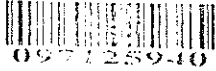


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DECLARATION  
of  
Covenants, Conditions, Restrictions and Easements  
for  
LONGVIEW AT MOUNTAIN SHADOWS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF

LONGVIEW AT MOUNTAIN SHADOWS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of Longview at Mountain Shadows ("Declaration") is executed this \_\_\_\_ day of \_\_\_\_\_, 1997 by Ute Valley, LLC, a Colorado limited liability company ("Declarant") in order to create a common interest community pursuant to the Colorado Common Interest Ownership Act.

WITNESSETH:

Declarant is the owner of certain real property situate in the City of Colorado Springs, County of El Paso, State of Colorado more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Property").

Declarant has or intends to plat the Property into a subdivision to be known as Longview at Mountain Shadows containing fifty-seven (57) lots;

The name of the common interest community created by this Declaration is "Longview at Mountain Shadows." Longview at Mountain Shadows is a planned community as defined in the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-103(22);

Declarant desires to subject the Property to the conditions, covenants, restrictions, and reservations hereinafter set forth to insure the proper use and appropriate development and improvement of the Property so as to: (a) protect the Owners (as hereinafter defined) against such improper development and use of surrounding Lots as will depreciate the value and use of the Lots; (b) insure adequate and reasonably consistent development of the Property; (c) encourage and insure the erection of attractively designed permanent improvements appropriately located within the Property in order to achieve harmonious appearance and functions; and (d) generally promote the welfare and safety of the Owners and Occupants of Lots; and

It is intended that these covenants, conditions, and restrictions will bind and benefit not only said Owners and Declarant, but also their respective successors, heirs, personal representatives and assigns and that all of the Property shall be held, used, leased, sold, and conveyed subject to the covenants, conditions, and restrictions set forth in this Declaration.

NOW, THEREFORE, the Declarant declares that all of the Property, as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold,

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used, improved, occupied, owned, hypothecated, encumbered, liened, mortgaged and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns.

## ARTICLE I

### DEFINITIONS

Section 1.1. Association. "Association" shall mean and refer to the Longview at Mountain Shadows Homeowner's Association, a Colorado nonprofit corporation, organized under the laws of the State of Colorado, its successors and assigns.

Section 1.2. Owner. "Owner" means any person, corporation, limited liability company, partnership, association or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest, in one or more Lots. "Owner" shall also include the purchaser under any executory land sales contract in which the Administrator of Veteran's Affairs ("Administrator") is the seller, regardless of whether such executory contract is recorded and whether owned by the Administrator or its assigns. The term "Owner" shall further include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee, as herein defined, or other person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 1.3. Property. "Property" shall mean and refer to that certain real property described on Exhibit "A" hereto, together with all appurtenances thereto and all improvements now or hereafter thereon.

Section 1.4. Occupant. "Occupant" shall mean a lessee or licensee of an Owner, or any other person or entity other than an Owner, in possession of a Lot.

Section 1.5. Lot. "Lot" shall mean and refer to Lots 1 through 57, inclusive, as depicted on the Plat and contained within the boundary of the Property, together with all appurtenances thereto and improvements now or hereafter thereon.

Section 1.6. Declarant. "Declarant" shall mean and refer to Ute Valley, LLC, a Colorado limited liability company, and its successors and assigns to whom it expressly transfers in writing all or any part of its rights as Declarant hereunder, and their authorized representatives.

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Section 1.7. Member. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.8. Mortgage. "Mortgage" means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and Recorder of El Paso County, Colorado, and by which a Lot or any part thereof is encumbered. "Mortgage" shall also include any executory land sales contract in which the Administrator of Veteran's Affairs ("Administrator"), an officer of the United States of America, is the original seller, regardless of whether such contract is recorded and regardless of whether such contract is owned by the Administrator, the Administrator's assignee, or a subsequent assignee who has notified the Board in writing of such assignment. If the executory contract in which the Administrator is the original seller is not recorded, then written notice of the contract shall be provided to the Board.

Section 1.9. First Mortgage. "First Mortgage" shall mean a mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 1.10. Mortgagee. "Mortgagee" means any person or entity, or any successor or assign thereof, which holds or owns a Mortgage. "Mortgagee" shall also mean the Administrator of Veterans Affairs, an officer of the United States of America, and the Administrator's assigns under any executory land contract in which the Administrator is not identified as the seller, regardless of whether such contract is recorded. If such executory contract is not recorded, written notice of the contract shall be provided to the Board.

Section 1.11. First Mortgagee. "First Mortgagee" means a Mortgagee whose encumbrance is a First Mortgage.

Section 1.12. Architectural Control Committee. "Architectural Control Committee" or "Committee" shall mean the committee appointed in the manner set forth in this Declaration to review and approve the plans for all improvements constructed on the Property.

Section 1.13. Unit. "Unit" shall mean a single family residential dwelling and related improvements constructed and located upon a Lot.

Section 1.14. Board. "Board" shall mean the Board of Directors of the Association.

