

DECLARATION

of

COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS

for

THE COMMUNITIES AT FEATHERGRASS,

affecting the Real Property known as

JESSICA HEIGHTS SUBDIVISION,

El Paso County, Colorado

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JESSICA HEIGHTS SUBDIVISION,

El Paso County, Colorado

This Declaration is made as of Feb. 9, 2006, by SAND CREEK INVESTMENTS SOUTH LLC, a Colorado Limited Liability Company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the County of El Paso, as described in Exhibit A attached hereto and by this reference incorporated herein (hereinafter the "Subdivision") and desires to provide for the preservation of the values and amenities of the Subdivision and to provide for maintenance of certain Subdivision amenities and for the convenience of its residents and to this end desires to subject the Subdivision to the conditions, covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of said property and for each owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any owner thereof;

WHEREAS, Declarant and related parties including Sand Creek Investments North LLC intend to develop additional residential communities adjacent or near to the Subdivision and do intend that these Covenants shall also govern those additional communities;

NOW, THEREFORE, Declarant declares that the real property described in Exhibit A attached hereto (as well as any additional real property) shall be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, easements, charges and liens hereinafter set forth (referred to herein as the "Declaration" or these "Covenants").

ROBERT C. "BOB" BALINK El Paso County, CO

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ARTICLE 1
GENERAL

Declarant declares that the real property described on Exhibit A is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration of Covenants, Conditions, Restrictions and Easements for Jessica Heights Subdivision (the "Declaration").

Section 1.1 Non-CCIOA Community. The name of the community created by this Declaration is "Jessica Heights Subdivision." Jessica Heights Subdivision is not currently a planned community as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103 (22), Colorado Revised Statutes. It is anticipated that all community improvements will be financed, owned and/or maintained by the Constitution Heights Metropolitan District, El Paso County, Colorado (the "Metro District"). The Association will, therefore, not impose assessments that are in excess of the limitations contained within C.R.S. § 38-33.3-116. All of Jessica Heights Subdivision is located in El Paso County, Colorado.

Section 1.2 Property Affected. Declarant is the owner of all of the real property described on **Exhibit A** attached hereto, which is located in El Paso County, Colorado. The property described on **Exhibit A**, subject to expansion as provided for in this Declaration, is referred to in this Declaration as the "Community Area." Declarant hereby reserves the right to add to the Community Area any portion of the real property located within the area depicted on **Exhibit B** attached hereto and incorporated herein by this reference (the "Expansion Property").

Section 1.3 Purposes of Declaration. This Declaration is executed and recorded (a) in furtherance of a common and general plan for those parcels of land which are part of the Community Area; (b) to protect and enhance the quality, value, desirability and attractiveness of all property within the Community Area; (c) to provide for the Association to hold, maintain and manage certain common properties and amenities in the Community Area and to perform certain functions for the benefit of owners of land within the Community Area; (d) to define the duties, powers and rights of the Association; and (e) to define certain duties, powers and rights of Owners.

Section 1.4 General Scheme and Plan of Community Area. The Community Area created pursuant to this Declaration encompasses all of the property described in **Exhibit A**, together with all or any portion of the Expansion Property, which Declarant may elect to add to the Community Area from time to time. Declarant hereby specifically reserves the right to add the Expansion Property to the Community Area, as provided in Section 10.4 of this Agreement. If none or only a portion of the Expansion Property is added to the Community Area for any reason, the validity of this Declaration shall not be affected, and this Declaration shall remain in full force and effect as to the Community Area as initially constituted in this Declaration. Unless and until a particular portion of the Expansion Property is added to the Community Area, this Declaration shall be interpreted as not being applicable thereto. The Association will be responsible for administering the architectural procedures related to all Improvements within the Community Area, including without limitation, buildings, landscaping and changes in grade, as set forth in this Declaration and for administering and enforcing this Declaration

with respect to all of the Community Area. In addition the Association will collect assessments to enable it to have adequate funds to administer this Declaration, and bring such actions as may be necessary from time to time to enforce this Declaration, and to undertake such additional activities as the Board of Directors may elect from time to time.

Section 1.5 Declaration. Declarant, for itself, its successors and assigns, hereby declares that the Community Area, and each part thereof, shall, on and after the date this Declaration is recorded, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions and other provisions set forth in this Declaration, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Community Area.

The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 15.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property within the Community Area and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all other persons and entities having or acquiring any right, title or interest in any property which is part of the Community Area or any part or parcel thereof or any Improvement thereon, and their encumbrancers, claimants, heirs, personal representatives, successors and assigns.

ARTICLE 2 DEFINITIONS

Unless otherwise expressly provided in this Declaration, the following words and phrases, whenever used in this Declaration, shall have the meanings specified in this Article 2.

Section 2.1 Architectural Committee. "Architectural Committee" shall mean the applicable approving authority described in Section 6.1 of this Declaration.

Section 2.2 Assessment. "Assessment" shall mean a "Common Assessment," pursuant to Section 11.3, a "Special Assessment," pursuant to Section 11.8 or a "Site Assessment," pursuant to Section 11.9.

Section 2.3 Association. "Association" shall mean Sand Creek Communities Homeowners Association, a Colorado Non-Profit Corporation, successors and assigns, and additional associations established by the Declarant as provided in Section 7.1.

Section 2.4 Association Documents. "Association Documents" shall mean the various operative documents of the Association, whether recorded or adopted at this time or as the same have been or may be amended, modified, supplemented, or otherwise changed from time to time, all of which are incorporated herein by this reference, and shall include the following:

- (a) the Articles of Incorporation of the Association;
- (b) the By-Laws of the Association;
- (c) this Declaration and all amendments to this Declaration;
- (d) the Plats and each Supplemental Plat;
- (e) the Community Guidelines; and
- (f) the Development Plan and all amendments thereto.

Section 2.5 Association Properties. "Association Properties" or "Association Property" shall mean all real and personal property, together with any and all Improvements now or hereafter thereon and appurtenances and rights thereto, hereafter owned by the Association or which the Association hereafter maintains, holds or uses for the common use and enjoyment of all of the Members as provided herein, without ownership thereof, and for other purposes as may be permitted by this Declaration. Although it is not anticipated that any Association Properties will be created, the Association shall have the right to accept ownership of such properties and/or to undertake the maintenance thereof subject to the terms of this Declaration.

Section 2.6 Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 2.7 Community Area. "Community Area" shall mean the real property described on **Exhibit A**, together with any and all Improvements now or hereafter on such real property and appurtenances and rights to such real property. If and when added by the Declarant, Community Area shall also mean and include that portion of the Expansion Property which Declarant elects to make a part of the Community Area as provided in this Declaration.

Section 2.8 Declarant. "Declarant" shall mean SAND CREEK INVESTMENTS SOUTH LLC, a Colorado Limited Liability Company, its successors and assigns. A Person shall be deemed a "successor and assign" of SAND CREEK INVESTMENTS SOUTH LLC as Declarant, only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument. Notwithstanding the foregoing, a successor to SAND CREEK INVESTMENTS SOUTH LLC by consolidation or merger shall automatically be deemed a successor or assign of SAND CREEK INVESTMENTS SOUTH LLC as Declarant, under this Declaration.

Section 2.9 Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Jessica Heights Subdivision, in its entirety, including all attached exhibits and all subsequent amendments.

Section 2.10 Dwelling Unit. "Dwelling Unit" shall mean an Improvement on a Lot which is intended or used for residential occupancy, including, without limitation, any individual single family detached home.

Section 2.11 Development Plan. "Development Plan" shall mean the Final Plat for Jessica Heights Subdivision, as approved by the County of El Paso on December 22, 2005, and all amendments thereto.

Section 2.12 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.13 First Mortgagee. "First Mortgagee" shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such Person under such First Mortgage.

Section 2.14 Improvements. "Improvements" shall mean all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, basketball backboards and supporting structures, patio covers, awnings, painting or other finish material of any exterior surfaces or any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, outdoor play or exercise equipment, and exterior or window air conditioning, hot tubs and water softener fixtures. "Improvements" shall also mean an excavation or fill the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 2.15 Landscape. "Landscape" shall mean the treatment of ground surface with live plant materials, wood chips, crushed stone, decorative rocks, mulch materials or other decorative surfacing materials approved by the Architectural Committee. For purpose of this definition, the word "Landscape" shall include all other forms of the word Landscape, such as "Landscaped" and "Landscaping."

Section 2.16 Lot. "Lot" shall mean a parcel of land subject to this Declaration that is shown as a lot on the Plats or any Supplemental Plat upon which at least one Dwelling Unit may be constructed pursuant to the ordinances of the County of El Paso, and which is not part of any Association Properties.

Section 2.17 Lot Lines. Front, side and rear "Lot Lines" shall be the same as defined in the zoning regulations of the County of El Paso in effect from time to time. In the absence of such a definition, a front Lot Line is each boundary line (whether one or more) between the Lot and any street. A side Lot Line is any boundary line that meets and forms an angle with a street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street that affords the principal access to the Lot. All other Lot Lines are rear Lot Lines.

Section 2.18 Member. "Member" shall mean a member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot.

Section 2.19 Owner. "Owner" shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Lot, including sellers under executory contracts under Colorado law.

Section 2.20 Person. "Person" shall mean a natural person, a corporation, a limited liability company, a partnership (including general, limited and limited liability partnerships) or any other public or private entity recognized as being capable of owning real property under Colorado law.

Section 2.21 Plats. "Plats" shall mean the plats that are the initial plats of all or a portion of the Community Area.

Section 2.22 Related User. "Related User" shall mean: (a) any Person who resides with an Owner within the Community Area; (b) a guest or invitee of an Owner; (c) an occupant, tenant or contract purchaser or any Dwelling Unit on a Lot; and (d) any family member, guest, employee, agent, representative, licensee, contractor, invitee or cohabitant of any of the foregoing Persons.

Section 2.23 Community Guidelines. "Community Guidelines" shall mean the guidelines and rules adopted by the Board of Directors as provided in Section 8.9 of this Declaration.

ARTICLE 3
COVENANTS TO PRESERVE THE RESIDENTIAL
CHARACTER OF THE COMMUNITY AREA

Section 3.1 Property Uses. Except as provided below in this Section 3.1, all Lots in the Community Area shall be used exclusively for private family residential purposes. Human service establishments, including human service homes, human service residences, human service facilities and human service shelters, health care support facilities, hospices and youth homes (as each of such terms are defined in the City Zoning Code of the City of Colorado Springs) and any other similar or dissimilar group home are each prohibited on a Lot and in the Community Area. No Dwelling Unit erected or maintained within the Community Area shall be used or occupied for any purpose other than for a single-family dwelling. No business,

profession or other activity conducted for gain shall be carried on or within any Lot or Dwelling Unit; provided that any uses that are permitted under any home occupation ordinance in effect for El Paso County as well as any home occupation ordinance in effect for the City of Colorado Springs in the event that all or part of the Community Area is annexed, including the Home Occupation ordinance of the City of Colorado Springs, as it may be hereafter amended, shall be permitted. The Home Occupation ordinance is in Article 4, Part 16 of the City of Colorado Springs Zoning Code. If any home occupation ordinance is hereafter repealed, then for purposes of this Declaration and its enforcement, the provisions of the home occupation ordinance in effect at the time of the recordation of this Declaration shall be incorporated herein as a part of this Declaration. Any violation of the home occupation ordinance shall be a violation of this Declaration.

Section 3.2 Improvements. No Improvement shall be erected within the Community Area except single family Dwelling Units and other Improvements which have been approved by the Architectural Committee. No Improvement, other than a Dwelling Unit, and no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Improvement may be placed on any Lot before completion of the Dwelling Unit upon such Lot except with the permission of the Architectural Committee.

Section 3.3 Construction Type. All construction shall be new. No building previously used at another location nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot except as expressly provided in Section 3.7 for temporary construction, sales or administration buildings.

Section 3.4 Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement unless such building materials are stored in the garage on the Lot or otherwise enclosed and fully screened in a manner approved by the Architectural Committee.

Section 3.5 Substantial Completion. A Dwelling Unit shall not be occupied in the course of original construction until substantially completed and until a certificate of occupancy has been issued by Regional Building and any other necessary governmental or quasi-governmental authority. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 3.6 Construction Completion. The exterior of all structures and final grading of Lots must be completed within twelve (12) months after the commencement of construction, except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities and except if the Architectural Committee approves a longer period of construction due to unusual circumstances. For purposes of this Section 3.6, "commencement of construction" for a Dwelling Unit is defined as the obtaining of necessary building permits and the excavation of earth for a foundation, and for all other Improvements is defined as the undertaking of any visible exterior work. If construction is not completed within the above time periods or such later time approved by the Architectural Committee, or if construction shall cease for a period of thirty (30) days without permission of the Architectural Committee, the Architectural Committee will give the Owner of the Improvements involved written notice of such

fact, and if construction on such Improvement is not diligently commenced within thirty days after such notice, the unfinished Improvement or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner.

Section 3.7 Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Declarant or the Architectural Committee. Model homes may be used and exhibited only by Declarant or with the permission of the Declarant or the Architectural Committee. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 3.8 Construction Debris. During the progress of construction, the Owner of a Lot shall use his best efforts to ensure that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container area. When construction is commenced upon a lot, the Owner shall provide a trash container and cause it to be properly used and maintained during construction. Such trash containers must be placed within the Owner's Lot unless the Declarant, in its sole discretion, authorizes its location within the street. The Owner shall use his best efforts to ensure that no construction materials, debris or trash shall be allowed on the property of others and any materials, trash or debris blown off the Lot shall be promptly retrieved and disposed of properly. In addition, the Owner of a Lot shall cause all excess dirt that may be generated from excavation on the Lot to be removed from the Lot or street following completion of construction.

Section 3.9 Drilling Structures. No derrick or other Improvement designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot. The foregoing is not intended to prohibit temporary drilling to obtain samples in connection with the investigation of soils or temporary drilling necessary in the construction of Improvements.

Section 3.10 District Maintenance. The Owners hereby acknowledge that the Metro District will be responsible for maintaining the private parks indicated on the Development Plan, as well as the tracts and improvements specified on the Plats.

ARTICLE 4

DENSITY, SETBACK AND QUALITY STANDARDS

Section 4.1 Limitation on Dwellings and Subdivisions. No more than one (1) Dwelling Unit shall be erected or maintained within any Lot. No Lot shall be replatted or otherwise subdivided without the approval of the Architectural Committee and applications for such approval shall not be favored in the absence of extreme hardship. Line adjustments which do not result in an increase in the number of Lots and which are made to accommodate building plans approved by the Architectural Committee may be approved by the Architectural Committee, in its sole discretion. This Section 4.1 does not apply to and shall not restrict Declarant's rights under Section 10.3.

