longer than 60 days after the same is due or other default of any covenant, condition, obligation, or the term of this Declaration not cured within 30 days; provided, however, that a Mortgagee shall furnish to the Board notice of such encumbrance.

Section 12. Liability for Assessments Upon Transfer of a Lot. The Grantee of the Lot shall be jointly and severally liable with Grantor for all unpaid assessments against the Lot up to the time of the conveyance without prejudice to Grantee's rights to recover from Grantor the amounts paid by Grantee; provided, however, that, upon payment of a reasonable fee periodically established by the Board and upon written request, any prospective Grantee may secure a statement from the Board setting forth the amount of the current monthly assessment, the date that the assessment becomes due and credits for any advance payment of assessments and prepaid items, which statement shall be conclusive upon the Association. The same procedure may be followed by any Mortgagee or prospective Mortgagee for a statement showing the status of paid and unpaid assessments with respect to a particular Lot. Notwithstanding the terms and conditions of this Section, in the event of default under any first Mortgage entitling the Mortgagee to foreclose, any sale under such foreclosure or delivery of a deed in lieu of foreclosure shall be made free and clear of unpaid assessments of the Lot owner and of unpaid assessments accruing prior to the time the Mortgagee becomes the Owner of the Lot.

**ARTICLE V
MAINTENANCE RESPONSIBILITY**

Section 1. General. The maintenance responsibilities for the Common Area and the Lots comprising this development shall be the responsibility of the parties as described herein.

Section 2. Association Maintenance Responsibility. The Association shall be responsible for the upkeep and maintenance of all of the Common Area, including the landscaped portion of the Common Area, as well as the 30' wide sewer easement which runs along the eastern and northeastern portion of the property as that easement is described in the documents recorded at Book 5573, page 747 of the books and records of the El Paso County Clerk and Recorder, together with any access roadway built within that sewer easement, and the Sound Wall on the southern side of the Project, as well as the retaining wall and other necessary work to protect and maintain that wall located within the private maintenance easement (*the Limited Common Area*) running along the west side of Lots 1 -19 inclusive, Audubon Spring Filing No. 2. Fenced privacy areas for each home may be constructed by the Owner, if desired, provided the area enclosed runs only from the Owners unit to the rear property line, or in the case of those Lots subject to the sewer easement recorded at Book 5573, page 747 of the books and records of the El Paso County Clerk and Recorder, to the perimeter fence installed west or southwest, as the case may be, of that sewer easement, rather than to the rear of those Lots.

The Association shall be responsible for maintenance of all utility mains and service lines in the Common Area.

The Association shall have the right to maintain neglected properties and charge all costs of maintenance to Owners. No Lot Owner shall assume or provide for any of the above-described maintenance responsibilities of the Association without the written authorization of the Association.

Section 3. Owner's Maintenance Responsibility. Each Owner shall be responsible for the upkeep and maintenance of all items located on his/her Lot, including the home, garage, attic, crawl space, and basement. Each Owner shall be responsible for the maintenance of the structural, mechanical, electrical, plumbing, heating and air conditioning systems of his/her home. Each Owner shall be responsible for the maintenance of utility service lines on the interior of his/her Lots (including underground services buried beneath said homes).

**ARTICLE VI
ARCHITECTURAL AND LANDSCAPING CONTROL**

Section 1. General. It is the intent that this shall be a Planned Unit Development where the architectural style, shapes, and exterior building colors and materials, and landscaping shall be similar in nature and compatible throughout the Development and shall be strictly controlled by the Declarant. After the initial construction of the entire Development has been completed by Declarant, said architectural control shall be the responsibility and authority of the Association, as further described herein. This architectural control will extend to the exterior of buildings and structures, fences, streets, driveways, walks, landscaping and other elements of the Development visible from the Common Area and public streets and will substantially limit the improvements and/or changes that any Owner can make to his/her Lot.

Section 2. Architectural Control. No building, fence, wall or other structure, or landscaping shall be constructed, installed or erected upon any Lot after purchase of that said Lot from Declarant, nor shall any exterior addition, change or alteration therein be made unless the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Managers of the Association or by an architectural committee composed of 3 or more representatives appointed by the Board. In the event said Board or its designated committee fails to approve or disapprove such design and locations within 30 days after receiving said written request, including said plans and specifications, approval will not be required; and this Article will be deemed to have been fully complied with.