Section 1.15. Plat. "Plat" shall mean the plat of Mountain Shadows Filing No. 35 recorded in the real property records of the Clerk and Recorder of El Paso County, Colorado.



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Section 1.16. CCIOA. "CCIOA" shall mean the Colorado Common Ownership Interest Act, C.R.S. § 38-33.3-101, et seq., as amended.

Section 1.17. Project. "Project" shall mean all of the Property, together with improvements and rights located on the Property, and all rights, easements and appurtenances belonging thereto. The term "Project" shall have the same meaning as the terms "common interest community" and "planned community" under C.R.S. § 38-33.3-103, as amended.

Section 1.18. 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, patio covers, awnings, painting or other finish material of any exterior surfaces or any visible structure, additions, walkways, garages, carports, roads, driveways, basketball hoops, backboards and standards, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, storage sheds, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning 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.

## ARTICLE II

### COMMON AREA: EASEMENTS

Section 2.1. No Common Area. There will be no common area or common elements in the Project. The landscaping, sprinkler system, fencing and other improvements to be maintained by the Association will be located in easements affecting certain Lots in the Project. Such easements will be as depicted on the Plat. In addition, the Association will be responsible for the maintenance of the entry island located in the public right of way of Chase Point Circle at its intersection with Wilson Road.

Section 2.2. Easements. The Property shall be subject to the following easements:

(a) Utility and Drainage Easements. Declarant reserves the right to create, grant and transfer nonexclusive easements in, under, over, across, through and upon the utility easements on any Lot as depicted on the Plat for the purpose of installing, maintaining, repairing and replacing drainage improvements and any utilities or related services, including but not limited to any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any

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master television antenna system and any other necessary and related facilities. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary improvements, pipes, wires, poles and other equipment and the right to enter into agreements relating to such drainage improvements, utility service and easements. If any person or party furnishing a service covered by the general easement herein provided requests a specific easement by separate recordable document, Declarant shall have the right to grant such easements on the Property without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including but not limited to any easements granted in the Plat. The rights granted to the Declarant in this paragraph will include a license to enter onto the Lot upon which the easement is located to construct and maintain the improvements in the easement.

(b) Association Easement. A nonexclusive easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Lots as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including without limitation any maintenance required or permitted hereunder, and inspection, maintenance, repair, replacement, construction or reconstruction of any facilities or utilities on or within any landscape easements located on a Lot.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Association Structure. The Association shall be formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in its Articles of Incorporation and Bylaws. 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 3.5 of this Article.

Section 3.2. Membership. The Declarant and each Owner shall be members of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. 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

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relieve an Owner from the responsibility for fulfillment of the obligations of an Owner under this Declaration, the Articles of Incorporation, or the Bylaws of the Association. The rights acquired by any such First Mortgagee, contract purchaser and tenant shall be extinguished automatically upon termination of the First Mortgage, sales contract or tenancy, as applicable. The assignment of rights by an Owner pursuant to this section shall be in writing and delivered to the Association before such Person shall be entitled to exercise any membership rights or privileges.

Section 3.3. Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The Board shall consist of 3 members during the Declarant Control Period set forth in Section 3.5 of this Article and thereafter shall consist of at least 3 but not more than 7 members, as determined by resolution of the Board. A quorum shall consist of not less than 2 directors during the Declarant Control Period, and thereafter a quorum shall be determined as provided in the Association's Bylaws. All members of the Board shall be representatives of Declarant or Members of the Association. The terms and other qualifications 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, and other persons.

Section 3.4. 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's Articles of Incorporation and Bylaws. One vote is allocated to each Lot, and Members shall have one vote for each Lot owned. If more than one person is the Owner of a Lot, the vote allocated to that Lot may not be divided fractionally among the Owners, and if the Owners are unable to agree on how to cast their one vote, then they shall be deemed to have abstained from voting. Voting rights and procedures may be further defined in the Articles and Bylaws of the Association.

Section 3.5. Declarant's Reserved Right to Appoint. Declarant hereby reserves the right to appoint a majority of the members of the Board of Directors, at all times following the date of recordation of this Declaration, which right shall terminate upon the occurrence of the first of the following events:

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- (a) thirty (30) years after the date on which this Declaration is recorded;
- (b) by written notice from Declarant to the Association of Declarant's intent to terminate its right to appoint the majority of the members of the Board of Directors;
- (c) upon the bankruptcy of Declarant (for purposes of this provision, Declarant shall be considered bankrupt if a petition in bankruptcy has been filed by or against Declarant and has not been dismissed within 180 days after such filing);
- (d) upon that date which is sixty (60) days after forty-six (46) Lots have been sold to Owners other than Declarant; or
- (e) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business.

Section 3.6. Nonliability of Association and Others. The Board of Directors, the officers and committees of the Association and the Declarant, including without limitation, the officers, directors, employees, agents, and representatives of the Declarant, shall not be liable in damages or otherwise to any person whatsoever for any act or omission done as an officer, director, agent or representative on behalf of the Association, except for willful misconduct done in bad faith or gross negligence and shall be indemnified from all such liability as provided in the Association's Bylaws.