Section 4.2 Setbacks, Easements and Site Visibility. All construction must also conform to the setback requirements of the building code, zoning code and subdivision regulations of the County of El Paso and all other applicable governmental or quasi-governmental agencies having appropriate jurisdiction for front, rear and side Lot lines, as of the date of commencement of construction. All Lots are platted with a five foot (5') side lot easement for public utilities and drainage purposes only, and all rear lot lines are platted with a seven foot (7') easement for public utilities and drainage purposes and a five foot (5') easement along the front and/or side of any Lot which abuts a fifty foot (50') wide right of way for public utilities and improvement purposes. The Owner of each such Lot shall be solely responsible for the maintenance of each such easement area. Except with Declarant's approval no building, porch, eave, overhang, projection or other part of a building shall be located within twenty-five (25) feet of a front Lot line and within twenty (20) feet of a rear Lot line, (or vice versa, within twenty feet of a front lot line and within twenty-five feet of a rear lot line), or within five (5) feet of a side Lot line, or, where the side Lot adjoins a public street within ten (10) feet of such side Lot line adjoining a public street. In addition, all setbacks will comply with the Development Plan if different than outlined above. The maximum lot coverage percentage for the Residence, including garage, decks and porches, shall be forty-five percent (45%). Declarant's approval for a variance to the setback requirements may be given only (a) for fireplace projections integral with the building (b) for eaves and overhangs or (c) for construction which extends less than ten (10) feet into the setback areas adjoining public streets or less than five (5) feet into any other setback area and which Declarant determines to be consistent with or required by the Lot terrain or Lot shape and consistent with superior design. All Lots adjacent to two (2) street right-of-ways are platted with a twenty (20) feet by twenty (20) feet (20' x 20') site visibility triangle easement for public improvements only, with the Owner thereof being solely responsible for maintenance (the "Corner Easements"). No Improvements, including without limitation, fences, hedges, trees, shrubbery or landscaping, may be constructed within any Corner Easements, other than approved landscaping which shall at no time obstruct visibility at the intersection and which will not be permitted to exceed three feet (3') in height at any time.

Section 4.3 Minimum Floor Area. No Dwelling Unit or other Improvement shall be erected which, exclusive of basements below garden level, porches, patios, covered but unenclosed areas, garages and any attached accessory building, has a gross liveable floor area less than as follows: (1) if a ranch or single story Dwelling Unit, 1,400 square feet, and (2) if other than a ranch or single story Dwelling Unit, 1,500 square feet.

Section 4.4 Height Restrictions. The height of any Dwelling Unit or other Improvements constructed or to be constructed on any Lot within the Community Area is hereby restricted and shall not exceed thirty-five feet (35') in height or such lower height as may be required by the County of El Paso (or the City of Colorado Springs, in case of annexation). Height shall be measured in accordance with the City's height standards and requirements.

Section 4.5 Exterior Colors and Materials. All exterior colors and materials, including roofing materials, used on Dwelling Units and other Improvements, must be approved by the Architectural Committee. Acceptable materials and standards for approval shall be as established from time to time by the Architectural Committee.

Section 4.6 Antennae and Roof Projections; Satellite Dishes. Except as provided below in this Section 4.6, no aerial, antenna, or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall any such aerial, antenna or other device be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for Improvements, other than FCC Protected Improvements, as defined below, must be submitted to and approved by the Architectural Committee prior to installation. If the Architectural Committee disapproves such structure, the party requesting approval may modify its plans to eliminate the Architectural Committee's objections and resubmit them for approval. If any such aerial, antenna, satellite dish or other device is installed without the approval of the Architectural Committee, the Architectural Committee shall have the rights set forth in this Declaration. Notwithstanding the above, an antenna that is (i) designed to receive direct broadcast satellite service that is one meter or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one meter or less in diameter or diagonal measurement, or (iii) that is designed to receive television broadcast signals, as defined by the Federal Communications Commission or the Telecommunications Act of 1996, as may be amended from time to time (collectively, "FCC Protected Structures"), shall be permitted so long as the means, method and location of such Antenna comply with the rules adopted from time to time by the Architectural Committee. No unreasonable delay or unreasonable increase in the cost or installation or maintenance of an FCC Protected Structure shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an FCC Protected Structure, other than for health and safety reasons.

Section 4.7 Rebuilding or Restoration. If any Dwelling Unit or other Improvement is destroyed in whole or in part by fire, windstorm or from any other cause or act of God, it must be rebuilt or all debris must be removed and the Lot restored to a sightly condition. Such rebuilding or restoration must be commenced within three (3) months after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed one (1) year after the date the damage occurred or such longer period of time as may be approved by the Architectural Committee due to unusual circumstances. If restoration, rebuilding or removal is not completed within the above time periods or such later time approved by the Architectural Committee, or if the restoration, rebuilding or removal shall cease for a period of sixty (60) days without permission of the Architectural Committee, the Architectural Committee will give the Owner of the Lot involved written notice of such fact, and if the restoration, rebuilding or removal of the Improvements is not diligently commenced within thirty (30) days after such notice, the damaged or destroyed Improvements shall be deemed a nuisance. The Association shall have the right thereafter to enter upon the Lot involved and remove the damaged or destroyed Improvements at the expense of the Owner. Such an entry and removal shall not be deemed a trespass and the Owner shall be liable for all costs incurred in connection with the removal.

Section 4.8 Fences.

a. No Park Fences. Each Owner of a Lot which is located adjacent to a park or open space (collectively, the "Parks" and, individually, the "Park"), whether such

Park is a local "pocket park" platted as a Tract within the Community Area or a park which is owned by the County of El Paso, the Association, or Cherokee Water and Sanitation District (the "District") (collectively the Park Lots" and, individually, the "Park Lot") is hereby prohibited from installing or maintaining any fence within a Park Lot which is parallel to the lot line which abuts any portion of a Park. Notwithstanding the above, each Owner of a Park Lot hereby acknowledges that the Declarant, the Association, the County, and the District shall each have the right to install a fence within any portion of a Park, including a fence that is adjacent to Park Lot. Nothing contained herein will require any fence to be constructed within a Park by Declarant. Any fence that is installed within a Park, other than a County, District, or Association owned park (a "Park Fence"), will be maintained by the County, District, or Association. The height of any Park Fence may not be increased or altered by any Owner. No other fence on any Lot which is within seventy-five feet (75') of a Park Fence and is parallel or within thirty degrees (30°) of parallel with any Park Fence shall be of greater height than the applicable Park Fence. No additions or attachments shall be made to any Park Fence, other than connecting rear and side Lot fences into the Park Fence in the manner provided above. No sign of any type shall be displayed from any Park Fence, other than promotive sales signs for initial Lot or home sales by Declarant or persons authorized by the Declarant or the District, and not for home resales or other homebuilders. Entry on an applicable Lot by Declarant, the District, the Association, or the County in order to construct or maintain a Park Fence shall not be deemed a trespass. Except in a case of an emergency, prior notice will be given to the applicable Lot Owner before any such entry by the Declarant, the Association, the District or the County. The Declarant, the Association, the District and the County will not be liable for any loss, costs or damages to any applicable Lot Owner within the Community Area on account of its performance of such installation or maintenance, except for any such loss, cost or damage caused by that party's gross negligence or willful misconduct.

b. Other Fences. Other than fences which are installed by the Metro District or the Declarant, and expressly subject to the terms of Section 4.8 a. above, the height, location, and material of all fences, animal pens, dog runs, and other similar Improvements located within a Lot must be approved by the Declarant. Chain link or similar wire or wire mesh fencing shall not be allowed as the primary fencing material. The total fencing of front yards is not permitted. In addition, no fence or hedge more than two feet (2') high shall be installed or maintained (a) closer than five feet (5') to the side Lot Line (and not the sidewalk or curb) of any "corner" Lot which is adjacent to a street, provided however, any such fence parallel to the front street and no closer to the front street than the front setback, shall be entitled to be as high as six feet (6'), or (b) closer to a front Lot Line of the Lot (and not the sidewalk or curb) than the dwelling or any other Improvement located on the Lot, except with the written approval of the Architectural Committee. No sign of any type shall be displayed from any fence, other than promotive sales signs for initial Lot or home sales by Declarant or persons authorized by the Declarant or the Architectural Committee, and not for home resales or other home builders not expressly authorized as provided by this Declaration.

Section 4.9 Underground Utilities. All utilities that will be installed within the Community Area, including electrical, telephone and cable television service, except lighting

standards and customary service devices for access, control or use of utilities, shall be installed underground. The Declarant may grant approval for temporary above ground utility lines as needed during construction,

Section 4.10 Garage and Driveway. The Improvements on each Lot shall include, as a minimum, a two-car, attached, fully enclosed garage or such equivalent garage arrangements as may be approved by the Declarant. All driveways shall be improved with concrete unless otherwise approved by the Declarant. No Lot shall contain more than one (1) driveway which directly accesses the garage from a public right of way. No driveway shall be added, extended, expanded or altered without the written approval of the Declarant, as provided in this Declaration.

Section 4.11 Access Restriction. All persons or entities having any interest in any of the Lots are required to and shall each arrange and maintain any drives, dwellings, or other Improvements so that ingress and egress to and from their respective Lots is exclusively from a publicly dedicated street and **not** through other private property or adjoining public lands or tracts.

Section 4.12 No Access from Adjacent County or City Streets. Access to and from any County or City street adjacent to the Community Area is hereby denied to all Owners of the Lots adjoining each such street, and all persons claiming by, through or under them, and the Owners of said Lots are required to and shall arrange and maintain their drives, dwellings and other Improvements so that ingress and egress to and from their Lots is exclusively from an adjoining public street as directed by Declarant.

Section 4.13 Compliance with Building Codes. All construction must also conform to the building codes, zoning codes and subdivision regulations of the El Paso County Development Services Department, also known as Regional Building, which regulations may vary from the provisions of this Declaration; provided, however, if this Declaration is more restrictive than such governmental codes and regulations, then the more restrictive provisions of this Declaration shall control.

Section 4.14 General Architectural Standards. The Declarant shall have the right and authority to establish and amend specific architectural standards from time to time as provided in Section 6.2 hereof.

ARTICLE 5 LIVING ENVIRONMENT STANDARDS

Section 5.1 Building and Grounds Maintenance. Each Owner shall maintain the exterior of the Dwelling Unit and all other Improvements on the Lot of the Owner in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Each Owner shall keep the lawn on his Lot mowed and all Landscaping properly maintained. Each Owner hereby acknowledges that the requirement to maintain each Lot in "good condition" and "properly maintained" shall be based upon a standard of care which is appropriate for single family residential areas in Colorado Springs, Colorado which are of a

comparable quality and nature. If the Owner fails to properly perform such maintenance, Declarant or the Architectural Committee may, after giving thirty (30) days' written notice and at the Owners' expense, effect such repairs and maintenance as it deems necessary in its judgment to maintain the standards of the Community Area. Entry to effect such repairs and maintenance shall not be deemed a trespass, and the Owner shall be liable for all costs incurred in connection with the repairs and maintenance.

Section 5.2 Garage Doors. Garage doors shall be kept closed except when being used to permit ingress and egress to or from the garage.

Section 5.3 Outside Storage. All maintenance equipment shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets. Each Owner shall consider the impact and take reasonable steps to minimize any material adverse impacts on neighboring Owners when allowing equipment and materials, including but not limited to maintenance equipment, play and exercise equipment, children's toys and lawn furniture to be located outside when such items are not in active use. The Association will have the authority to adopt such Community Guidelines as it deems appropriate, in its reasonable discretion, to regulate the placement of such items and materials on any Lot when such items are not in active use, including requiring the removal of any items which the Association deems to have a material adverse impact on neighboring Lots.

Section 5.4 Clotheslines. No outdoor clothes poles, clotheslines or other facilities for drying or airing clothing or household goods shall be placed on any Lot, and no laundry shall be dried or hung outside any Dwelling Unit or other Improvement.

Section 5.5 (Reserved; Intentionally Left Blank)

Section 5.6 Refuse. No unsightly objects or materials, including but not limited to ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collections. After a period of fifteen (15) days of continued violation of this Section 5.6, the Association or Declarant shall have the right to enter upon the Lot involved and remove such unsightly objects or materials at the expense of the Owner. Such an entry shall not be deemed a trespass, and the Owner shall be liable for all costs incurred relative thereto.

Section 5.7 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any Dwelling Unit. No annoying lights, sounds or odors shall be permitted to emanate from any Lot or Dwelling Unit.

Section 5.8 Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for security purposes, shall be located, used or placed on any Improvement or within any Lot. With the

prior approval of the Architectural Committee, an Owner may install exterior stereo speakers, provided that the sound levels from such speakers are not objectionable to neighbors.

Section 5.9 Landscaping. Within six (6) months following receipt of a Certificate of Occupancy for the Dwelling Unit in a Lot, or within any extension of that period granted by the Architectural Committee, all Lots (other than where the Dwelling Unit and driveway are located) shall be Landscaped and thereafter maintained and kept in good condition. Prior to commencing any Landscaping within a Lot, the Owner thereof shall be required to submit his proposed landscape plan to the Architectural Committee for its approval in accordance with Article 6 of this Declaration. Unless otherwise approved by the Architectural Committee, a substantial portion of the front yard area, as reasonably determined by the Architectural Committee, shall be covered with sod and other vegetation of a type approved by the Architectural Committee. For purposes of this section, the front yard is defined as the area of the Lot between the paved surface of any street adjacent to the Lot and the building setback line on the Lot. Any landscaping plan that makes substantial use of artificial grass, plants or trees, must be approved by the Architectural Committee in its sole and absolute discretion.

Section 5.10 Weeds. All yards and open spaces and the entire area of every Lot on which no building has been constructed shall be kept free from plants and weeds infected with noxious insects or plant diseases and from weeds which, in the reasonable opinion of the Association or Declarant, constitute a nuisance or are likely to cause the spread of infection or weeds to neighboring property, and free from brush or other growth or trash which in the reasonable opinion of the Association or Declarant causes undue danger of fire.

Section 5.11 Mowing and Pruning. In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any Lot upon which a building has not been constructed shall mow, cut, prune, clear and remove from the premises unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot.

Section 5.12 Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original, approved finish grading plan except after first obtaining the prior consent and approval of the Declarant. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture. Any construction, grading or swales should direct surface waters to a drainage easement or to the street. Surface waters should not be concentrated and directed differently than the historic direction of flow. Special attention should be paid to the revegetation of approved grades, cuts and fills to eliminate erosion.

Section 5.13 Transmitters. No electronic or radio transmitter of any kind other than garage door openers, electronic devices and transmitters permitted by Title 47, Part 15 of the United States Code and remote control devices for televisions, stereos, video cassette recorders and similar equipment shall be operated in or on any Improvement or Lot.

Section 5.14 Animals. No animals, except domesticated birds or fish and other small domestic animals permanently confined indoors and those permitted pursuant to this Section 5.14, shall be permitted within any Lot. Domesticated dogs and domesticated cats may be kept or maintained in or on any Lot within the Community Area only if kept as pets and the total number of which may not exceed two (2) animals. No animals shall be kept, bred or maintained within the Community Area for any commercial purposes. No dogs or other pets shall be chained or enclosed on a Lot outside of the Dwelling Unit for any extended period of time, except by means of underground electronic fences or other invisible barriers or fences. Dogs or pets may also be kept in a dog run or other similar enclosure. The location, materials, size and other specifications for the dog run shall be subject to approval by the Architectural Committee. Notwithstanding the above, no animal of any kind shall be permitted which in the opinion of the Association makes an unreasonable amount of noise or odor or is a nuisance. Each Owner shall be responsible for cleaning up after his/her pets and their guests' pets in Common Areas of the Community Area, including all streets, sidewalks, parks and Association Properties. In addition, each Owner shall be liable for any damage caused by their or their guests' pets to any improvements to the Community Area. All pets must be appropriately leashed or controlled in the Community Area.