Section 3. Basic Architectural & Design Requirements.

- a. Dwelling Area: No dwelling shall be constructed which, exclusive of basements below garden level, porches, patios, garages and any attached accessory building has a gross livable area of less than 900 square feet if a single-story dwelling, 1,100 square feet if a two-story dwelling, 1,200 square feet if a bi-level, tri-level or 4 level dwelling;
- b. All construction shall conform to the following requirements:
 1. The minimum roof pitch shall be 4/12 with a shingle style roof;
 2. Siding must be hardboard, wood, vinyl, cementuous or stucco;
 3. Front elevations of homes must have accents around windows and doors, such as shutters, trim or other details;
 4. Windows on the front elevation shall have grids;
 5. All homes shall have a minimum of a 1 car attached garage;

6. All homes shall have a concrete or asphalt driveway from the street to the garage;
7. All homes shall have a concrete service walk from the driveway to a wood or concrete front porch;
8. Front porches shall be a minimum of 4' deep and a minimum of 20 square feet in size;
9. Wing fencing from the home to the side property lines shall be constructed;
10. All fences shall be vinyl or wood between 4' and 6' tall and shall not protrude past the front corners of the home. Fences on corner lots may have additional setback requirements and shall not be installed prior to approval by the Board or its designated committee;
11. Front yard landscaping is required to be installed by the builder prior to initial occupancy, weather permitting. The front yard landscaping shall include at a minimum: sod, rock or other hard surface around the foundation, 3 each shrubs and one each 1 ½" caliper tree;
12. Exterior paint, masonry and shingle colors must be approved by the Board or its designated committee. Colors shall be earth tones;
13. Factory built homes shall not be permitted to be placed on any Lot;
14. Height restrictions: No structure shall be constructed on any Lot which is more than two (2) stories in height, excluding walkout basements;
15. Applicable federal, state and local Building Code requirements may be more restrictive than certain of the requirements of these Covenants; all construction shall be in compliance with such applicable codes and requirements.

Section 4. Landscaping, Fencing & Drainage. No Owner shall change or alter the landscaping or fencing on his/her Lot without similarly submitting a written request, including plans and specifications, to the Board of Managers or the architectural committee. Per procedures described in the Article VI Section 2 above, said Board or architectural committee shall have 30 days to approve or disapprove said request. Any approved change or addition to landscaping shall be made at the sole expense of the Owner requesting said change. No blinds, partitions, walls, fences, patio covers or structures in excess of six feet in height shall be constructed on patios other than those constructed by the Declarant,

unless said blinds, partitions, walls, fences, patio covers or structures have been approved by the Board or the architectural committee in accordance with this Article. The general grading and drainage scheme, as constructed by Declarant, over and across said Lots shall not be altered.

Section 5. Changes to Architectural Control Regulations. The Association shall not by act or omission change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural control or the exterior appearance of Units, the exterior maintenance of Units, or the upkeep of lawns and plantings unless at least two-thirds of the Owners have given their prior written approval.

Section 6. Appointment of Architectural Committee. Declarant shall initially appoint the Architectural Committee consisting of not less than 3 persons who shall remain in office until Declarant relinquishes control of the Association. From and after such event, the Architectural Committee shall be composed of the Board of the Association or by 3 or more representatives appointed by the Board who need not be members of the Association.

Section 7. Enforcement. The Association, or any Owner shall have the right to enforce by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration.

ARTICLE VII USE RESTRICTIONS

Section 1. Residential Lots. No Lot shall be used except for residential purposes. This residential use restriction shall not prohibit Declarant and other developers approved by Declarant, from using a residential type structure as a construction and/or sales office.

Section 2. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot or the Association as applicable, except for those improvements for which a public or private authority or utility company is responsible.