Section 3.7. Master Association. The Project is located in the Mountain Shadows subdivision. If a master association is formed for Mountain Shadows, the Association shall have the right to join such master association if the Board deems it to be in the best interests of the Owners to join such master association. The Board shall also have the right to make the commitment to pay dues and/or assessments to the master association provided that such dues and assessments are equitably allocated among all members of the master association. The Association may enter into cooperative arrangements for the provision of services with other homeowners associations in the surrounding area and may assume responsibility for that part of the cost attributable to the Property.

#### ARTICLE IV

#### COVENANT FOR ASSESSMENTS

Section 4.1. Creation of the Obligation for Assessments. Each Owner, for each Lot owned within the Property, 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

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assessments, charges, fees, fines, and other sums which are described in this Declaration, all of which shall be both a personal obligation of the Owner and a lien against his Lot as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees, fines and other sums attributable to such Owner and/or his Lot. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. All assessments shall be payable without deduction or offset. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees, fines and other sums provided for herein by abandonment or leasing of his Lot or by asserting any claims against the Association, the Declarant or any other person or entity. The assessments, charges, fees, fines and other sums payable under this Declaration are in addition to and not in lieu of real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against Lots.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners and to maintain, repair and replace the landscaping, perimeter Project fences, sprinklers and related equipment located in the landscaping easements as depicted on the Plat and for the maintenance of the entry island located in the public right of way in Chase Point Circle at its intersection with Wilson Road.

Section 4.3. Annual Common Assessments. The annual common assessment shall specifically include, but shall not be limited to the following common expenses:

- (a) expenses of management;
- (b) premiums for all insurance which the Association maintains as required or permitted under these Declarations, together with any expenses or sums expended by the Association for the deductible under such policies as set forth in Article VIII;
- (c) maintenance for which the Association is responsible as provided in Section 5.1;
- (d) wages for Association employees;
- (e) legal and accounting fees;
- (f) any deficit remaining from a previous assessment year;
- (g) a working capital fund;

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(h) the creation of reasonable contingency reserves, surpluses and sinking funds;

(i) signage for identification of the Project and directional and traffic control signs;

(j) the dues and assessments levied by a master association; and

(k) any other costs, expenses and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof. The Association may enter into cooperative arrangements for provision of services with other homeowners associations in the surrounding area and may assume responsibility for that part of the cost attributable to the Property.

Section 4.4. Fixing Assessments. For the calendar year 1998, the monthly common assessment shall be \$5.00 per Lot. The assessments for each year thereafter shall be established in the manner set forth in Section 4.7. 18

Section 4.5. Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement of fencing, sprinklers, landscaping and improvements located in the landscaping easements.

Section 4.6. Rate of Assessment. Except as provided herein, both annual and special assessments shall be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association. The total common and/or special assessment shall be divided by 57 to determine the amount of the assessment payable by each Owner and assessable to the Lot of the Owner.

Section 4.7. Assessment Procedure.

(a) Annual Assessments. At least ninety (90) days before the beginning of each assessment year commencing with the assessment year 199\_\_, the Board of Directors of the Association shall adopt a proposed budget for the total annual common assessment based upon the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. At least

sixty (60) days prior to the commencement of the assessment year, 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 nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of the Owners entitled to vote reject the budget, the budget shall be deemed ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners will be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The annual common assessment shall be payable in monthly installments on the first day of each month. The Board shall have the authority to change the periods of payment to either an annual, semi-annual or quarterly basis. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the amount and timing of the payments of the common assessment.

(b) Special Assessments. Any special assessment under Section 4.5 of this Article shall be adopted only after following a procedure that is substantially similar to the procedure for establishing the common assessment pursuant to Section 4.7(a). Special assessments shall be due and payable in the manner determined by the Board.

(c) Site Assessments. If the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner, his tenants, employees, guests, invitees or Occupants, or any breach by any of such parties of any of the provisions of this Declaration, the Association's Bylaws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof shall be deemed to be a site assessment against such Owner and his Lot and shall be enforceable as provided herein. A site assessment may be assessed by the Board and shall not require any vote of the Members.

(d) Notice. Failure of the Board to timely adopt a proposed budget for the common assessment or to give timely notice of any assessment as provided herein shall not affect the liability of the Owner or his Lot for such assessment, but if notice is not timely given, the date when payments shall be due shall be deferred to a date not less than ten (10) days after such notice is given.

Section 4.8. Certificate of Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 4.9. Effect of Nonpayment of Assessments-Remedies of the Association.

(a) General. Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose a late charge for each delinquent monthly assessment. The amount of the late charge shall be ten percent (10%) of the delinquent assessment or in such other amount as is set forth in the Bylaws of the Association. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against such Owner's Lot and/or may suspend the delinquent Owner's right to vote. If a judgment is obtained, such judgment shall include late charges and interest on the assessment as above provided, and a reasonable attorneys' fee, together with the expenses and costs of the action, and the judgment shall bear interest at the rate of eighteen percent (18%) per annum from the date of the entry of judgment.