Section 5.15 Parking of Vehicles. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes, off-road vehicles, motorcycles, nor any towed trailer unit or truck (collectively, "Restricted Vehicles") shall be parked overnight on any street or within any Lot except in a completely enclosed building such as a garage, or unless screened in a manner approved by the Architectural Committee. Pickup trucks having a 3/4 ton or less manufacturer's rated capacity, with or without bed toppers, and passenger vans for the private use of the residents of a Dwelling Unit as primary transportation on a day-to-day basis, shall not be considered trucks for purposes of the foregoing restrictions. No motor vehicles or any Restricted Vehicle shall be parked within any of the Association Properties except as expressly authorized in writing by the Architectural Committee.

Section 5.16 Inoperative Vehicles. No unused, stripped down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot (including, without limitation, the driveway) in such a manner as to be visible at ground level from any neighboring property or street, unless fully screened in a manner approved by the Architectural Committee. An unused vehicle shall be any vehicle which is not properly licensed or otherwise determined by the Association. Nothing contained in this Section shall permit or be deemed to permit any Owner to maintain more than one (1) inoperative motor vehicle or part thereof, even if screened, within any portion of a Lot.

Section 5.17 Vehicle Repairs. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed Improvement which screens the sight and sound of the activity from adjoining streets and from neighboring property.

Section 5.18 Signs. The only signs permitted on any Lot or Improvement shall be:

- (a) One sign of customary size for offering of the signed property for sale or for rent;

- (b) One sign of customary size for identification of the occupant and address of any dwelling;
- (c) Multiple signs for sale, administration and directional purposes installed by or with the permission of the Declarant or the Architectural Committee, including without limitation, signs for model homes and related directional and advertising signage;
- (d) Signs as may be necessary to advise of rules and regulations or to caution or warn of danger, and
- (e) Such signs as may be required by law.

Except for permitted signs, there shall not be used or displayed on any Lot or Improvement any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental, except by the Declarant or with the prior written permission of the Declarant. All permitted signs must be professionally painted, lettered and constructed. If a sign is not in compliance with the provisions of this Section 5.18, the Association may, upon ten (10) days notice, require it to be modified or removed.

Section 5.19. Outdoor Burning. There shall be no outdoor fires on any Lot or any of the Association Properties, except fires in barbecue, braziers and outside fireplaces contained within facilities or receptacles intended for such purpose. In no event shall any such facility or receptacle be used for burning of trash. Any such facilities or receptacles shall be subject to the Community Guidelines, which may include limitations on the time and manner in which fires will be permitted and may permit the Association to impose total outside fire bans when deemed appropriate by the Association. No Owner shall permit any condition on such Owner's Lot which creates a fire hazard or is in violation of fire prevention regulations adopted by the County of El Paso or any governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by the City or a governmental authority having jurisdiction and control over outside burning, such ban shall be observed within the Community Area.

Section 5.20 Drainage. The soils within the State of Colorado consist of both expansive soils and low-density soils that will adversely affect the integrity of the Dwelling Units or other Improvement and the Lot containing it are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soiled grains, thereby resulting in consolidation and/or collapse of the soils.

An Owner shall not permit the moisture content of the soil supporting the foundation and supporting the concrete slabs forming a part of the Dwelling Unit to increase to an extent that would adversely affect the foundation and concrete slabs, and shall not introduce

excessive water into the soil surrounding the Dwelling Unit. An Owner shall maintain the grading and drainage patterns of the Lot in accordance with the terms of Section 5.12 of this Declaration.

An Owner shall not impede or hinder in any way the water flowing on his Lot from reaching the drainage courses established for the Lot and the Property or areas shown on the approved drainage plans.

By virtue of the review and submittals described in this Section 5.20 and Section 5.12, the Declarant is in no manner certifying, guaranteeing or otherwise making any representations or warranties with respect to the adequacy, sufficiency or appropriateness of any grading plan applicable to the Lot. Each Owner of a Lot acknowledges and agrees that the Declarant shall have no responsibility or liability whatsoever with respect to such issues and each Owner shall be fully and solely responsible for same.

The Owner of each Lot hereby acknowledges that it is solely responsible for any damage which results, directly or indirectly, from a change in the grading pattern of the Lot in violation of the provisions of this Section 5.20 or Section 5.12 of this Declaration.

Section 5.21 Hazardous Materials. No materials shall be transported to, from or within the Community Area in such a way as to create a nuisance or hazard, Storage, use or disposal of hazardous or radioactive material within the Community Area is prohibited. Any continued or intensive use of pesticides or herbicides is deemed to be a use of hazardous materials.

Section 5.22 Solar Devices, Air Conditioning Units, Etc. All solar devices, exterior air conditioning units and systems, swamp coolers and other similar devices must either be architecturally and aesthetically integrated into the building they serve or be screened from the view of adjacent Lots and streets in either manner approved by the Architectural Committee in accordance with the terms of this Declaration.

Section 5.23 Storage Sheds. No storage sheds of any kind will be permitted to be constructed or installed within any Lot prior to the specific prior written approval of the design, color, materials to be used in connection therewith and the location thereof by the Architectural Committee in accordance with the terms of this Declaration.

ARTICLE 6 ARCHITECTURAL CONTROL

Section 6.1 Architectural Committee. Until Declarant has sold all of the Lots in the Community Area (as the Community Area may be expanded from time to time by Declarant as provided herein), or until such earlier time as Declarant elects to assign the right to appoint the Architectural Committee for one (1) or more platted subdivision filings within the Community Area to the Board, the Architectural Committee for the applicable platted subdivision shall consist of three (3) members appointed by Declarant. After the right to appoint the Architectural

Committee for a platted subdivision has been transferred to the Board, the Architectural Committee for the applicable platted subdivision or subdivisions shall consist of at least three (3) and not more than five (5) individuals, all of whom shall be appointed by the Board. The Board, following the delegation to it of the right to appoint an Architectural Committee for platted subdivisions within the Community Area, shall have the right to establish one (1) or more Architectural Committees for the various platted subdivisions within the Community Area. The Architectural Committee for all other platted subdivisions within the Community Area for which the right to appoint an Architectural Committee shall not have been delegated to the Board shall remain at least one (1), but not more than three (3) members appointed by Declarant. All references in this Declaration to the Architectural Committee shall be deemed to refer to the Architectural Committee for the applicable platted subdivision in which the Lot or area for which approval is being sought is located or which is in violation of this Declaration, whether such Architectural Committee is appointed by the Declarant or the Board, as provided in this Section 6.1. The members of the Architectural Committee need not be Members of the Association. The Architectural Committee shall exercise the functions assigned to it by this Declaration and the Design Guidelines, if any, including reviewing and approving all plans for Improvements as provided in this Declaration.

Section 6.2 Design Guidelines. The Architectural Committee may promulgate and adopt Design Guidelines applicable to all Improvements in the Community Area, which shall regulate among other things, the following matters:

- (a) Site Location:
 - (1) location on a Lot;
 - (2) orientation of a Dwelling Unit to Lot Lines;
 - (3) site coverage.

- (b) Architectural Design:
 - (1) exterior materials and colors;
 - (2) elevations;
 - (3) roof lines;
 - (4) exterior lighting.

- (c) Site Accessories:
 - (1) entrances to Lots and driveway layout;
 - (2) parking areas within Lots;
 - (3) fences and dog runs;
 - (4) placement and screening of satellite dishes;
 - (5) patios, accessory buildings or other Improvements;
 - (6) basketball backboards and other play equipment; and
 - (6) driveway lighting.

- (d) Landscape Design:
 - (1) plant materials;
 - (2) amount of landscaping required;
 - (3) preservation of vegetation;
 - (4) maintenance guidelines.

- (e) Approval Processes:
 - (1) documentation required for review and approval;
 - (2) time periods for review and approval.

All Improvements, including those on the Association Properties (if any), shall be constructed or installed in compliance with the requirements of the Declaration and any Design Guidelines which exist at the time of approval of plans pursuant to this Article 6. The Architectural Committee shall have the right to adopt, modify or supplement the Design Guidelines from time to time in its sole discretion; provided, however, that no provision contained within the Design Guidelines may result in a provision that contradicts or conflicts with any express provision of this Declaration or that is contrary to the general intent or purposes of this Declaration.

Section 6.3 Approval Required. No Improvement shall be placed, erected, installed or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until

the plans and specifications for such Improvements shall have been submitted to and approved in writing by the Architectural Committee. Matters which require the approval of the Architectural Committee include but are not limited to:

- (a) the construction, installation, erection or expansion of any or any building, structure, or other Improvements;
- (b) the installation of Landscaping;
- (c) the demolition or destruction, by voluntary action, of any building, structure or other Improvements;
- (d) the grading, excavation, filling or similar disturbance to the surface of the land; and
- (e) any change or alteration of any previously approved Improvements, including any change of exterior appearance, finish material, color or texture.

Any Applicant desiring to build more than one house of the same model in the Community Area shall only be required to submit its plan (including all color schemes and elevations) for that model one time to the Architectural Committee. On approval, said Applicant will not have to re-submit its plan for said model to be built on any lot in the Community Area unless such approval is withdrawn by the Architectural Committee with written notice as otherwise defined herein.

Section 6.4 Plans Submissions. All plans, samples and other materials to be submitted to the Architectural Committee shall be submitted in duplicate, together with the fee described in Section 6.5 hereof. The minimum scale of such plans shall be one-twentieth inch equals one foot ($1/20" = 1'$). The plot plan shall show in scale the location of all buildings, drives, walks, fences and any other Improvements. Plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. Landscaping plans shall show the location of all landscaping elements, including grass, ground cover, shrubs, trees and other landscape materials for all the area of the Lot not covered by Improvements. The size and type of all new plant materials shall be indicated. The Declarant shall have no obligation to retain any submitted plans following action by the Architectural Committee.

In discharging its rights and obligations hereunder, the Architectural Committee makes no representations or warranties to the Owner or any other person or entity concerning the construction of the Improvements on the Lot, and the Architectural Committee shall have no liability or responsibility for defective construction or other similar matters. Each Owner of a Lot acknowledges and agrees that the Declarant, in discharging its rights and obligations hereunder, is not making any warranty or representation, expressed or implied, that any Improvement to be constructed by an Owner upon a Lot is suitable for that Lot and each Owner further acknowledges that each Owner,

and such Owner's representatives or contractors, are ultimately and fully responsible for any construction techniques, measures and means utilized in the construction of a Improvement upon a Lot.

Section 6.5 Approval Process. All action required or permitted to be taken by the Architectural Committee shall be in writing, and any such written statement shall establish the action of the Architectural Committee and shall protect any person relying on the statement. The procedure for submitting requests and obtaining approvals shall be as established from time to time by the Architectural Committee. **The Architectural Committee may charge reasonable fees to cover expenses incurred in review of all plans (including without limitation landscaping plans), samples and materials submitted pursuant to this Declaration, and reimbursement and/or compensation to the non-Lot Owner members of the Architectural Committee for their services, as and in such amount as determined from time to time by the Association Board.** The Architectural Committee shall be entitled to retain one copy of all approved plans as part of its files and records. Approvals of all plans and specifications for an Improvement will automatically expire within one year after approval if construction is not commenced within one year after approval, and if approval so expires, the applicant must resubmit a request for approval of the Improvement.

Section 6.6 Approval Standards. All Improvements to be constructed or installed within the Community Area must comply with the Design Guidelines, if any, and this Declaration. In granting or withholding approval of matters submitted to it, the Architectural Committee shall consider the specific standards and specifications set forth in this Declaration. The Architectural Committee shall have the right to disapprove any plans, specifications or details submitted to it if it determines, in its sole discretion, that the proposed Improvement is not consistent with any provision of this Declaration; if the plans and specifications submitted are incomplete; or if the Architectural Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interest, welfare or rights or all or any part of the Community Area, the Association or the Owners. If the Architectural Committee believes there may be questions of structural integrity, it may, as part of the approval requirements, require certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. The decisions of the Architectural Committee shall be final and binding unless they are clearly arbitrary and there is no evidence to support the Architectural Committee's decision.

Section 6.7 No Liability. Neither Declarant, the Board nor the Architectural Committee or any member thereof shall be liable in damages or otherwise to anyone submitting plans to them for approval or requesting a variance, or to any Owner by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the plans, specifications or variance. Approval by the Architectural Committee shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Committee to comply with all codes, ordinances and regulations.

Section 6.8 Variances. The Architectural Committee shall have the authority to grant for a Lot a variance from the terms of this Declaration or the Design Guidelines, if any, subject to terms and conditions which may be fixed by the Architectural Committee and will not be contrary to the interests of the Owners and residents of the Community Property where, owing to exceptional and extraordinary circumstances, literal enforcement of those sections could result in unnecessary hardship. **All determinations of the Architectural Committee shall be final and binding and neither the Architectural Committee nor the Association, nor their respective members or agents, shall have any liability for granting or denying any variance request. The Architectural Committee may charge reasonable fees to cover expenses incurred in review of all variances submitted pursuant to this Declaration, including reimbursement or compensation to the members of the Architectural Committee for their services, as and if determined from time to time by the Board of Directors of the Association.**

Following an application for a variance:

(a) The Architectural Committee shall, within thirty (30) days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Architectural Committee fails to act on the request for the variance within this thirty (30) days, the variance shall be deemed not to be granted as of the expiration of such thirty (30) days.

(b) A variance granted hereunder shall run with the Lot for which it is granted.

(c) A variance shall not be granted unless the Architectural Committee shall first find that all of the following conditions exist:

- (i) the variance will not authorize the operation of a use other than a use authorized by this Declaration;
- (ii) owing to the unusual circumstances, literal enforcement of this Declaration could result in unnecessary hardship;
- (iii) the variances will not materially and permanently injure the use of other property in the Community Area;
- (iv) the variance will not materially alter the essential character of the Community Area;
- (v) the variance will not materially weaken the general purposes of this Declaration;
- (vi) the variance will generally be in harmony with the spirit and purpose of this Declaration; and

(vii) the circumstances leading the applicant to seek a variance are unique to the Lot or its Owner and are not applicable generally to Lots in the Community Area or their Owners.

(d) If a variance is denied, another application for substantially the same variance for the Lot involved may not be made for a period of at least one year from the date of submittal of the original request.

(e) If a variance is granted, it shall not serve as a precedent to the granting of any future requested variance.

ARTICLE 7 ASSOCIATION OPERATION

Section 7.1 Association Structure. The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in the Association Documents. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs. The Board of Directors shall be elected by its Members; provided, however, that the Declarant shall have the sole right to appoint a majority of the members of the Board of Directors for the period of time provided in Section 7.5. In the Declarant's sole and absolute discretion, the Declarant may establish one or more Associations to govern the Community Area, including any Expansion Property, as it sees fit. Each Association will govern at least one filing. Any reference to "Association" in these Covenants shall be a reference to each Association or all Associations as the case may be. For example, if only one Association has Association Property, any reference to the Association concerning Association Property shall be a reference to that Association that owns Association Property. As an additional example, any reference to the structure of the Association shall be a reference to all the Associations. Upon a majority vote of the Board of Directors of each Association, two or more Associations can merge into one Association.