Section 3. No Noxious Activity. No noxious or offensive activity shall be carried upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 4. Residence Restrictions. No structure of a temporary character, trailer, tent, shack, or garage, barn or other out building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 5. Sign Restrictions, Development I.D. Sign Easement. No permanent sign of any kind shall be displayed to the public view on any Lot except signs used by a builder to advertise the Property during the construction and sales period. A permanent development identification sign or signs constructed by the Declarant shall also be allowed. Said permanent sign(s) shall be erected on the Common Area maintained by the Association and shall be considered as part of the Development's Common Landscaping. An easement is granted to the Association for installation and maintenance of said Development identification signs at the locations where said signs are installed by Declarant.

Section 6. Mining and Drilling Restrictions. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 7. Animal Restrictions. No animals, livestock (including but not limited to pot belly pigs) or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes, and they do not create a nuisance for other members of the Association. No more than three (3) dogs or cats or combination thereof (e.g., one dog and two cats) shall be kept or maintained on any one Lot. Owners shall be responsible for any damage caused by their animal(s) and shall be obligated to clean up after such animal(s) on the Project. No animals shall be allowed on the Project outside of homes and fenced privacy areas unless said animals are on leashes and are accompanied by their Owners.

Section 8. Unsightliness. No clothes, sheets, blankets, or laundry of any kind or other articles shall be hung out or exposed on any part of the Project where it would be visible to other Lot Owners. The Properties shall be kept free and clear of rubbish, debris and other unsightly materials. Trash, garbage or other waste shall be disposed of by each individual Owner. No portion of the Project shall be used for the storage of building materials, refuse or any other materials, other than in connection with approved construction. Firewood stacks and lawn furniture shall only be kept within the rear yard of each Lot so that same are concealed from view from any other Lots or from any portion of the Properties or from the streets.

Section 9. Parking Restrictions. No house trailer, camping trailer, hauling trailer, motor home, commercial type vehicle, of any type, or accessories thereto,

shall be parked, stored, or maintained on the Project except within an Owner's garage. No Owner shall conduct or permit to be conducted major repairs or restorations of any vehicle of whatever kind upon the Project. Further, no inoperable or unlicensed vehicle of any kind whatsoever may be stored upon the project except within an Owner's garage.

Section 10. No Radio or TV Antennae. No exterior mounted equipment for any type of radio, short wave, or television shall be permitted. No transmitter, receiver, antenna, satellite dish in excess of 18 inches in diameter, or appurtenant equipment shall be allowed on the exterior of any house.

Section 11. No Violation of Rules. No Owner and no Owner's guests shall violate the rules and regulations adopted from time to time by the Association.

Section 12. No Imperiling of Insurance. No Owner and no Owner's guests shall do anything or cause anything to be kept in or on the Project which might result in an increase in the premiums of insurance obtained for the Project or which might cause cancellation of such insurance.

Section 13. No Violation of Law. No Owner or no Owner's guests shall do anything or keep anything in or on the Project which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

Section 14. Evaporative Coolers. No Owner shall install an exterior or roof mounted evaporative cooler in such a manner as to allow the cooler to be visible from the front street of the house on which the cooler is installed.

Section 15. Garage Doors. Garage doors shall be kept closed except when being used for ingress or egress.

Section 16. No Business Use. No Lot shall ever be used or caused, allowed, or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, storing, vending, or other purpose which would cause an increase in vehicular traffic over and above that normally incident to a residential area; provided, however, that Declarant, its successors or assigns, may use Lots it/they own for such facilities as in its or their sole opinion may be reasonably required, convenient, or incidental to the construction and sale of living Units, including a business office, storage area, construction yard, signs, and display and sales office during the construction and sales period.

Section 17. Annoying Lights, Sounds, or Odors. No lights shall be emitted from any property which are unreasonably bright or cause unreasonable glare; no sound shall be emitted on any property which is unreasonably loud or

annoying; and no odors shall be emitted on any property which are noxious or offensive.