(b) Lien. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Lot, including, without limitation, interest thereon at the rate of eighteen percent (18%) per annum, late charges, court costs and all other collection costs and reasonable attorneys' fees, shall be a charge on the interest of the Owner in that Lot and shall be a continuing lien pursuant to C.R.S. §38-33.3-316, in favor of the Association, upon the Lot against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any costs or fees, and then to the assessment payment first due. The Board may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot and the Owner's interest therein, the name of the Association and the amount of delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Lot, at the address of the Lot or at such other address as the Association may have in its records for the Owner of the Lot. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorneys' fees, charges and interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the statement of lien in the same manner as provided for in the foreclosure of mortgages under the statutes and laws of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the Owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums, which are not fully paid when due. Except to the extent that the lien of the Association is subordinated to the lien of a First Mortgage on a Lot pursuant to Section 4.11 of this Article and except as subordinated by law to the lien of real property taxes, the lien of the Association shall be deemed to have a priority date as of the date of



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the recording of this Declaration and shall have priority over all other liens and encumbrances against a Lot.

(c) Authority. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure. The Association shall also have the right to the appointment of a receiver for the Lot and Unit, ex parte, without notice to the Owner. Such receiver shall have the right to lease the Lot and Unit and to collect all rents and profits from the Lot and Unit during the pendency of the foreclosure.

Section 4.10. Working Capital. The Association shall require an Owner who purchases a Lot from Declarant to pay to the Association an amount equal to \$100.00 per Lot, which sum shall be held by the Association as and for working capital. The Association, in its sole discretion, may increase or decrease at any time the amount per Lot collected as and for working capital. Such sum shall not be refundable to such Owner but, if the Association decides that such sums are not required for working capital, such sums shall be placed in the general revenues. Furthermore, such sum shall not relieve an Owner from making the regular payment of assessments as the same become due.

Section 4.11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any bona fide purchase money loan evidenced by a First Mortgage. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that transfer of title to any Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of assessment charges which became due prior to any such transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure. No such transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall relieve any Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof, provided, however, that in the event of a foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for the unpaid charges and assessments that accrue prior to the vesting of title in the First Mortgagee.

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Section 4.12. Notice to Mortgagees and Inspection of Books. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under this Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days, after the Board of Directors has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall grant to each First Mortgagee the right to examine the books and records of the Association at any reasonable time.

Section 4.13. Homestead. The lien of the Association assessments 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 said assessment lien.

## ARTICLE V

### MAINTENANCE

Section 5.1. Association Maintenance. The Association shall maintain, repair and replace as needed the landscaping, sprinkler system and perimeter fences around the Project that are installed in the landscape easements as shown on the Plat and for the maintenance of the entry island located in the public right of way in Chase Point Circle at its intersection with Wilson Road.

Section 5.2. Willful or Negligent Damage. In the event that the need for maintenance, repair or replacement described in Section 5.1 of this Article is caused, in the sole discretion of the Board, through the acts or omissions of any Owner, his guests, tenants, contractors, employees, Occupants or invitees, or other persons or parties acting with the consent of any of the foregoing, the cost of such maintenance, repair or replacement shall be the personal obligation of such Owner. If such cost is not paid by the Owner, the Association shall have the right to establish a site assessment against such Owner and his Lot.

Section 5.3. Access at Reasonable Hours. For the purpose of performing the maintenance referred to in Section 5.1 of this Article, and inspections related thereto, the Board of Directors of the Association, through its duly authorized agents, contractors or employees shall have the right to enter upon any Lot, and such entry shall not be deemed a trespass. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its action, except on account of its gross negligence or willful misconduct.

Section 5.4. Management Agreements. The Association may enter into agreements for professional management of the Association's business. Each Owner shall

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be bound by the terms and conditions of any management agreement entered into by the Association. The Association may contract with the Declarant or its affiliates to provide maintenance services pursuant to this Declaration. Any agreements for professional management of the Association's business or to otherwise provide services to the Association (including agreements between the Declarant and the Association) shall provide for termination by either party with or without cause and without payment of a termination fee upon no more than ninety (90) days' prior written notice and shall have a maximum term of one (1) year.

#### ARTICLE VI

#### ARCHITECTURAL CONTROL COMMITTEE

Section 6.1. Composition of Committee. The Architectural Control Committee shall consist of one (1) or more persons appointed by the Declarant. When the Declarant no longer owns a Lot, or at such earlier time as the Declarant notifies the Association in writing that the Declarant will no longer appoint the members of the Committee, the right to appoint the Committee shall pass to the Association. When the right to appoint members of the Architectural Control Committee passes to the Association, the Association shall have the right to determine the number and the qualifications of the members of the Committee. The members of the Committee may be removed at any time by the Declarant until the right to appoint its members passes to the Association and thereafter the Association shall have the right to remove and appoint its members. A majority of the Committee may designate a representative to act for it. It shall be the power and the duty of the Committee, by the exercise of its best judgment, to determine that all structures, improvements, construction, decoration and landscaping on the Property conform to and harmonize with the existing surroundings and structures.