Section 7.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The Board shall consist of a minimum of three (3) members during the Period of Declarant Control stated in Section 7.5 and thereafter shall consist of at least three (3) but not more than nine (9) members, as determined by the Board. All members of the Board shall be representatives of Declarant or Members of the Association. The terms and qualification of the members of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws of the Association. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration or by Colorado law. All lawful decisions, agreements and undertakings by the

Board, or its authorized representatives, shall be binding upon all Members, Owners, Related Users and other Persons.

Section 7.3 Membership in Community Association. Each Owner shall be a Member of the Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that an Owner may assign, some or all of the Owner's rights as an Owner and as Member of the Association to a contract purchaser, tenant or First Mortgagee, and may arrange for such Person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any such contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the First Mortgage, sales contract or tenancy. The assignment of rights by an Owner pursuant to this section shall not be subject to any present or future statutory time limit for the duration of duly notarized proxy rights, but shall be in writing, and delivered to the Association before such Person shall be entitled to exercise any membership rights or privileges. All rights, title and privileges of membership shall be subject to the Association Documents.

Section 7.4 Voting Rights of Members. Members shall have the right to cast votes for the election of Board of Directors and on such other matters to be voted on by the Members as provided in the Association Documents. One vote is allocated to each Lot and Members shall have one vote for each Lot owned. The one vote for each Lot may not be split if there is more than one Owner of the Lot, and if the Owners are unable to determine how to cast the one vote allocated to their Lot, then the Owners shall be deemed to have abstained. Voting rights and procedures may be further defined in the Articles and Bylaws of the Association. Notwithstanding the foregoing, Declarant shall have the reserved rights set forth in Section 7.5.

Section 7.5 Declarant's Reserved Right to Appoint. Declarant hereby reserves the right to appoint the Board of Directors, to control the Association and to appoint and remove the officers and members of the Board at all times subsequent to the date of recordation of this Declaration and continuing for a period of twenty years following the date on which this Declaration is recorded (the "Period of Declarant Control"). Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. It is hereby expressly acknowledged that any action by Declarant to surrender its authority over the Association or its Board will in no way limit Declarant's rights and authority with respect to architectural control matters as provided in this Covenant, unless such rights are expressly terminated or waived by Declarant.

ARTICLE 8
DUTIES AND POWERS OF ASSOCIATION

Section 8.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members. The Association, acting through the Board or representatives to whom the Board has delegated such powers, shall have the duties and powers given non-profit corporations, including without limitation those hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members to manage the Association, manage, administer and enforce this Declaration, to maintain, improve and enhance Association Properties, if any, and to improve and enhance the attractiveness, desirability and safety of the Community Area and to use Association funds to enforce this Declaration. The Association shall have and may exercise all powers authorized under Colorado law for non-profit corporations. Except as expressly otherwise provided in the Association Documents or by Colorado law, the Association shall act through the Board of Directors, without the vote or meeting of the Members, and the Board may exercise all rights, powers and interests of the Association, as described in this Article or elsewhere in the Association Documents.

Section 8.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any property, including without limitation any Improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration. No representation, express or implied, is made that the Declarant will or will not transfer property to the Association, except as specifically provided in Section 9.2.

Section 8.3 Duty to Manage and Care for Property. Although it is not currently the intent to create any Association Properties, to the extent Association Properties are owned by the Association, the Association shall manage, operate, care for, maintain and repair all Association Properties and keep the same in an attractive and desirable condition for the use and enjoyment of the Members. In addition, the Association may manage, operate, care for, maintain and repair property other than Association Properties, if some or all of the Members will benefit thereby or if such Association action is required pursuant to any Plat or Supplemental Plat, or the Development Plan. In addition, the Association shall have the right, but not the obligation, to maintain and repair any property which is to be maintained by the Metro District and which is within the Community Area if the Association, through its Board of Directors, determines that such maintenance or repair is advisable following written notice to the Metro District of the need for such maintenance and repair and the District's failure to timely undertake such action.

Section 8.4 Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Association Properties owned by the Association, if any, and all other taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment, and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful. The Association may maintain reserves for any taxes, interest and penalties which could be incurred as a result of an adverse ruling on any position taken by the Association.

Section 8.5 Duty to Maintain Insurance. The Association shall obtain and keep in full force and effect at all times insurance coverage in accordance with this Declaration and as required by Colorado law.

Section 8.6 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 8.7 Power to Provide Security. The Association shall have the right, but not the obligation, to provide for the security of the Owners by hiring a security patrol and performing any other functions relating to safety and security authorized by the Board or the Members.

Section 8.8 Power to Acquire and Maintain Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The Association may construct or reconstruct Improvements on property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Community Area, whether or not owned by the Association.

Section 8.9 Power to Adopt Community Guidelines. The Association may adopt, amend, repeal and enforce such Community Guidelines as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of Association Properties, if any, and the use of any other property within the Community Area, including Lots. Any such Community Guidelines shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Community Guidelines shall be effective upon adoption by resolution of the Board of Directors. Written notice of the adoption, amendment or repeal or any Community Guideline shall be provided to all Members by the Association, and copies of the currently effective Community Guidelines shall be made available to each Member upon request and payment of the copying cost. Each Owner, Related User, Member and other Person shall comply with such Community Guidelines, and each Owner shall be responsible for ensuring that the Related Users of such Owner comply with the Community Guidelines. Community Guidelines shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Community Guidelines and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 8.10 Power to Enforce Declaration and Community Guidelines. Until the time for selection of the Architectural Committee by the Board, as provided in Section 6.1 hereof, Declarant may, and after the selection of the Architectural Committee by the Board, the Architectural Committee or Declarant, including an assignee or delegate, may give notice to the Owner of the Lot where a violation of this Declaration occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Architectural Committee or Declarant to invoke this Section unless within a period stated in the notice (which notice shall not be less than ten (10) calendar days unless a shorter period of time is otherwise provided for in this Declaration), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Architectural Committee or Declarant (whichever party gives the notice) may, but shall not be obligated to, cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry upon such Owner's Lot as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant and the Architectural Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration. Declarant and the Architectural Committee may delegate their entry and removal rights hereunder to agents and independent contractors. The cost so incurred by the Architectural Committee or Declarant shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of twenty-one percent (21%) per annum and costs enforcement and of collection (including reasonable attorneys' fees), shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. Such lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section 8.10 and Section 11.15. The Architectural Committee or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of enforcement and collection against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien and there shall be added to the amount of such obligation the costs of enforcement and collection, and the judgment in any such action shall include interest as above provided and the costs of collection, including reasonable attorney's fees. The waiver of homestead exemption set forth above shall apply to any foreclosure action for the lien imposed by this Section 8.10 and Section 11.15. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce this Declaration pursuant to Section 11.15 or as otherwise may be provided herein or by law or equity; provided, however, that only the Declarant and the Architectural Committee shall have the right to proceed under this Section 8.10. In the event that the Declarant or Architectural Committee, whether acting for themselves or through their agents and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless (i) damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Covenants and (ii) is caused by the willful and wanton acts of the Declarant or the Architectural Committee. In no event shall there be any liability for damage to a Structure that is in violation of this Declaration.

Section 8.11 Power and Duty to Enforce Association Documents. The Association shall have the power and duty to enforce the covenants, terms and provisions of the Association Documents.

Section 8.12 Power to Provide Special Services. The Association shall have the power to provide special services beyond this Declaration to a Member or group of Members and any services to any other Person. Any such service or services shall be provided pursuant to an Agreement in writing, or through one or more amendments to this Declaration, which shall provide for payment to the Association by such Member or group of Members or other Persons of the costs and expenses which the Association estimates it will incur in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns or the Member or group of Members or other Persons, and may be collected in the same manner as a Site Assessment, or, if the written agreement so provides, in installments as part of the Common Assessments or may be collected in any manner permitted by law or statute or the Association Documents.

Section 8.13 Power to Operate and Charge for Facilities. The Association shall have the power to acquire, create, own and operate any and all such services as it deems appropriate, including, without limitation, landscape maintenance and to establish charges for the use of services. Such charges or fees shall be as determined from time to time by the Board of Directors.

Section 8.14 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under Association Property, if any, for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, or other uses or services to some or all of the Members or to facilitate the development of the Community Area or the Expansion Property.

Section 8.15 Power to Employ Managers. The Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management of any functions for which the Association has responsibility under this Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to the manager. Any contract or agreement with a manager shall be terminable by the Association for cause on no more than thirty days' prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety days' prior written notice. No such contract or agreement shall be for a term of more than one year. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, power and functions. In addition to a manager, the Association may employ and pay a consultant, which may be Declarant, an affiliate of Declarant, or a third party, to assist in operating and managing the Association after the Declarant's reserved rights under Section 7.5 terminate.

Section 8.16 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and to retain and pay for such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Association Documents.

Section 8.17 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, subject to any limitations, restrictions, or requirements expressly set forth in the Association Documents.

Section 8.18 Other Powers. The Association shall have the power to regulate the days and hours during which trash and solid waste may be collected or put out for collection in any portion of the Community Area, and the Association may require all Owners to use a common trash collection company or entity selected by the Board. The Association shall have the power, but not any duty, to sponsor or conduct various community activities or special events of a social or recreational nature, to hire and provide a security or courtesy patrol, which shall be unarmed and shall not be a substitute for the municipal police, and to provide general informational services which may include, without limitation, community newsletter, radio broadcast, cable television services and similar services. The cost of these additional powers and/or trash services shall be a cost of the Association to be paid by the Owners as otherwise provided herein.

ARTICLE 9 ASSOCIATION PROPERTIES

Section 9.1 Right of Association to Regulate Use. To the extent that the Association hereafter owns, holds or has property, the provisions of this Article 9 shall apply. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members to enhance further the overall rights of use and enjoyment of all Members, including without limitation, imposing limits on the times of use and numbers of guests permitted to use the Association Properties.

Section 9.2 Property that Must be Conveyed. The Declarant shall be obligated to convey to the Association any tracts of land that are identified on the Plats or any Supplemental Plat as tracts for open space or trails that the Association, rather than any third party or one of the Metro District, will be required to maintain. Such properties to be conveyed to the Association, if any, shall be conveyed to the Association on or before the expiration of the Period of Declarant Control under Section 7.5. Declarant is not obligated to convey any other real property to the Association.

Section 9.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties (if any) or any part thereof.

Section 9.4 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Association Properties (if any) or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or a Related User of such Owner of the Association Documents. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Site Assessment against a Member, Owner, Lot, Related User, or other Person to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of the Association Documents, including without limitation, the deductible on any insurance of the Association, interest, costs, expenses and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 9.5 Damage to Association Properties. In the event of damage to or destruction of all or a portion of the Association Properties due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, then the Association shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to this Declaration and shall proceed to make such repairs or reconstruction, unless the Owners and First Mortgagees by a majority vote agree not to repair and reconstruct such damage in accordance with the terms and provisions of this Declaration. No distributions of insurance proceeds shall be made to the Owners, unless made jointly payable to Owners and the First Mortgagees, if any. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction or replacement, the Association may use the excess for future maintenance, repair, and operation of and improvements to Association Properties.

Section 9.6 Association Powers in the Event of Condemnation.

(a) If proceedings are initiated by any government or agency thereof seeking to take Association Properties or any interests therein or part thereof, including any Improvements, the Association shall give prompt notice thereof, including a description of the part of or interest in the Association Properties or Improvements thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the Association Properties, any part thereof, or any interest therein, and each Owner hereby appoints the Association as the Owner's attorney-in-fact for such purposes. Any award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

(b) If all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, any award or settlement shall be apportioned by the Association on such a fair and equitable basis as the Association determines to be appropriate in the circumstances, or as determined by judicial

decree. If the allocation of the condemnation award is already established in the negotiations, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent that it is relevant and applicable.

(c) If less than all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condemnation award shall first be applied by the Association to the rebuilding and replacement of those Improvements on the Association Properties which are damaged or taken by the condemning public authority, if such rebuilding or replacement is reasonably practical, unless Members with at least sixty-seven percent of the First Mortgagees (based upon one vote for each First Mortgage held) agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be distributed by the Association on the same basis as indicated in subparagraph (b) of this section. No provision of this Declaration or any other document relating to the Association Properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee, pursuant to a First Mortgage, awarding distribution of insurance proceeds or condemnation awards for losses to or taking of Association Properties.

ARTICLE 10

DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

Section 10.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Association Properties (if any) for a period of twenty (20) years after the date this Declaration is recorded in the real property records of El Paso County, Colorado, or until such earlier date when Declarant ceases to own any real property within the Community Area. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment.

Section 10.2 Declarant's Development Rights. For the period stated in Section 10.1, Declarant shall have the following development rights:

- (a) Declarant may create additional Lots within the Community Area; and
- (b) Declarant may create Association Properties within the Community Area or convert any of the Declarant owned Lots within the Community Area to Association Properties;
- (c) Declarant may expand, from time to time, the Community Area to include all or any portion of the Expansion Property.

All of the development rights set forth above may be exercised by Declarant with respect to all or any portion of the Community Area. No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of the Community Area may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them. If Declarant does exercise a development right in any portion of the Community Area, Declarant is not obligated to exercise that development right in all or any other portion of the remainder of real estate affected by the exercise of the development right or in all or any other portion of the remainder of the Community Area.

Section 10.3 Special Declarant Rights. For the period stated in Section 10.1, and as more particularly set forth in this Article 10 or elsewhere in this Declaration, Declarant shall have the following special Declarant rights:

- (a) to complete any Improvements shown on the Plats or any Supplemental Plat;
- (b) to exercise any development rights set forth in Section 10.2;
- (c) to maintain anywhere within the Community Area, sales offices, management offices, signs advertising the Community Area and model homes;
- (d) to use easements through the Association Properties for the purpose of making improvements within the Community Area;
- (e) to appoint or remove any officer of the Association or any member of the Board of Directors appointed by Declarant; and
- (f) to amend this Declaration to reflect Declarant's exercise of its reserved rights, as provided in this Article 10.

Section 10.4 Expansion.

(a) Right to Expand. Until the expiration of the period indicated in Section 10.1, Declarant reserves the right to expand the Community Area to include all or part of the Expansion Property, whether or not such Expansion Property is owned by Declarant or not, without the approval of the Owners or First Mortgagees, except such VA or FHA approval as shall be required, to include additional land and one or more additional buildings located upon all or any part of the Expansion Property. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to expand the Community Area.

(b) Procedure for Expansion. Such expansion may be accomplished by the filing for record by Declarant with the Clerk and Recorder of El Paso County, Colorado no later than the expiration of the period set forth in Section 10.1, an amendment or

amendments to this Declaration containing a legal description of the land area to be added to the Community Area, together with any supplemental plats which may be required. Any such amendment or amendments to this Declaration shall also contain a listing of the total number of Lots then contained within the Community Area. The expansion may be accomplished in "phases" by successive amendments.

(c) Effect of Expansion.

(1) In the event of such expansion, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Community Area as so expanded; e.g., "Community Area" shall mean the real property described on Exhibit A hereto plus any additional real property added by any amendment to this Declaration; similarly, "Lots" shall include those areas located within the real property described on Exhibit A hereto, as well as those so designated on any amendment or supplemental plat relating to any real property which is annexed pursuant to this Section 10.4. References to this Declaration shall mean this Declaration as so amended.