ARTICLE VIII INSURANCE

Section 1. Types of Coverage. The Association shall obtain and maintain at all times, to the extent obtainable, policies of insurance written with financially responsible and able companies licensed to do business in Colorado covering the risks set forth below. The types of coverages to be obtained and risks to be covered are as follows, to-wit:

Insurance against loss or damage by fire, lightning, and such other hazards as are customarily covered in the County of El Paso, Colorado, under extended coverage and all risk endorsements. Said Casualty insurance shall insure the Common Area of the Project and all improvements thereon owned by the Association. The amount of said casualty insurance coverage shall be not less than 100% of the full replacement cost, without deduction for depreciation. The Association shall not use casualty insurance proceeds received for losses to any property for any purpose other than repair, replacement or reconstruction of such damaged property.

Bodily injury and property damage liability insurance in such limits as the Board may from time to time determine, but not in an amount less than \$1,000,000.00 per injury, per person, per occurrence. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and Association activities in connection with the ownership, operation, maintenance and other use of the Project. All liability insurance shall name the Association, the Board, the Declarant, and the officers of the Association as insureds thereunder.

Workers' Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

Fidelity coverage against dishonesty of employees or any other Person handling funds of the Association, destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

The Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Project, insurance for any personal property of the Association located thereon, and errors and omissions' insurance with respect to the actions of

the Board and officers of the Association.

Section 2. Waivers of Subrogation, Cancellation, Named Insured. All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least twenty (20) days prior written notice to all of the Owners, first Mortgagees and the Association. If requested, duplicate originals of all policies and renewals thereof, together with proof of payments or premiums, shall be delivered to all first Mortgagees at least ten (10) days prior to expiration of the then current policies. All casualty insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners, as their interest of each Owner (Owner's name and Lot number designation) and first Mortgagee.

Section 3. Insured Amounts. Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions of this insurance paragraph, the Board shall obtain an appraisal from the insurance appraiser of the company issuing such insurance, which appraiser shall reasonably estimate the full replacement value of the improvements of the Common Area without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provision of this insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than 100% of the full replacement cost with an agreed amount endorsement. Determination of maximum replacement value shall be made annually, and each first Mortgagee, if requested, shall be furnished with a copy thereof within 30 days after receipt of such written appraisals. Such amount of insurance shall be contemporized annually in accordance with their currently determined maximum replacement value.

Section 4. Owners' Insurance. Owners shall carry fire and extended coverage insurance on their residence property in an amount not less than 100% of the full replacement cost without deduction for depreciation.

Such additional insurance may include coverage on furnishings, draperies, carpeting, appliances, and other items of personal property belonging to the Owner. Public liability coverage within each Lot shall be the sole and direct responsibility of the Owner thereof, and the Board and the Association shall have no responsibility therefor.

Section 5. Notification of Loss. In the event that there shall be any damage, destruction or loss to a Lot, then notice of such damage or loss shall be given by the Lot Owner to the Association within 10 days after the occurrence of such event.

ARTICLE IX

TAXES, CHARGES, DEFAULT

Section 1. Taxes. Each Lot shall be separately taxed and assessed. No forfeiture or sale of any Lot for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Lot. The taxes or assessments for the Common Area will be assessed on the Common Area as a whole and charged to the Association. Each Owner shall pay his proportionate share thereof in accordance with his ownership interest in the Common Area; and such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for the Common Area for the taxes assessed on the Common Area.

Section 2. Default. First Mortgagees, upon request, are entitled to written notification from the Homeowners Association of any default in the performance by an individual Lot Borrower of any obligation under the constituent documents which is not cured within 60 days.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provision of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of 10 years. This Declaration may be amended by an instrument signed by not less than 75% of the Lot Owners. Any amendment must be recorded.

Section 4. Construction. Declarant's entire property as set forth in these Covenants, Conditions and Restrictions is subject to complete development of the private and common areas.

Section 5. Management. Any agreement for professional management of the Association or any other contract providing for services of the developer,

sponsor, or builder may not exceed three years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on 90 days' or less written notice.