Section 6.2. Review by Committee. No Improvements will be constructed, erected, installed, modified or amended until such Improvements have been approved in writing by the Architectural Control Committee. The scope of the requirement to obtain Architectural Control Committee approval shall include, without limitation, each of the following matters: (i) the original construction of Improvements, (ii) replacing worn out, damaged or destroyed portions of Improvements, including roofing and exterior materials, (iii) landscaping and modifications thereto, (iv) repainting of any Improvements, (v) any improvements to a Lot for which a building permit is required, (vi) the installation of basketball hoops, standards and backboards, (vii) construction of fences and (viii) any other matters that change the exterior appearance of Improvements to a Lot. It is the intent of the Declarant that there be a method of control applicable to the original construction of Improvements on the Lots and any changes or additions thereto to maintain a quality appearance of Improvements in the Project. This section shall therefore be broadly and liberally construed to require

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approval by the Committee to any Improvements constructed, changed or modified within the Project.

Section 6.3. Procedures.

(a) All plans, samples and other materials to be submitted to the Architectural Control Committee shall be submitted in duplicate. The minimum scale of these plans shall be one-twentieth inch equals one foot. The plot plan in this minimum scale shall show the location of all buildings, drives, walks, fences and any other Improvements. Proposed new contours throughout the Lot and abutting street elevations on all sides shall be shown. Drainage patterns shall show where runoff water is being directed, and in the case of the Lots with the specific drainage requirements set forth in paragraph 6.4 of these Covenants, shall reflect compliance with such requirements. Structure 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. The Committee shall approve or disapprove all plans and requests within thirty (30) days after a request has been submitted. If the Committee fails to take action within thirty (30) days after plans have been received by the Committee, approval will not be required, and this Article will be deemed to have been fully complied with; provided, however, that no structure or improvement may be constructed or maintained that is in violation of a specific provision of this Declaration. A majority vote of the members of the Committee is required for approval or disapproval of proposed improvements. The Committee shall maintain written records of all applications submitted to it and of all actions taken. In approving or disapproving the plans submitted to it, the Committee shall take into consideration the design, style and construction of the proposed building or alteration, its location upon the Property, the harmony of its design, architecture and location with the terrain and surrounding neighborhood, and shall determine whether such proposed building is consistent with the general terrain, the architecture of other buildings located upon the Property and whether or not the construction or alteration of said building will adversely affect or decrease the value of other Lots and/or Units because of its design, location, height or type of material used in construction. The Committee may make reasonable requirements of the Lot Owner, including the submission of additional plans, to insure conformance of such building or alteration when effected with these restrictions and covenants and with the plans submitted and approved. All construction or alterations performed on any Lot must conform to the approved plans and specifications. The Committee may require such changes as may be necessary to conform to the general purposes as herein expressed. The Committee shall be responsible for enforcing compliance of the approved plans with these covenants and restrictions.

(b) The Committee shall have authority to grant variances from the provisions of this Declaration if the strict enforcement of these restrictions would result in unusual hardship. The Committee shall be the sole and exclusive judge of whether or not said hardship exists.

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(c) If the Committee disapproves of any proposed plans or specifications, it shall state in writing its reason for such disapproval in general terms so that the objections can be met by alterations acceptable to the Committee.

(d) All plans submitted to the Committee shall be left on file with the Committee.

(e) It is the intent of this Declaration that the Committee shall exercise broad discretionary powers hereunder and its decisions shall be final and conclusive except for an arbitrary abuse of its discretion or in excess of its authority.

(f) The Committee shall resolve all questions of interpretation under this Article.

(g) If the Committee denies or disapproves a request or submission under this Article, such matter may not be resubmitted to the Committee for one (1) year following the date of the denial or disapproval, unless the Committee consents in writing to the resubmittal and, if resubmitted without the approval of the Committee, such request shall be automatically deemed denied. The Committee may in its sole discretion waive this requirement to permit resubmission of plans and specifications with revisions to conform with matters identified by the Committee in its disapproval of the originally submitted plans and specifications.

(h) If a request or submission is approved, construction shall promptly commence and shall be completed within one (1) year after the date of approval. All construction shall be in strict compliance with the approved plans and specifications.

Section 6.4. Specific Architectural, Design and Building Requirements. Architectural standards are established to the end that the Project may benefit from the natural advantages of its particular location. While the standards for architectural style are flexible, compatibility with the informal natural environment is required. All buildings must be designed to fit the natural or presently existing contours of the Lot without excessive grading. The following specific architectural, design and building guidelines are hereby adopted for the Project that shall be applicable to all Lots in the Project and to any Units or other improvements constructed on a Lot:

(a) Building Requirements.

(i) Dwelling Area Requirements. No two-story dwelling shall have a gross livable finished floor area of less than 2,500 square feet. No one-story dwelling shall have a gross livable finished floor area of less than 1,900 square feet. The following shall be excluded when calculating finished floor area: porches, patios, covered but

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unenclosed areas, garages, any accessory structures and all basement areas, whether or not such basements have direct access to ground level.