(2) Upon recording of the amendment or amendments to Declaration and any supplemental plat with the Clerk and Recorder of the County, the additional Lots shall be subject to the provisions of this Declaration.

(3) Until the expansion of the Community Area is accomplished by recording the amendment(s) to this Declaration and supplemental plat(s), the Expansion Property and any improvements constructed thereon shall not be subject to this Declaration in any way whatsoever, including but not limited to consideration for the purpose of apportioning assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in this Declaration or otherwise shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant's, or its successors' or assigns' sole and complete right, title and interest to the Expansion Property and any improvements constructed thereon. The Declarant alone shall be liable for all expenses of the Expansion Property unless and until annexed hereunder, and shall be entitled to any income and proceeds therefrom. The Declarant's right to annex, and other development rights, may be exercised at different times and as to different portions of the Community Area or Expansion Property, and so no assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed. If the Declarant exercises any right to annex additional portions, the Declarant is not required to exercise any development rights to any and all portions of the remaining Community Area or Expansion Property.

Section 10.5 Right to Construct Additional Improvements on Association Properties.
Declarant shall have and hereby reserves the right, but shall not be obligated, to construct

additional Improvements on Association Properties, at Declarants cost, at any time and from time to time in accordance with this Declaration for the improvement and enhancement of the Association Properties and for the benefit of the Association and the Owners.

Section 10.6 Declarant's Rights to Use Association Properties and Declarant-Owned Lots in Promotion and Marketing. Declarant and its assigns, including any homebuilder to whom Declarant transfers a Lot, shall have and hereby reserves the right to use the Association Properties and any Lots owned by Declarant and its assigns and to use services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Community Area or nearby areas. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Association Properties, or any Lot owned by Declarant and its assigns, such signs, temporary buildings and other structures as Declarant or its assigns may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Community Area; may use vehicles and equipment on Association Properties for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Community Area to use Association Properties.

Section 10.7 Declarant's Rights to Complete Development of Community Area. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Community Area or nearby areas and to subdivide, resubdivide, or rezone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Community Area; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant, its assigns (including any homebuilders) or owned by the Association within the Community Area; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Community Area. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant or its assigns; to make changes or modifications to Article 6 of this Declaration by means of an amendment to this Declaration; to change any landscaping, grading, drainage, vegetation, or view; or to construct, alter, demolish or replace any Improvements on any property owned by Declarant or its assigns, or to use any structure on any property owned by Declarant or its assigns as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Community Area. Nothing in this section shall limit or impair the reserved rights of Declarant or its assigns as may be elsewhere provided in the Association Documents, which rights are incorporated in this section by this reference.

Section 10.8 Reserved; Intentionally Left Blank.

Section 10.9 Declarant's Approval. Until Declarant no longer has the right to appoint a majority of the Board, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Association Properties; mortgage the Association Properties; use Association

Properties other than for the benefit of Members; levy any Special Assessment; change or repeal any rules of the Architectural Committee; make any substantial reduction or change in Association services; or make any amendment of Association Documents.

ARTICLE 11 ASSESSMENTS

Section 11.1 Obligation for Assessments. Each Owner, for each Lot owned within the Community Area, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments which are described in the Association Documents and which shall be both a personal obligation of the Owner and a lien against his Lot as provided therein. Each Owner shall be jointly and severally liable to the Association for the payment of all Assessments attributable to them and/or their Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for herein by non-use of the Association Properties or the facilities contained therein, by non-use of any service provided by the Association for all Owners, by abandonment or leasing of his Lot, or by asserting any claims against the Association, the Declarant or any other person or entity. In addition to the foregoing Assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot. All property dedicated to and accepted by a public or governmental authority and the Association Properties shall be exempt from Assessments hereunder.

Section 11.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners to manage the Association, administer and enforce this Declaration, bring enforcement actions as provided in this Declaration, and for the improvement and maintenance of the Association Properties as more specifically provided herein.

Section 11.3 Common Assessments. The Common Assessments may include, but shall not be limited to, the following common expenses:

- (a) expenses of management of the Association and its activities;
- (b) taxes and special assessments upon the Association Properties, both real and personal (if any);
- (c) premiums for all insurance which the Association is required or permitted to maintain;
- (d) common services to Owners as approved by the Board;

- (e) landscaping and care of the Association Properties (if any) and any recreational or other Association facilities or improvements located thereon;
- (f) repairs and maintenance that are the responsibility of the Association (if any);
- (g) wages for Association employees and payments to Association contractors;
- (h) legal and accounting fees for the Association;
- (i) any deficit remaining from a previous Assessment year;
- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for enforcement actions, maintenance, repairs and replacement of those elements of any Association Property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by Special Assessments;
- (k) the creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies;
- (l) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration; and
- (m) the cost of other powers and trash services of the Association outlined in Section 8.18.

Common Assessments shall be paid quarterly as provided in Section 11.5.

Section 11.4 Declarant's Obligation. Until Assessments are first levied by the Association pursuant to this Article 11, Declarant shall pay all common expenses of the Association described in Section 11.3.

Section 11.5 Common Assessment Procedure.

(a) Promptly after the first Dwelling Unit is completed within the Property, Board of Directors shall set the total annual Common Assessment for the then current year based upon an estimated budget for the Association for that year. No later than ninety (90) days before the beginning of each year after the initial budget year, the Board of Directors shall set the total annual Common Assessment based upon an advanced budget of the Association's requirements for the following Assessment year. Within thirty (30) days after adoption of the Association's budget for each year, by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the

budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the budget summary. The notice mailed to the Owners shall include a ballot allowing an Owner to vote for or against approval of the budget by returning the ballot, marked and signed by the Owner, to the Board, by mail or otherwise, prior to or on the date on which the meeting is scheduled. Unless a majority of all Owners present and voting in person or by proxy at the meeting called to discuss the budget or voting by the mailed ballot returned to the Board prior to that meeting reject the budget, the budget is ratified, whether or not a quorum is present at the meeting. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(b) After approval of the budget, the Board shall cause to be prepared, delivered or mailed to each Owner who owns a Lot upon which a completed Dwelling Unit has been constructed, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth the annual Common Assessment. That annual Common Assessment shall be payable in advance in quarterly installments due on the first day of each successive quarter unless the Board otherwise directs. All payments of Common Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Board. Common Assessments shall be applicable to all Lots upon which completed Dwelling Units have been constructed, including those owned by Declarant. Declarant and other Owners of Lots upon which completed Dwelling Units have been constructed at the time a Common Assessment is first levied shall become responsible for Common Assessments at that time. Each Owner who subsequently acquires a Lot upon which a completed Dwelling Unit has been constructed shall become responsible for Common Assessments attributable to that Lot as of the date the Lot is transferred to such Owner. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as established pursuant to the Bylaws of the Association. The Board may adopt Community Guidelines requiring the Owner, at the time when Common Assessments first commence upon that Owner's Lot as provided in this section, to prepay the Common Assessments for the balance of the quarterly period and an additional period which shall not exceed an additional twelve (12) months; such prepayment shall not relieve the Owner from any additional requirement to pay working capital pursuant to Section 11.18. Notwithstanding any other provision contained in this Declaration, Common Assessments shall first be assessed against Lots upon which completed Dwelling Units have been constructed within the real property described on Exhibit A as of the date to be determined by the Declarant in its sole discretion. At such time as the Lots are added to the Community Area, Common Assessments will be paid for such Lots, on a prorated basis, as of the date such Lots which are included within the Community Area have completed Dwelling Units constructed upon them.

Section 11.6 Rate of Assessments. Common Assessments and Special Assessments shall be sufficient to meet the expected needs of the Association. Common Assessments and Special Assessments shall be allocated equally and uniformly among all Lots upon which

completed Dwelling Units have been constructed, so that each Owner of a Lot upon which a completed Dwelling Unit has been constructed is obligated to pay an equal Common Assessment and Special Assessment, as applicable, for each Lot owned which has a completed Dwelling Units constructed upon it. The rate for Assessments shall be determined by dividing the total applicable Assessments payable for any Assessment period, as determined by the ratified budget, by the number of Lots upon which completed Dwelling Units have been constructed and that are then subject to the Declaration. The resulting quotient shall be the amount of the applicable Assessment payable with respect to each Lot upon which a completed Dwelling Unit has been constructed.

Section 11.7 Failure to Fix Assessment. The failure by the Board of Directors to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period.

Section 11.8 Special Assessments. In addition to Common Assessments, the Board of Directors may, subject to the provisions of this section, levy Special Assessments for the purpose of raising funds to construct or reconstruct, repair or replace capital Improvements upon Association Properties, including personal property relating thereto; to add to the Association, Properties; to provide for necessary facilities and equipment; to offer the services authorized in this Declaration; to correct any deficit or cost overrun; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments shall be equally, uniformly imposed upon Lots as provided in Section 11.6. No Special Assessment shall be assessed until it has been ratified by the Owners in accordance with a procedure substantially identical to the procedure set forth in Section 11.5(a). At any time that insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed Improvements on the Association Properties, or on any other property which the Association maintains, the Association may levy Special Assessments for the purpose of repair or reconstruction of such damaged or destroyed Improvements; all such Special Assessments shall be equal to the amount by which the costs of repair or reconstruction of Improvements exceeds the sum of insurance proceeds awarded for the damage or destruction, and shall be set in the same manner as other Special Assessments. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owners shall pay any such Special Assessment in the manner so specified.

Section 11.9 Site Assessments. The Board of Directors may, subject to the provisions of this Section 11.9, levy a Site Assessment against any Member, Owner, or Lot if the willful or negligent acts or omissions of the Member, Owner or a Related User cause any violation of the Association Documents or cause any loss or damage to the Association or Association Properties or cause any expenditure of funds in connection with the enforcement powers of the Association. Except for a default consisting solely of a failure to timely pay any Assessment, including, without limitation, Special Assessments or Common Assessments, which shall not require any notice and hearing, a Site Assessment shall be levied only after such notice and hearing as may be required by the Bylaws. The amount of the Site Assessment shall be due and payable to the Association, in addition to any Common or Special Assessments, upon notice by the Board that

the Site Assessment is owing. Imposition or non-imposition of Site Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies.

Section 11.10 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten (10) days after it is due, the Member, Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys' fees, court costs, witness expenses, and all related expenses ("collection expenses"), and to pay a reasonable late charge to be determined by the Board. Any Assessment which is not paid within ten (10) days after the date of any notice of default given under Section 11.12 shall bear interest from the due date at a rate determined by the Board, not to exceed the lower of twenty-one percent (21%) per annum, or the maximum percentage permitted by law, from the due date until paid.

Section 11.11 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board of Directors, in its discretion, determines.

Section 11.12 Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty (30) days after its due date, the Board of Directors may mail a notice of default to the Owner and to each First Mortgagee of the Lot who has requested a copy of such notice. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for the Assessment against the Lot of the Owner. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all collection expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

Section 11.13 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. In the event of a default in payment of any Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and expenses of collection, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 11.15.

Section 11.14 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement against the defaulting Owner, including, without limitation, court costs and reasonable attorneys' fees.

Section 11.15 Lien to Enforce Assessments. The Association shall have a lien for Assessments (the "Lien"). In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this section. The Board may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which has accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The Lien shall be prior to any declaration of homestead rights recorded after the time that the Lot becomes part of the Community Area. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said Lien. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all collection expenses, court costs, recording costs and filing fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed *through* a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same. The lien under this section shall be subject to the provisions and restrictions of Section 15.6 hereof.

Section 11.16 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Board of Directors, and upon the written request of any Member or Owner and any Person which has, or intends to acquire, any right, title or interest in the Lot of such Member or Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person whom it is issued, if relied thereupon in good faith and without actual knowledge to the contrary, be conclusive against the Association.

Section 11.17 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association Properties, or the non-

use by an Owner of Association Properties or services provided by the Association or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

Section 11.18 Working Capital Fund. The Association may require the first Lot Owner of any Lot (other than a Declarant or a homebuilder) who purchases that Lot from Declarant or a homebuilder to make a nonrefundable contribution to the Association in the amount equal to one times the total annual assessment at the time of sale (regardless of whether or not assessments have commenced as provided herein). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a builder of each Lot as aforesaid, and shall, until used, be maintained in a non-segregated account with other such working capital funds for the use and benefit of the Association as the Executive Board deems desirable, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve a Lot Owner from making regular payments of assessments as the same become due. Upon the transfer of their Lot, a Lot Owner shall be entitled to a credit from their transferee (but not from the Association) for the aforesaid contribution to working capital fund. The Association may, from time-to-time, increase the amount required for each Lot Owner's share of the working capital fund to an amount equal to two times the then current total annual assessment for each Lot Owner.

ARTICLE 12 INSURANCE

Section 12.1 Insurance Requirements. The Association shall maintain the following types of insurance, to the extent that such insurance is applicable, reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article 12, the Association may also consider, in determining the type and amount of insurance it needs to obtain, the then-existing requirements of the Agencies.

(a) 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 all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum of funds, including reserves, held by the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two months' aggregate Common Assessments on all Lots, plus the Association's reserve funds. Such fidelity coverage or bonds shall meet the following requirements:

(1) all such fidelity coverage or bonds shall name the Association as an obligee;

(2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression.

In the event that the Association has delegated some or all of its responsibility for handling of funds to a manager, the Association may require the manager to purchase, at the manager's expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (a).

(b) If the Association owns any Association Property, a policy of property insurance covering all insurable Association Properties for broad form covered causes of loss, in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as at the time are customarily covered with respect to associations having property similar in construction, location and use, including all periods normally covered by the standard "all risk" endorsement, where such is available.

(c) If the Association owns any Association Property, a comprehensive policy of commercial general liability insurance covering all of the Association Properties, insuring the Association in an amount but not less than \$1,000,000.00 covering bodily injury, including death, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, with limitation, legal liability of the insureds for property damage, bodily injuries and deaths in connection with the operation, maintenance or use of the Association Properties, legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-owned and hired automobiles. Such coverage may also include, if applicable, comprehensive automobile insurance, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and insurance coverage of such other risks as are customarily required by private institutional mortgage investors with respect to associations having property similar in construction, location and use. This policy shall insure the Association, the Board of Directors, the Association's managing agent (if any), and their respective employees, agents and all persons acting as agents. Declarant shall be included as an additional insured in its capacity as an Owner of Lots. The Owners shall be included as additional insureds but only for claims and liabilities arising from the ownership, existence, use of management of the Association Properties. The insurance shall cover claims of one or more insured parties against other insured parties.

(d) In addition, the Association may obtain insurance against such other risks of 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 and the members of the Architectural Committee and other representatives.

Section 12.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association, or its designee, as trustee and attorney-in-fact for all Owners, as the insured, 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 First Mortgagee's clause in favor of each First Mortgagee, and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty days' prior written notice thereof is given to the insured and to each First Mortgagee, insurer or guarantor of a First Mortgage. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest including First Mortgagees, upon request and payment of a reasonable fee. Any such Owner's policy shall also contain waivers of subrogation. Additionally, all policies shall contain waivers of any defense based on invalidity arising from any act or neglect of an Owner where such Owner is not under the control of the Association. Insurance obtained by the Association, to the extent reasonably feasible, and provided that Declarant reimburses the Association for any additional premium payable as a result, shall name Declarant as an additional insured and shall contain a waiver of subrogation rights against Declarant. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

Section 12.3 Deductibles. No policy or insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy. Any deductible shall be payable by the Person responsible for the repair and maintenance of the damaged or destroyed property which is the subject of an insurance claim. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the parties sharing in such joint duty, or may be partly or wholly borne by the Association, at the election of the Board of Directors.