Section 6. Declarant's Right to Non-Interference. In order that Declarant's work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, neither any Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

- (a) prevent Declarant, its successors or assigns, or its or their contractors or subcontractors from performing on any Lot owned by it whatever it determines to be necessary or advisable in connection with the completion of such work, including without limitation, the alteration of construction plans and designs as Declarant deems advisable in the course of development ; or
- (b) prevent Declarant, its successor or assigns, or its or their contractors or subcontractors from erecting, constructing and maintaining on any portion of the Property such structures as may be reasonably necessary for the conduct of its or their business of completing the work and establishing the Project as a residential community and disposing of the same in Units by sale, lease or otherwise;
- (c) prevent Declarant, its successors or assigns, or its or their contractors or subcontractors from conducting on any portion of the Property its or their business of developing, subdividing, grading and constructing Lots and other improvements on the property;
- (d) prevent Declarant, its successors or assigns, or their contractors or subcontractors from maintaining such sign or signs on the Property as may be necessary in connection with the sale, lease or other marketing of Lots; or,
- (e) prevent Declarant, its successors and assigns, and its employees, representatives, agents and contractors from maintaining business and sales offices, models, construction facilities and yards, trucks, advertising signs and displays, and other developer's facilities reasonably necessary, appropriate or customarily used or required during the construction, development and sales periods.

Section 7. Sales and Construction Facilities and Activities of Declarant. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of any construction and/or sales of the Lots on the Project upon such portion of the Project as Declarant may choose, such facilities as in the sole

opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Lots, including without limitation, a business office, storage area, construction yards, signs, model Lots, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Lots. In addition, Declarant, its agents, employees and contractors shall have the right to ingress and egress over the Common Area as in Declarant's discretion may be necessary with regard to the foregoing.

Section 8. Condemnation. If at any time any part of the Common Area shall be condemned by any public authority or sold or otherwise disposed of in lieu or in avoidance of condemnation, the following provisions of this Article shall apply:

Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereafter called "condemnation award," shall be payable to the Association.

Complete Taking. In the event the entire Common Property is taken or condemned or sold or otherwise disposed of in lieu or in avoidance thereof, the condemnation award shall be apportioned equally among the Owners; provided, however, that if the standard differed from the value of the Property as a whole is employed as the measure of condemnation award in the negotiation, judicial decree or otherwise, then in determining such shares, the same standards shall be employed to the extent it is relevant and applicable.

Partial Taking. In the event that less than the entire Property is taken or condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, each Owner shall be entitled to a share of the condemnation award to be determined in the following manner:

- b. The total amount allocated to the taking of or injury to the Common Property shall be apportioned equally among the Owners.
- (2) The total amount allocated to severance damages shall be apportioned to those Lots which were taken or condemned.
- (3) The respective amounts allocated to the taking of or injury to a particular Lot shall be apportioned to the particular Lot.
- (4) The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the condemnation award is established in negotiations, judicial decree or otherwise, then the

condemnation award shall be allocated in accordance with such allocation to the extent that it is relevant and applicable.

In the event a partial taking results in the taking of a complete Lot, the Owner thereof shall automatically cease to be a member of the Association and shall cease to hold any right, title, or interest in the remaining Common Area and shall execute any and all documents necessary to accomplish that result.

Section 9. Destruction, Damage or Obsolescence-Association as Attorney-in-Fact. With respect to any damage, destruction or obsolescence of the improvements in the Common Area as in hereinafter provided, the Association by its officers shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument which is necessary and appropriate to exercise the powers herein granted. In the event the Association is dissolved or becomes defunct, a meeting of all Lot Owners shall be held within 30 days of either such event; and at such meeting, a new attorney-in-fact to deal with the Property upon its damage, destruction or obsolescence shall be appointed. Said appointment must be approved by three-fourths of the members.

Repair and reconstruction of the improvements as used herein means restoring the improvements to substantially the same condition in which they existed prior to the damage with each improvement having substantially the same dimensions as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacement, unless all of the Owners and all first Mortgagees agree not to rebuild in accordance with the provisions hereof.

In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied to such reconstruction; and the improvements shall be promptly repaired and reconstructed by the Association. The Association shall have full authority, right and power to cause the repair and restoration of the improvements.

If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction may be promptly repaired and reconstructed by the Association, using the proceeds of insurance and the proceeds of a special assessment to be made against Owners of the Lots. Such deficiency assessment shall be an expense and made pro rata according to the Owners. The Association shall have the absolute right and power to sell the Lot of any Owner refusing or failing to pay such deficiency assessment within the time provided; and, if not so paid, the Association shall