(ii) Setbacks. All Lots and Units must comply with the setback requirements and limitations of the applicable building codes, zoning codes and subdivision regulations of the City of Colorado Springs.

(iii) Height Restrictions. No dwelling or other structure shall exceed thirty-five (35) feet in height, as measured in accordance with the applicable El Paso County Regional Building Department and Zoning Administration Office regulations under the Hillside Overlay Area ordinances.

(b) Building Materials and Exterior Colors. All buildings shall conform to the following material and appearance standards:

(i) Exterior materials shall be natural wood, brick, stone, stucco or other natural material approved by the Architectural Control Committee. The Committee reserves the right to approve other types of exterior materials which the Committee deems appropriate for the neighborhood environment.

(ii) Aluminum, vinyl or wood windows are permitted. All aluminum and vinyl windows shall be anodized and painted or coated a color to blend with the color of the building.

(iii) Gutters, if installed, shall be painted the same color as the adjoining trim color of the building.

(iv) Exposed concrete shall be stuccoed and painted or textured in a manner approved by the Committee.

(v) All roof areas shall be tile, slate, composition products which have received prior approval of the Committee, treated wood shakes or wood shingles, or such other material as may be approved by the Committee. All products, other than composition roofing materials, shall meet the Class C fire-rated requirements of the City. Pre-approved composition roofing shall meet the Class A fire-rated requirements and shall have a 40-year warranty.

(vi) The same house plan will not be repeated on adjacent Lots. If the same plan is used on a Lot that is two Lots over, the elevations of the house on the second Lot will be changed.

(viii) The colors used for the body and trim of a house will not be the same on adjacent Lots.

(c) Fences. The height, location and material of all privacy fences, animal pens, dog runs and other similar items must be approved by the Committee. To preserve the unique character of the Project, more extensive fencing will only be permitted with special approval by the Committee. Lot Owners must establish to the Committee's satisfaction that, due to unique characteristics and topography of a specific Lot, such fencing will not have an adverse aesthetic impact on the Project or adjacent Lots. All fences shall be designed and constructed as a visual extension of the architecture of the primary dwelling, including both scale and use of materials. Stockade type fencing will not be permitted on the lot lines of any Lot. Except with approval of the Committee, no fence shall be installed closer to an adjoining street than the dwelling or any other building located on the Lot.

Section 6.5. Guidelines. The Committee shall have the authority to adopt and amend guidelines to include (i) design and architectural guidelines, (ii) building guidelines and (iii) procedural guidelines related to the conduct of the affairs of the Committee.

## ARTICLE VII

### RESTRICTIONS

Section 7.1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Property in order to enhance the value, desirability, and attractiveness of the Property and serve and promote the sale thereof.

Section 7.2. Leases. Any lease agreements between an Owner and a lessee shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing, and a copy thereof shall be provided to the Association upon request. After notice and an opportunity for hearing, the Board of Directors may require an Owner to evict any tenant who has violated any provision of this Declaration, the Articles of Incorporation or the Bylaws.

Section 7.3. Residential Use. All Lots in the Project and the Units erected on the Lots shall be used exclusively for private single 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. 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 the Home

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Occupation ordinance of the City of Colorado Springs as it may be hereafter amended. The Home Occupation ordinance is in Article 4, Part 16 of the City of Colorado Springs Zoning Code. If the 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 7.4. Animals. No horses, cattle, sheep, goats, pigs, snakes, reptiles, insects, birds, fish, rabbits, poultry or other animals of any description shall be kept or maintained on any Lot except that Owners may keep not more than three domestic animals which are bona fide household pets so long as such pets are not kept for commercial purposes, do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all-existing applicable local ordinances and any rules and regulations of the Association. An Owner, family member, tenant or guest is responsible for any damage caused by his pet and shall be obligated to clean up after his pet while it is on the Property. All pets shall be kept on leash and attended by their owners except when on the Lot of the owner.

Section 7.5. Structures. The only permitted structures on a Lot shall be a single family residence and such accessory structures and improvements as are permitted by these Covenants, the Architectural Control Committee and the applicable zoning codes of the City of Colorado Springs. Each dwelling unit shall have a garage to accommodate a minimum of three cars. All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property. No temporary house, trailer, tent, garage or outbuilding shall be placed or erected upon any Lot, and no Unit or other structure placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans, nor shall any Unit when completed be in any manner occupied until made to comply with all requirements, conditions and restrictions herein set forth; provided, however, that the foregoing shall not apply to the Declarant. In no event shall any temporary structures be occupied for living purposes. The work of constructing, altering or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof, which shall in any event be not later than one (1) year after the approval of the plans and specifications by the Declarant.

Section 7.6. Accessory and Miscellaneous Structures. No advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot without the prior permission of the Architectural Control Committee under the procedures set forth in Article VI; except that the Declarant shall be permitted to use larger signs until all Lots are sold by the Declarant. All types of refrigerating, air conditioning and heating apparatus shall be concealed. No garbage or trash cans or receptacles shall be maintained in an exposed



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and unsightly manner. Any permitted accessory structures shall be compatible in color, style and architecture with the residence located on the Lot.