Section 12.4 Insurance Trustee. The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including: the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interests may appear.

Section 12.5 Acceptable Insurance Companies. Any hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current credit or financial rating, which meets any applicable requirements of the Agencies, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy if (a) the terms of the insurance company's charter, bylaws, or policy provide that contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) the terms of the carrier's charter, bylaws, or policy provide that loss payments are contingent upon action by the carrier's board of directors, policyholders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which would prevent a First Mortgagee or any Owner from collecting insurance proceeds.

Section 12.6 Other Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot, and hazard insurance coverage on the Improvements owned by each Owner shall be the responsibility of the Owner of such Lot.

Section 12.7 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 coverage provided by such policies adequately covers those risks insured by the Association.

Section 12.8 Owners' Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Association Property is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction may be collected as a Site Assessment as provided in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by law. A determination of the negligence or willful act or omission of any Owner's liability therefor, shall be determined by the Board of Directors at a hearing after any notice required by the Bylaws to be given to the Owner, but any determination by the Board of Directors shall be subject to judicial review as appropriate.

ARTICLE 13 EASEMENTS

Section 13.1 Easement for Encroachments. If any portion of an Improvement encroaches upon the Association Property (if any), including any future encroachments arising or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, the Board may grant a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restrictions imposed by the Board.

Section 13.2 Association Easement. An easement to perform its maintenance or other rights or obligations pursuant to this Declaration is hereby granted to the Association, its officers, agents, employees and assigns, upon, across, over in and under the Community Area, together

with the right to make such use of the Community Area as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

Section 13.3 Utilities. Declarant hereby creates and reserves to itself until Declarant has sold the last Lot in the Community Area to an Owner other than Declarant, and, thereafter, to the Association;

(a) perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to other over, under, in and across each of the utility easements of each Lot as shown on the Plat or the Development Plan for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes; and

(b) a blanket easement across, over and under the Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone and electricity.

If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The Association shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Community Area to the first Owner thereof, other than Declarant. The easement provided for in this section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Community Area.

Section 13.4 Easement for Emergency Vehicles. There is hereby granted an easement for emergency vehicles, including fire, police and ambulance, to use the streets in the Community Area for emergency and other official purposes.

Section 13.5 Easements Deemed Created. All conveyance of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, whether or not specific reference to such easements or to this Article appears in the instrument of such conveyance.

Section 13.6 Easements of Record. In addition to the easements created in this Article 13 and on the Plat, the Community Area is subject to those easements and other matters currently of record in El Paso County, Colorado.

Section 13.7 Landscape Easement. The Declarant reserves for itself and the Association the right to enter into the landscape easements as depicted on any Plat or Supplemental Plat concerning the Community Area or Association Property for the purpose of installing, maintaining, repairing and replacing the landscaping, sprinkler system, fencing, signage, lighting and any other improvements deemed appropriate by the Declarant or the Association to enhance the Community Area or Association Property.

ARTICLE 14
METRO DISTRICT AND AIRPORT RESTRICTIONS

Section 14.1 Metropolitan District. Each Lot within the Community Area will be included in the Special Taxing District referred to as Constitution Heights Metropolitan District (the "Metro District"), which has been created as the operating and Special Taxing Districts for the purpose of constructing and maintaining certain roadway, drainage, landscaping, park and recreation improvements. The Metro District will be subject to a general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within the Metro District. Each Owner should familiarize himself/herself with the potential tax obligation and ramifications of his/her Lot being located within the Metro District. A mill levy that is not planned to exceed 35 mills will be assessed against all properties in the Metro District, including each Lot within the Community Area. The assessment will be collected as part of the annual real property taxes that you pay to the El Paso County Treasurer.

Section 14.2 (Reserved; Intentionally Left Blank)

Section 14.3 Colorado Springs Airport. Each Lot within the Community Area is located near the Colorado Springs Municipal Airport and may be impacted by noise caused by aircraft operating in and out of the Colorado Municipal Airport. As a condition to the development of the Community Area and the construction of your home, the City of Colorado Springs has been granted an aviation easement that allows airplanes flying in and out of the airport to fly over your home.

Section 14.4 Other Airport Restrictions. To avoid interference with airplanes flying in and out of the Colorado Springs Municipal Airport and communications between the airplanes, there are certain limitations concerning your Lot that must be observed. Those limitations are as follows:

1. This Property is subject to an Avigation Easement, dated March 14, 1989, recorded in the real property records of El Paso County, Colorado, in Book 5612 at Page 726.
2. **"NOTICE: This Property may be impacted by noise caused by aircraft operating into and out of the Colorado Springs Municipal Airport. The Buyer should familiarize himself/herself with this potentiality and the ramifications thereof."**
3. No man-made or non-man-made obstructions shall be allowed to penetrate the horizontal surface.
4. All exterior lighting plans shall be approved by the Director of Aviation to prevent a hazard to aircraft.

5. No electromagnetic light or any physical emissions which may interfere with aircraft, aviation, communications or navigational aids will be allowed.

ARTICLE 15
MISCELLANEOUS

Section 15.1 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years after the date when this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners with at least sixty-seven percent (67%) of the voting power of the Association.

Section 15.2 Amendment of Declaration by Declarant or the Association.

(a) Until the first Lot subject to this Declaration has been conveyed by Declarant by recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

(b) Declarant may amend the Declaration in accordance with Section 10.2 as necessary to exercise any of the development rights set forth in Section 10.2.

(c) Declarant may amend the Declaration pursuant to the terms of Section 15.3 of this Declaration.

Section 15.3 Amendment of Declaration of Members. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of the Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members with at least sixty-seven percent (67%) of the voting power of the Association.

Section 15.4 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot in the Community Area has been conveyed by Declarant to the first Owner other than Declarant.

Section 15.5 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefor with the Association, shall be entitled to (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the

performance of the Owner's obligations under the Association Documents, which default is not cured within sixty days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon request, receive a copy of financial statement, within ninety days following the end of any fiscal year of the Association; (d) receive written notice of all meeting of Members; (e) designate a representative to attend any meeting of Members; (f) receive written notice of abandonment or termination of the Association or of this Declaration; (g) receive notice of any amendment to this Declaration, the Articles of Incorporation or the Bylaws; (h) receive written notice of termination of any agreement for professional management of the Association of the Association Properties following a decision of the Association to assume self-management of the Association Properties; and (i) receive written notice of any damage to the Association Properties if the cost of reconstruction exceeds \$10,000.00, and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

Section 15.6 Priority of First Mortgage Over Assessments. Each First Mortgagee who recorded its First Mortgage before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title, other than allocation of any deficiency prorated among all Members of the Association. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, as the case may be.

Section 15.7 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Association Properties, and may pay any overdue premiums on hazard insurance policies for any Association Properties, or may secure new coverage if the insurance policy on and Association Properties lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 15.8 Evidence of Required Approvals. Whenever the validity of any amendment to or revocation of this Declaration is conditioned upon voting by a stated percentage of Members and approval by First Mortgagees or Agencies, or both, the recorded document implementing the amendment or revocation shall contain a certification by an officer or the Association that the approvals of the required percentages of Members, First Mortgagees and Agencies were obtained. The Association shall keep on file in its offices such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the officer's certificate on the recorded instrument shall be sufficient public notice of compliance.

Section 15.9 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

Section 15.10 Persons Entitled to Enforce Declaration. The Association (acting by authority of the Board) or any Member (acting on his own behalf), shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or the other Association Documents. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents and at law or in equity.

Section 15.11 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 15.12 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 15.13 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

Section 15.14 Costs and Attorneys' Fees. In any action or proceeding under the Association Documents, the party which seeks to enforce the Association Documents and prevails, shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees.

Section 15.15 Limitation on Liability. The Association, the Board of Directors, the Architectural Committee, Declarant, and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by the laws of Colorado, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law, in accordance with the subject to the terms and limitations contained in the Bylaws.

Section 15.16 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 Area, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, 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 a writing signed by Declarant.

Section 15.17 Liberal Interpretation. The provisions of the Association Documents shall be liberally construed as a whole to effectuate the purposes of the Association Documents. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter,

Section 15.18, Governing Law. The Association Documents shall be construed and governed under the laws of the State of Colorado.

Section 15.19, Severability. Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 15.20 Number and Gender. Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural, the singular and the use of any gender shall include all genders.

Section 15.21 Captions for Convenience. The titles, headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

Section 15.22 Mergers and Consolidation. The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community Area together with the covenants and restrictions established upon any other property, as one plan. Notwithstanding the foregoing, the Association shall have the right to merge into one association upon a vote of the respective boards of directors of such associations.

Section 15.23 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws of the Association, this

Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 15.24 Approving Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent or meaning of any of these Covenants, the Declarant, during the Period of Declarant Control, and thereafter, the Association (the "Interpretive Authority"), shall determine the proper construction of the provisions in question and shall set forth in a written instrument duly acknowledged by the Interpretive Authority and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect, and application of the provision. This determination will thereafter be binding on all parties so long as it is not arbitrary nor capricious,

Section 15.25 Exemption From Common Interest Ownership Act. **Notwithstanding any other provision contained in this Declaration, the annual average common expense liability of each Lot, exclusive of optional user fees and insurance premiums paid by the Association, may not exceed the limitation provided for in Section 38-33.3-116 of the Colorado Revised Statutes. Therefore, the Community Area is only subject to the provisions of Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107 of the Colorado Revised Statutes and not to any other provisions of the Common Interest Ownership Act (i.e., CCIOA).]**

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective on the day and year first above written.

DECLARANT:

**SAND CREEK INVESTMENTS SOUTH LLC,
a Colorado Limited Liability Company**

By: _____

Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 27th day of JANUARY, 2006, by DANNY MIENKA as Manager of SAND CREEK INVESTMENTS SOUTH LLC, a Colorado Limited Liability Company.

My commission expires: 10-13-2007

Witness my hand and official seal.

Michael Salgiver
Notary Public



ADDENDUM
To the
Covenants, Conditions, Restrictions and Easements
For
THE COMMUNITIES AT FEATHERGRASS,
Affecting the Real Property Known as
JESSICA HEIGHTS SUBDIVISION
El Paso County, Colorado

May 19, 2006

**ADDENDUM
to the
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
for
THE COMMUNITIES AT FEATHERGRASS,
affecting the Real Property known as
JESSICA HEIGHTS SUBDIVISION,
El Paso County, Colorado**

This Addendum to the Covenants, Conditions, Restrictions and Easements for The Communities at Feathergrass (the "Covenants") is entered into to be effective this 19th day of MAY, 2006, by Sand Creek Investments South LLC, a Colorado Limited Liability Company, (herein referred to as the "Declarant").

RECITALS

WHEREAS, the Declarant wishes to clarify the Covenants so that the governing documents for The Communities at Feathergrass are revised.

WHEREAS, the Declarant now desires to enter into this Addendum.

NOW, THEREFORE, Declarant declares that the Covenants shall be amended by substituting the following:

**ARTICLE 5
LIVING ENVIRONMENT STANDARDS**

"Section 5.14 Animals. No animals, except domesticated birds or fish and other small domestic animals permanently confined indoors and those permitted pursuant to this Section 5.14, shall be permitted within any Lot. Domesticated dogs and domesticated cats may be kept or maintained in or on any Lot within the Community Area only if kept as pets and the total number of which may not exceed two (2) animals. No animals shall be kept, bred or maintained within the Community Area for any commercial purposes. No dogs or other pets shall be chained or enclosed on a Lot outside of the Dwelling Unit for any extended period of time, except by means of underground electronic fences or other invisible barriers or fences. Dogs or pets may also be kept in a dog run or other similar enclosure. The location, materials, size and other specifications for the dog run shall be subject to approval by the Architectural Committee. Notwithstanding the above, no animal of any kind shall be permitted which in the opinion of the Association makes an unreasonable amount of noise or odor or is a nuisance. Each Owner shall be responsible for cleaning up after his/her pets and guests' pets in Common Areas of the Community Area, including all streets, sidewalks, parks and Association Properties. In addition each Owners shall be responsible for cleaning up after his/her pets on a regular basis to prevent accumulation of visible pet waste and any resulting noxious odors. In addition, each Owner shall be liable for any damage caused by their or their guests' pets to any

improvements to the Community Area. All pets (including cats) must be leashed, with the leash in the hands of a responsible individual, in the Community Area. If after notice and opportunity for a hearing the Board of Directors determines that an animal represents a nuisance or danger to the Community, the Board may require permanent removal of the animal.”

“Section 5.22 Solar Devices, Air Conditioning Units, Etc. All solar devices, exterior air conditioning units and systems, swamp coolers and other similar devices must either be architecturally and aesthetically integrated into the building they serve or be screened from the view of adjacent Lots and streets in either manner approved by the Architectural Committee in accordance with the terms of this Declaration. Window mounted air conditioners or swamp coolers are strictly prohibited.”

ARTICLE 7 ASSOCIATION OPERATION

“Section 7.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The Board shall consist of a minimum of three (3) members during the Period of Declarant Control stated in Section 7.5 and thereafter shall consist of at least three (3) but not more than five (5) members, as determined by the Board. The terms and qualification of the members of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws of the Association. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration or by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon all Members, Owners, Related Users and other Persons.”

ARTICLE 8 DUTIES AND POWERS OF ASSOCIATION

“Section 8.10 Power to Enforce Declaration and Community Guidelines. Until the time for selection of the Architectural Committee by the Board, as provided in Section 6.1 hereof, Declarant may, and after the selection of the Architectural Committee by the Board, the Architectural Committee or Declarant, including an assignee or delegate, may give notice to the Owner of the Lot where a violation of this Declaration occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Architectural Committee or Declarant to invoke this Section unless within a period stated in the notice (which notice shall not be less than ten (10) calendar days unless a shorter period of time is otherwise provided for in this Declaration), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Architectural Committee or

Declarant (whichever party gives the notice) may, but shall not be obligated to, cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry upon such Owner's Lot as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant and the Architectural Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration. Declarant and the Architectural Committee may delegate their entry and removal rights hereunder to agents Land independent contractors. The cost so incurred by the Architectural Committee or Declarant shall be paid by the Lot Owner and the person responsible for the breach, if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount shall accrue interest at the rate of twenty-one percent (21%) per annum and costs enforcement and of collection (including reasonable attorneys' fees). Alternatively and/or in addition to the remedy outlined above, the Architectural Committee or the Declarant, after proper notification, shall have the authority to assess and collect from the Owner, and the person responsible for the breach, fines of up to One Hundred Fifty Dollars (\$150.00) for each day a violation continues and is not corrected. Any fines assessed and not paid within thirty (30) days after such Owner has been sent notice of the amount due, shall accrue interest at the rate of twenty-one percent (21%) per annum as well as costs of enforcement and of collection, including reasonable attorneys' fees. Any costs or fines (as well as any interest and costs of enforcement and of collection, including reasonable attorneys' fees) shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. Such lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section 8.10 and Section 11.15. The Architectural Committee or Declarant may bring an action at law for recovery of the costs incurred by it and fines assessed, plus interest and costs of enforcement and collection against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien and there shall be added to the amount of such obligation the costs of enforcement and collection, and the judgment in any such action shall include interest as above provided and the costs of collection, including reasonable attorney's fees. The waiver of homestead exemption set forth above shall apply to any foreclosure action for the lien imposed by this Section 8.10 and Section 11.15. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce this Declaration pursuant to Section 11.15 or as otherwise may be provided herein or by law or equity; provided, however, that only the Declarant and the Architectural Committee shall have the right to proceed under this Section 8.10. In the event that the Declarant or Architectural Committee, whether acting for themselves or through their agents and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless (i) damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Covenants and (ii) is caused by the willful and wanton acts of the Declarant or the Architectural Committee. In no event shall there be any liability for damage to a Structure that is in violation of this Declaration."