Section 7.7. Lots to be Maintained. Each Lot at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or building materials shall be permitted to remain exposed upon any Lot so that same are visible from any neighboring Lot or street, except as necessary during the period of construction of improvements as authorized pursuant to this Declaration. All lawns and other landscaping shall be watered, pruned, mowed and otherwise maintained in clean and orderly manner. All weeds, brush, noxious plants and materials shall be promptly removed to avoid a noxious or unsightly condition. Each Owner of a Lot shall be responsible for the removal of snow, trash and debris from the sidewalks on the Lot, including the sidewalks located to the rear of the Lots adjacent to Wilson Road and Chuckwagon Road.

Section 7.8. Lots Not to be Subdivided. Each Lot is as depicted in the Plat of the Property, and no Lot shall be further subdivided.

Section 7.9. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 7.10. No Hazardous Activities. No activities shall be conducted on the Property which are or might be unsafe or hazardous to any person or property or might cause the cancellation or diminution of insurance or an increase in insurance premiums. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Property and no open fires shall be lighted or permitted on the Property unless in a barbecue grill or a fireplace pit that has been approved by the Architectural Control Committee.

Section 7.11. No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others.

Section 7.12. Restrictions on Parking and Storage. No abandoned vehicles shall be stored or parked upon any part of the Property or any street adjoining the Property. If the Board shall determine, in its sole discretion, that a vehicle is an abandoned vehicle, then a written notice describing the vehicle will be personally delivered to the Owner thereof (if such Owner can be reasonably ascertained) or will be conspicuously placed on the abandoned vehicle (if the Owner thereof cannot be reasonably ascertained), and if the abandoned vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to remove the vehicle at the sole expense of the Owner thereof. For the

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purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, house trailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of five (5) days or longer. Garage doors, if any, shall be kept closed at all times except when in immediate use for ingress or egress of a motor vehicle. The Association shall have the right to adopt and amend rules and regulations concerning the parking of vehicles. Boats, recreational vehicles, campers, motor homes, trailers and other such vehicles shall either be kept in the garage on the Lot or screened from view in a manner approved by the Architectural Control Committee, and shall in no event be parked on the streets in the Project.

Section 7.13. Clotheslines, Swingsets, Basketball Backboards and Storage Sheds. Outside clotheslines shall not be allowed. Basketball hoops and backboards and storage sheds will be allowed subject to the approval of the Architectural Control Committee. Swingsets, jungle gyms, slides and other similar play structures shall not exceed eight feet in height and shall be subject to the control of the Architectural Control Committee.

Section 7.14. Garbage and Refuse Disposal. No garbage, refuse, rubbish or cuttings shall be deposited on any street or on any Lots unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. All trash and refuse containers, except when placed as noted above for the sole purpose of garbage pickup, will be kept inside the Units or adequately screened from view. The burning of trash in outside incinerators, barbecue pits or the like is prohibited, it being intended that all refuse, trash, garbage and the like shall be hauled from the Property. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

Section 7.15. Repair. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers, boats, or vans may be performed on any Lot unless it is done within completely enclosed structures located on the Lot to screen the sight and sound of the activities from the street and any adjoining property.

Section 7.16. Tanks. No tanks of any kind, either elevated or buried, shall be erected, placed or permitted upon any Lot.

Section 7.17. Underground Electric Lines. All electric, television, radio and telephone line installations and connections shall be placed underground, except for customary surface devices for access or control. During the construction of a Unit, the contractor or builder may install a temporary overhead utility line which shall be removed upon completion of construction.

Section 7.18. Aerials, Satellites and Antennas. No electronic or radio transmitter of any kind shall be operated upon the Property. No aerials, satellite dishes or antennae

shall be installed upon a Lot or on a Unit unless approved by the Architectural Control Committee. Any such devices (i) shall be screened in a manner approved by the Committee, (ii) shall not be installed on the roof of a Unit or structure and (iii) shall not exceed the height of the Unit on the Lot. Notwithstanding the foregoing, a small dish antenna not exceeding one meter in diameter shall be permitted on the exterior of Units or on the ground adjacent to a Unit, provided that such antenna shall be mounted in the least obtrusive and least visible place possible to reduce the visibility of the antenna to other houses and from public streets to the minimum amount, subject only to the requirements of reasonable signal reception in accordance with the requirements of the Federal Communications Commission. No such antennae shall be erected without the prior approval of the Architectural Control Committee. The Architectural Control Committee may require that the antenna/dish be painted to match the predominant exterior color of the Unit so long as the signal reception will not be materially impaired.