**ARTICLE 11
ASSESSMENTS**

“Section 11.11 Attribution of Payments. If any Assessment payment is less than the amount assessed (including late fees, interest, legal fees and any applicable fines), the sums received by the Association from that Owner shall be credited in the following order: (I) late fees; (ii) interest; (iii) legal fees; (iv) assessment fines (if applicable); (v) assessments in arrears (past due); and (vi) assessments for the current month. This priority list is included to notify all the Owners that if their Association account is in arrears, they cannot apply payments towards current assessments to avoid monthly late fees until any past due balance is paid in full.”

**ARTICLE 15
MISCELLANEOUS**

“Section 15.9 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally, by mail or email. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.”

In all other respects, the Covenants shall remain unmodified and unchanged.

**SAND CREEK INVESTMENTS SOUTH LLC,
a Colorado Limited Liability Company**

By: _____

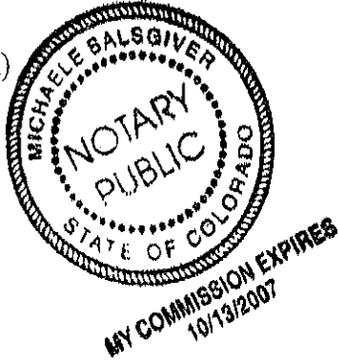
Daniel M. Mientka, Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 22ND day of MAY, 2006, by Daniel M. Mientka, as Manager of SAND CREEK INVESTMENTS SOUTH LLC, a Colorado Limited Liability Company.

Witness my hand and official seal.
My commission expires: 10-13-2007

(Notarial Seal)



Michael Balsgiver
Notary Public

ADDENDUM
To the
Covenants, Conditions, Restrictions and Easements
For
THE COMMUNITIES AT FEATHERGRASS,
Affecting the Real Property Known as
JESSICA HEIGHTS SUBDIVISION
El Paso County, Colorado

June 18, 2008



**ADDENDUM TO THE
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF
THE COMMUNITIES AT FEATHERGRASS**

This Addendum to the Declaration of Covenants, Conditions, Restrictions and Easements of The Communities at Feathergrass (the "Covenants") is made this 18TH day of JUNE, 2008, by **SAND CREEK INVESTMENTS SOUTH LLC, a Colorado Limited Liability Company**, as Declarant, and is as follows:

RECITALS

WHEREAS, the Declarant wishes to amend the Covenants so that the governing documents for The Communities at Feathergrass are revised to allow electronic fencing along a Lot's boundary with a Park, and to provide for underground drainage and maintenance.

WHEREAS, the Declarant now desires to enter into this Addendum.

NOW, THEREFORE, Declarant declares that the Covenants shall be amended as follows:

IN WITNESS WHEREOF, Declarant has executed this Addendum to the Declaration of Covenants, Conditions, Restrictions and Easements of The Communities at Feathergrass on the day and year first above written.

**ARTICLE 4
DENSITY, SETBACK AND QUALITY STANDARDS**

Section 4.8 Fences.

a. No Park Fences. Each Owner of a Lot which is located adjacent to a park or open space (collectively, the "Parks" and, individually, the "Park"), whether such Park is a local "pocket park" platted as a Tract within the Community Area or a park which is owned by the County of El Paso, the Association, or Cherokee Water and Sanitation District (the "District") (collectively the "Park Lots" and, individually, the "Park Lot") is hereby prohibited from installing or maintaining any type of fence other than an underground electronic fence within a Park Lot which is parallel to the lot line which abuts any portion of a Park. Notwithstanding the above, each Owner of a Park Lot hereby acknowledges that the Declarant, the Association, the County, and the District shall each have the right to install a fence within any portion of a Park, including a fence that is adjacent to Park Lot. Nothing contained herein will require any fence to be constructed within a Park by Declarant. Any fence that is installed within a Park, other than a County,

District, or Association owned park (a "Park Fence"), will be maintained by the County, District, or Association. The height of any Park Fence may not be increased or altered by any Owner. No other fence on any Lot which is within seventy-five feet (75') of a Park Fence and is parallel or within thirty degrees (30°) of parallel with any Park Fence shall be of greater height than the applicable Park Fence. No additions or attachments shall be made to any Park Fence, other than connecting rear and side Lot fences into the Park Fence in the manner provided above. No sign of any type shall be displayed from any Park Fence, other than promotive sales signs for initial Lot or home sales by Declarant or persons authorized by the Declarant or the District, and not for home resales or other homebuilders. Entry on an applicable Lot by Declarant, the District, the Association, or the County in order to construct or maintain a Park Fence shall not be deemed a trespass. Except in a case of an emergency, prior notice will be given to the applicable Lot Owner before any such entry by the Declarant, the Association, the District or the County. The Declarant, the Association, the District and the County will not be liable for any loss, costs or damages to any applicable Lot Owner within the Community Area on account of its performance of such installation or maintenance, except for any such loss, cost or damage caused by that party's gross negligence or willful misconduct.

b. Other Fences. Other than fences which are installed by the Metro District or the Declarant, and expressly subject to the terms of Section 4.8(a) above, the height, location, and material of all fences, animal pens, dog runs, and other similar Improvements located within a Lot must be approved by the Declarant. Chain link or similar wire or wire mesh fencing shall not be allowed as the primary fencing material. The total fencing of front yards is not permitted. In addition, no fence or hedge more than two feet (2') high shall be installed or maintained (a) closer than five feet (5') to the side Lot Line (and not the sidewalk or curb) of any "corner" Lot which is adjacent to a street, provided however, any such fence parallel to the front street and no closer to the front street than the front setback, shall be entitled to be as high as six feet (6'), or (b) closer to a front Lot Line of the Lot (and not the sidewalk or curb) than the dwelling or any other Improvement located on the Lot, except with the written approval of the Architectural Committee. No sign of any type shall be displayed from any fence, other than promotive sales signs for initial Lot or home sales by Declarant or persons authorized by the Declarant or the Architectural Committee, and not for home resales or other home builders not expressly authorized as provided by this Declaration.

c. Maintenance of Lot Beyond Fence. In the event that an Owner installs a fence that does not follow the Lot line, such Owner shall be required to maintain that portion of the Lot between the fence and the Lot line. Such maintenance shall be as otherwise required under these Covenants, including complying with Section 5.10 concerning Weeds.

Section 4.15 Underground Drainage and Maintenance.

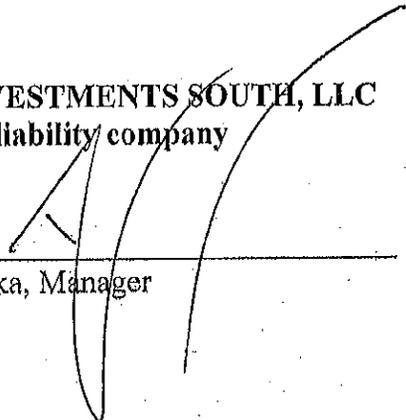
a. Underdrain System. There shall be installed as necessary, culverts and/or other sub-surface drainage conduits to allow for adequate and proper sub-surface drainage of the principal residential structures located on the Lots, which shall tie into the Underdrain System owned by the Association, which is installed in easements and rights-of-way within the Community Area. For purposes of these Covenants, the "Underdrain System" shall not include

any individual service line servicing a principal residential structure. The Underdrain System shall be maintained by the Association. To the extent possible, the Underdrain System shall meet applicable requirements of the City of Colorado Springs and any applicable engineering and drainage plans and requirements, and shall be maintained by the Association.

DECLARANT:

SAND CREEK INVESTMENTS SOUTH, LLC
a Colorado limited liability company

By: _____
Daniel M. Mientka, Manager

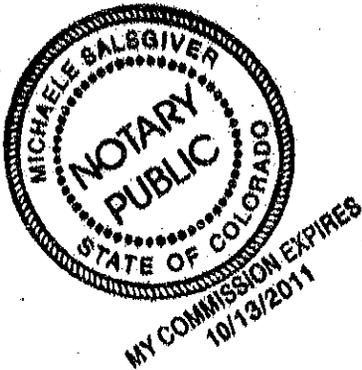


STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 28TH day of June, 2008, by Daniel M. Mientka as Manager of SAND CREEK INVESTMENTS SOUTH LLC, a Colorado Limited Liability Company.

Witness my hand and official seal.

(SEAL)



Michele Salzgiver
Notary Public
My Commission Expires: 10/13/2011

CLARIFICATION
to the
Declaration of Covenants, Conditions, Restrictions and
Easements
of
THE COMMUNITIES AT FEATHERGRASS,

July 12, 2007

After Recording Return to:
John M. Stinar, Esq.
121 E. Vermijo Avenue, Suite 200
Colorado Springs, CO 80903

ROBERT C. "BOB" BALINK El Paso County, CO
07/13/2007 04:36:48 PM
Doc \$0.00 Page
Rec \$56.00 1 of 11 207093771



*CLARIFICATION TO THE
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS OF
THE COMMUNITIES AT FEATHERGRASS,
affecting the Real Property known as
JESSICA HEIGHTS SUBDIVISION,
El Paso County, Colorado*

**CLARIFICATION TO THE
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS OF
THE COMMUNITIES AT FEATHERGRASS**

This Clarification to the Declaration of Covenants, Conditions, Restrictions and Easements of The Communities at Feathergrass (the "Covenants") is made this 12th day of July, 2007, by **SAND CREEK INVESTMENTS SOUTH LLC**, a Colorado Limited Liability Company, as Declarant, and is as follows:

RECITALS

WHEREAS, the Declarant wishes to clarify the Covenants so that the governing documents for The Communities at Feathergrass are revised to more accurately reflect the Real Property governed by the Covenants.

NOW, THEREFORE, Declarant declares that the Covenants shall be amended as follows:

Section 1.2 is clarified to read as follows:

Section 1.2 Property Affected. Declarant is the owner of all of the real property described on **Exhibit A** attached hereto, which is located in El Paso County, Colorado. The property described on **Exhibit A**, subject to expansion as provided for in this Declaration, is referred to in this Declaration as the "Community Area - Jessica Heights Subdivision." Declarant hereby reserves the right to add to the Community Area any portion of the real property located within the area depicted on **Exhibit B** attached hereto and incorporated herein by this reference (the "Expansion Property - Hannah Ridge"). Declarant hereby incorporates the legal descriptions added to **Exhibit A** and **Exhibit B** of the Covenants filed

with the Clerk and Recorder of El Paso County on February 9, 2006 at Reception Number 206021423, and amended on May 22, 2006 at Reception Number 206074499.

IN WITNESS WHEREOF, Declarant has executed this Clarification to the Declaration of Covenants, Conditions, Restrictions and Easements of The Communities at Feathergrass on the day and year first above written.

DECLARANT:

SAND CREEK INVESTMENTS SOUTH LLC
a Colorado limited liability company

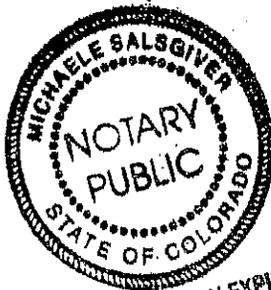
By: _____
Daniel M. Mientka, Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 12th day of July, 2007, by Daniel M. Mientka as Manager of SAND CREEK INVESTMENTS SOUTH LLC, a Colorado Limited Liability Company.

Witness my hand and official seal.

(SEAL)



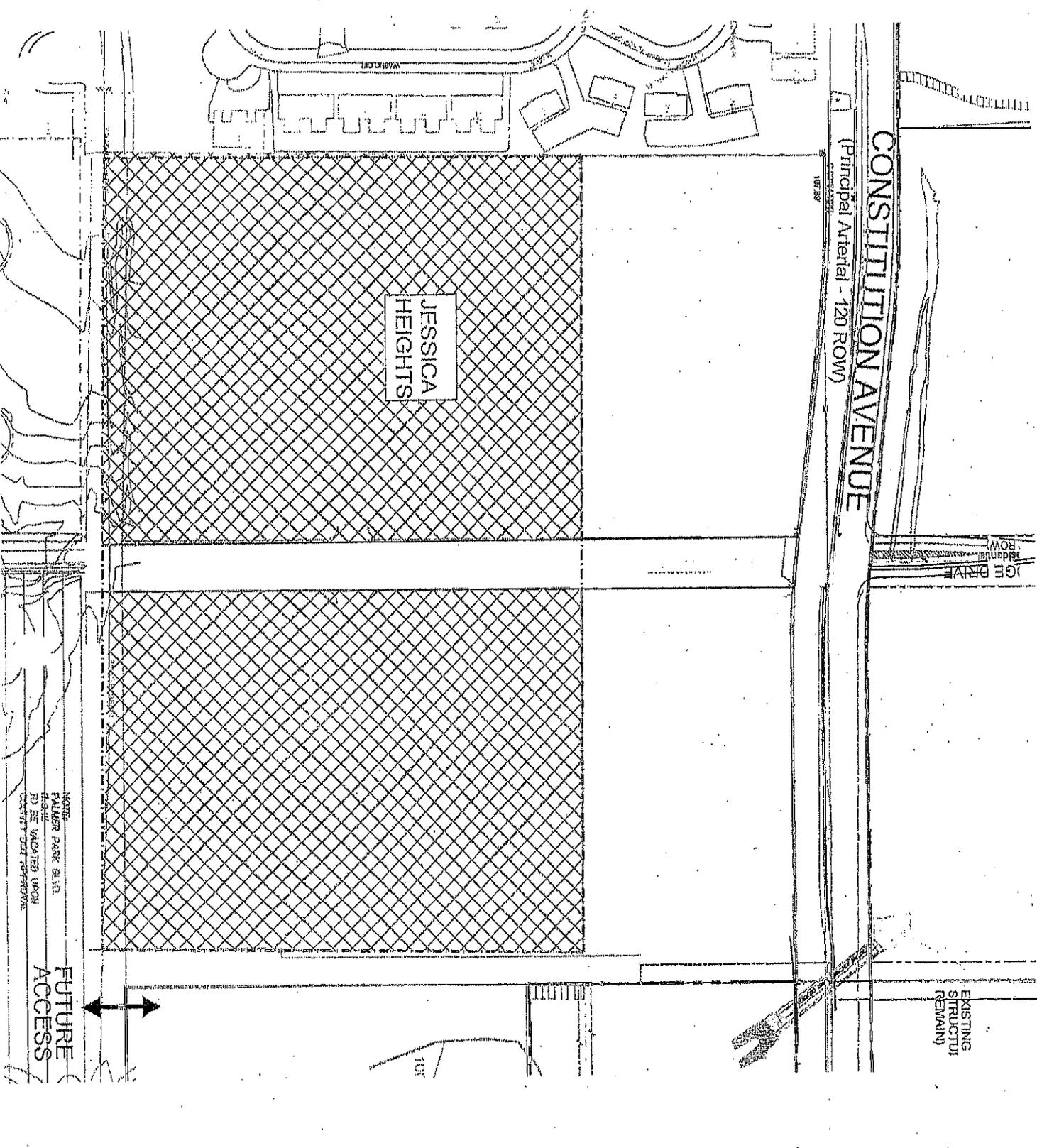
MY COMMISSION EXPIRES
10/13/2007

Michael Salsgiver
Notary Public
My Commission Expires: 10-13-07

EXHIBIT A

Community Area - Jessica Heights Subdivision

EXHIBIT A



NOTE:
PALMER PARK BLVD
TO BE VACATED UNDER
LOCALITY SELF-CORPORATION

EXISTING
STRUCTURE
REMAIN

FUTURE
ACCESS

CONSTITUTION AVENUE
(Principal Arterial - 120 ROW)

JESSICA
HEIGHTS

JOE DRIVE

EXISTING
STRUCTURE
REMAIN

10'

LAND DESCRIPTION: (JESSICA HEIGHTS FILING NO. 1)

JESSICA HEIGHTS FILING NO. 1 AS RECORDED UNDER RECEPTION NO. 206712249 OF THE RECORDS OF EL PASO COUNTY, COLORADO, BEING THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6TH P.M. OF EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

(BEARINGS REFERRED TO HEREIN ARE BASED ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 5, ASSUMED TO BEAR N89°53'50"E.)

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER, SAID CORNER BEING ON THE SOUTHERLY LINE OF CONSTITUTION AVENUE AS DESCRIBED IN "CONSTITUTION AVENUE / PETERSON ROAD RIGHT-OF-WAY", RECORDED IN PLAT BOOK V-3 AT PAGE 169 OF THE RECORDS OF SAID COUNTY (THE FOLLOWING FIVE (5) COURSES ARE ALONG SAID SOUTHERLY LINE.);

1.) THENCE S89°54'50"E, 107.89 FEET;

2.) THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 6°04'26", A RADIUS OF 1310.93 FEET, FOR AN ARC DISTANCE OF 138.97 FEET;

3.) THENCE S83°50'24"E, 364.67 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED;

4.) THENCE CONTINUE S83°50'24"E, 32.15 FEET;

5.) THENCE ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 1°55'47", A RADIUS OF 1430.93 FEET, FOR AN ARC DISTANCE OF 48.19 FEET;

THENCE S00°20'42"W, 363.29 FEET;

THENCE S89°39'18"E, 632.60 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER, SAID POINT ALSO BEING ON THE WESTERLY LINE OF THAT TRACT OF LAND DESCRIBED UNDER RECEPTION NO. 203142486 OF SAID RECORDS;

THENCE S00°17'12"W, 70.97 FEET ALONG THE SAID WESTERLY LINE OF THAT TRACT OF LAND DESCRIBED UNDER RECEPTION NO. 203142486 TO THE NORTHWESTERLY CORNER OF THAT TRACT OF LAND DESCRIBED IN BOOK 2383 AT PAGE 473 OF SAID RECORDS;

THENCE CONTINUE S00°17'12"W, 659.26 FEET ALONG THE WESTERLY LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 2383 AT PAGE 473 TO THE NORTHERLY LINE OF THAT 60 FOOT STRIP OF LAND DESCRIBED IN BOOK 2779 AT PAGE 566;

THENCE CONTINUE S00°17'12"W, 60.00 FEET TO THE SOUTHERLY LINE OF SAID 60 FOOT STRIP OF LAND DESCRIBED IN BOOK 2779 AT PAGE 566;

THENCE S89°54'40"W, 1322.87 FEET ALONG SAID SOUTHERLY LINE TO THE WEST LINE OF SAID NORTHEAST QUARTER;

THENCE N00°20'42"E, 84.04 FEET ALONG SAID WEST LINE TO THE SOUTHEAST CORNER OF LOT 21, CIMARRON EASTRIDGE FLING NO. 3 AS RECORDED IN PLAT BOOK Z-2 AT PAGE 89 UNDER PLAT FILE NO. 4285 OF SAID RECORDS;

THENCE CONTINUE N00°20'42"E, 87.04 FEET ALONG THE EASTERLY LINE OF SAID LOT 21 TO THE SOUTHEAST CORNER OF EASTRIDGE TOWNHOMES FILING NO.2 AS RECORDED IN PLAT BOOK R-3 AT PAGE 09 UNDER PLAT FILE NO. 5989 OF SAID RECORDS;

THENCE CONTINUE N00°20'42"E, 528.87 FEET (585.85 FEET RECORDED) ALONG THE EASTERLY LINE OF SAID EASTRIDGE TOWNHOMES FILING NO.2 TO THE SOUTHEAST CORNER CHEROKEE PARK TOWNHOMES AS RECORDED IN PLAT BOOK F-3 AT PAGE 72 UNDER PLAT FILE NO. 5943 OF SAID RECORDS;

THENCE CONTINUE N00°20'42"E, 100.30 FEET ALONG THE EASTERLY LINE OF SAID CHEROKEE PARK TOWNHOMES;

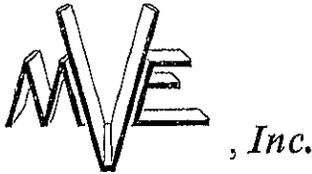
THENCE S89°39'18"E, 609.42 FEET;

THENCE N00°20'42"E, 370.62 FEET TO THE POINT OF BEGINNING AND CONTAINING 24.82 ACRES MORE OR LESS.

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

EXHIBIT B

Expansion Property - Hannah Ridge



LEGAL DESCRIPTION: (PROPOSED HANNAH RIDGE AREA)

THAT PORTION OF THE SOUTH HALF OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M. OF EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

(BEARING REFERRED TO HEREIN ARE BASED ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M. ASSUMED TO BEAR N89°53'50"E.)

(ALL DIMENSIONS ARE AS FIELD MEASURED)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF CONSTITUTION AVENUE AS DESCRIBED IN "CONSTITUTION AVENUE / PETERSON ROAD RIGHT-OF-WAY", RECORDED IN PLAT BOOK V-3 AT PAGE 169 OF THE RECORDS OF SAID EL PASO COUNTY, WITH THE WESTERLY LINE OF LOT 11, AKERS ACRES SUBDIVISION NO. 1, AS RECORDED IN PLAT BOOK H-2 AT PAGE 48 OF SAID RECORDS, SAID POINT BEING S00°16'40"W, 241.65 FEET FROM THE NORTHWEST CORNER OF SAID LOT 11;

THENCE N89°54'50"W, 940.43 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE TO THE EASTERLY RIGHT OF WAY LINE OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD; (THE FOLLOWING TWO (2) COURSES ARE ALONG SAID EASTERLY RIGHT OF WAY LINE.)

- 1.) THENCE N09°45'59"E, 837.77 FEET;
- 2.) THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 47°37'07", A RADIUS OF 1810.08 FEET, FOR AN ARC DISTANCE OF 1504.36 FEET TO SAID WESTERLY LINE OF AKERS ACRES SUBDIVISION NO. 1;

THENCE S00°16'40"W, 2044.67 FEET ALONG SAID WESTERLY LINE TO THE POINT OF BEGINNING;

TOGETHER WITH:

LOTS 12 THROUGH 17 OF AKERS ACRES SUBDIVISION NO. 1, AS RECORDED IN PLAT BOOK H-2 AT PAGE 48 OF THE RECORDS OF EL PASO COUNTY, COLORADO, AND THAT PORTION OF LOT 11 OF SAID AKERS ACRES SUBDIVISION FILING NO. 1 LYING NORTH OF THE NORTHERLY RIGHT OF WAY LINE OF CONSTITUTION AVENUE AS DESCRIBED IN "CONSTITUTION AVENUE / PETERSON ROAD RIGHT-OF-WAY", RECORDED IN PLAT BOOK V-3 AT PAGE 169 OF THE RECORDS SAID COUNTY.

ALL THE AFOREMENTIONED PARCELS CONTAINING A COMBINED ACREAGE OF 99.48 ACRES MORE OR LESS.

Prepared By:
M.V.E., Inc.
1903 Lelaray Street, Suite 200
Colorado Springs, CO 80909
December 13, 2006

60754 Proposed Hannah LD 06.wpd

Indexing Note

Please index in the County's grantee index under "The Communities at Feathergrass" and "The Communities at Feathergrass Homeowner's Association" and in the grantor index under "Sand Creek Investments South LLC" and "Elite Properties of America, Inc

CHUCK BROERMAN

El Paso County, CO

06/15/2015 09 21 34 AM

Doc \$0 00 Page

Rec \$41 00 1 of 7



215061331

**SUPPLEMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR THE COMMUNITIES AT FEATHERGRASS**

This Supplement to Declaration of Covenants, Conditions, Restrictions and Easements for The Communities at Feathergrass (the "Supplement") is made as of June 8, 2015, by Sand Creek Investments South LLC, a Colorado limited liability company (the "Declarant")

WITNESSETH

WHEREAS, Declarant has heretofore caused to be recorded a Declaration of Covenants, Conditions, Restrictions and Easements for the Communities at Feathergrass recorded February 9, 2006 at Reception No 206021423 (as amended and supplemented from time to time, the "Declaration") in the Office of the Clerk and Recorder of El Paso County, Colorado, and

WHEREAS, in Article 10 of the Declaration, Declarant expressly reserved for itself the right to expand the Community Area (all capitalized terms used herein shall have the meanings as defined in the Declaration, unless otherwise defined or modified herein) by annexing and submitting additional real property by one or more duly recorded amendments/supplements to the Declaration and, if necessary, supplemental plats, and

WHEREAS, Declarant wishes to submit to the Declaration the real property described on Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the "Supplemental Property"), and

WHEREAS, Declarant wishes to reserve the right for itself to further expand the Community Area in the future in accordance with the Declaration

NOW, THEREFORE, Declarant hereby declares that the Supplemental Property and each part thereof, shall, on and after the date this Supplement is recorded, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the following covenants, conditions, restrictions, limitations, reservations, exceptions and other provisions and the covenants, conditions, restrictions, limitations, reservations, exceptions and other provisions contained in the Declaration. The provisions of the Declaration as modified by this Supplement shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property within the Community Area and Supplemental Property and each part or parcel thereof, (b) Declarant and its successors and assigns, (c) the Association and its successors and assigns, and (d) all other persons or entities having or acquiring any right, title or interest in any property which is part of the Community Area or Supplemental Property or any part or parcel thereof or Improvement thereon, and their

encumbrances, claimants, heirs, personal representatives, successors and assigns

- A General The terms and provisions contained in this Supplement shall be in addition and supplemental to the terms and provisions contained in the Declaration. All terms and provisions of the Declaration, including all definitions, except those terms and provisions specifically modified herein, shall be applicable to this Supplement and to the Supplemental Property. The definitions used in the Declaration are hereby expanded and shall hereafter and in the Declaration be deemed to encompass and refer to the Community Area as defined in the Declaration and the Supplemental Property as defined herein. For example, "Lot" shall mean the Lots described in the Declaration plus the additional Lots described herein and identified by number on the Supplemental Plat (defined below). "Plat" shall mean the plats described in the Declaration plus Hannah Ridge at Feathergrass Filing No. 1 recorded June 11, 2014 under Reception No. 214713469 in the office of the Clerk and Recorder for El Paso County, Colorado (the "Supplemental Plat"). Reference to the "Community Area" shall mean both the Community Area and the Supplemental Property, and reference to the "Declaration" shall mean the Declaration as supplemented by this Supplement and any other supplements to the Declaration.
- B Annexation of Supplemental Property The Supplemental Property is hereby and, upon the recording of this Supplement shall be, annexed into the Community Area, and the Supplemental Property shall be subject to all of the covenants, conditions, restrictions and easements as contained in the Declaration.
- C Effect of Expansion Assessments by the Association as provided in Article 11 of the Declaration, upon the recording of this Supplement, shall be assessed to all Owners in accordance with Article 11, regardless of whether such Owner is the owner of property which is part of the Supplemental Property or part of the definition of the Community Area prior to the recording hereof. Notwithstanding any inclusion of additional real property under the Declaration, each Owner (regardless of whether such Owner is the owner of property which is part of the Supplemental Property or part of the definition of the Community Area prior to the recording hereof) shall remain fully liable with respect to his obligation for the payment of Assessments of the Association, including the expenses for any new Association Properties, costs and fees, if any. The recording of this Supplement shall not alter the amount of the Assessments assessed to an Owner prior to such recording.
- D Lots As of the date of this Supplement, the total number of Lots contained within the existing Community Area together with the Supplemental Property, is 395.
- E Reservation Declarant hereby reserves the right for itself to further expand the Community Area in the future in accordance with the Declaration.
- F Severability Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

- G Conflicts Between Documents In case of conflict between the Declaration, as supplemented hereby, and the Articles or Bylaws of the Association, the Declaration as supplemented shall control
- H Controlling Law This Supplement will be governed by and construed in accordance with the laws of the State of Colorado

[SIGNATURE PAGES ATTACHED HERETO]

SAND CREEK INVESTMENTS SOUTH LLC, a
Colorado limited liability company

By _____
Name Danny Mientka
Title Manager

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 8TH day of JUNE,
2015, by DANNY MIENTKA as MANAGER of Sand Creek Investments South LLC, a
Colorado limited liability company

Witness my hand and official seal
My commission expires 10-13-2015

[SEAL]

MICHAEL SALSGIVER
NOTARY PUBLIC
STATE OF COLORADO
MY COMM. EXP 10-13-2015

Michael Salsgiver
Notary Public

**EXHIBIT A
TO SUPPLEMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR THE COMMUNITIES AT FEATHERGRASS**

**LEGAL DESCRIPTION
FOR SUPPLEMENTAL PROPERTY**

**LOTS 1 THROUGH 45, INCLUSIVE, AND TRACTS A, B
AND C, HANNAH RIDGE AT FEATHERGRASS FILING
NO. 1, COUNTY OF EL PASO, STATE OF COLORADO**

APPROVAL OF OWNER

The undersigned is the owner of the Supplemental Property pursuant to deed recorded June 13, 2014 under Reception No 214050782 in the office of the Clerk and Recorder for El Paso County, Colorado. The undersigned approves the foregoing Supplement to Declaration of Covenants, Conditions, Restrictions and Easements for The Communities at Feathergrass (the "Supplement") (all capitalized terms use but not otherwise defined in this Approval will have the meaning for such terms set forth in the Supplement) and consents, confirms and agrees to the annexation of the Supplemental Property under the Declaration as provided in the Supplement and to the covenants running with the land set forth in the Declaration and the Supplement

Dated June 8, 2015

ELITE PROPERTIES OF AMERICA, INC , a
Colorado corporation

By [Signature]
Name Douglas Stimple
Its CEO

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 8th day of June 2015, by Douglas Stimple as C.E.O of Elite Properties of America, Inc , a Colorado corporation

Witness my hand and official seal

My commission expires 12-02-2017

Christine L. Wise
Notary Public