Section 7.19. Rules and Regulations. The Association shall have the right, power and authority to adopt and amend rules and regulations as deemed appropriate to further implement and define the living standards set forth in this Article VII. Such rules and regulations may be adopted by a vote of the Board and shall not require a vote of the members. The rules and regulations, as adopted and amended from time to time, shall be mailed to the Owners and shall thereafter be binding upon all Owners, Occupants and the guests, invitees, visitors, agents and contractors of the Owners and any other person entering onto the Project. A violation of the rules and regulations shall be deemed a violation of this Declaration, and all rights and remedies set forth in this Declaration or otherwise available at law or in equity, may be used to enforce the rules and regulations.

Section 7.20. Landscaping. Within six (6) months after completion of a dwelling, or within any extension of that period granted by the Architectural Control Committee, all yards and open spaces shall be landscaped according to a landscaping plan previously approved by the Committee. Each landscaping plan shall initially include at least two (2) native evergreen trees (pinon, pine, ponderosa, spruce or fir) at least twelve (12) feet in height and at least one deciduous tree having a caliper of not less than two inches and sod or other approved ground covers. In determining whether to approve a proposed landscaping plan, consideration will be given to preservation of natural trees and vegetation, the extent to which landscaping harmonizes with the natural vegetation and the replacement of native vegetation which is unavoidably damaged or destroyed during construction. Landscaping must also be compatible with adjoining Lots so as to present a pleasing and harmonious appearance. The Owner's responsibility for landscaping shall also extend from the boundary of his Lot to the curb on any street bordering the front or side of his Lot or providing direct access to his Lot.

Section 7.21. 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 finish grading except after first obtaining the prior consent and approval of the Architectural Control

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Committee. 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.

Section 7.22. Rebuilding or Restoration. Any dwelling or building destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a sightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six months from the time the damage occurred.

#### ARTICLE VIII

#### INSURANCE

Section 8.1. Common Insurance. The Association shall obtain and maintain at all times, to the extent reasonably obtainable, insurance policies covering the following risks:

(a) Public Liability. Comprehensive general liability and property damage insurance in such limits as the Board of Directors of the Association may, from time to time, determine, but not in an amount less than \$500,000.00 for bodily injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence covering claims for bodily injury and \$500,000.00 for property damage arising out of one occurrence or \$1,000,000.00 combined single limit coverage. To the extent reasonably obtainable, coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, off-premises employee coverage, its officers, directors, agents, employees, representatives and the Owners, contractual liability, and liability for property of others.

(b) Worker's Compensation. Worker's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(c) Fidelity Insurance. The Association shall have the right, but not the obligation to, purchase adequate fidelity coverage against dishonesty of employees, destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including, but not limited to, employees of the professional manager in name the Association as the named insured or obligee, and shall also contain endorsements thereto covering any persons who serve the Association without compensation. Such fidelity coverage or bonds shall name the Association as an obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

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(d) Officers' and Directors' Personal Liability Insurance. The Association shall have the right, but not the obligation, to purchase appropriate officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

(e) Casualty Insurance. The Association shall obtain casualty insurance in an amount equal to the full replacement value of the improvements that the Association is obligated or permitted to maintain pursuant to this Declaration

(f) Other Insurance. In addition, the Board of Directors may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Property.

(g) Form of Insurance. The insurance required or permitted under this Declaration shall be with such insurance companies as the Association shall select, but such insurance companies shall be properly qualified to issue insurance in the State of Colorado. The maximum deductible for such insurance shall not exceed limits deemed prudent by the Board.

#### ARTICLE IX

#### DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

Section 9.1. 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 Property for a period of thirty (30) 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 Project. 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 Project is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Articles of Incorporation or the Bylaws of the Association and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Articles of Incorporation or the Bylaws of the Association. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment.

Section 9.2. Special Declarant Rights. For the period stated in Section 9.1, and as more particularly set forth in this Article XI or elsewhere in this Declaration, Declarant shall have the following special declarant rights:

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- (a) to complete any improvements shown on the Plat;
- (b) to exercise any development rights set forth in Section 9.3;
- (c) to maintain anywhere within the Project, sales offices, management offices, signs advertising the Project and model homes; and
- (d) to use easements through the Project for the purpose of making improvements within the Project.

Section 9.3. Declarant's Rights to Complete Development of Project. 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 Project 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 Project; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Project; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Project. 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; 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 to use any structure on any property owned by Declarant 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 Project. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in this Declaration, or the Articles of Incorporation or Bylaws of the Association, which rights are incorporated in this section by this reference. Declarant shall not be required to obtain the approval of the Architectural Control Committee for the development of the Project, the construction of any improvements in the Project by Declarant or builders selected by Declarant or for any other activities of Declarant related to the development and construction of the Project and improvements thereon.

Section 9.4. Maximum Number of Lots. Notwithstanding any other provision of this Declaration, the maximum number of Lots that Declarant may create within the Project is fifty-seven (57).

## ARTICLE X

## GENERAL PROVISIONS

Section 10.1. Acceptance of Provisions of All Documents. The ownership, acceptance of conveyance, acceptance of a lease, or encumbrance of a Lot or the improvements thereon shall be deemed to include the acceptance of all provisions of this Declaration, the Articles of Incorporation of the Association and the Association's Bylaws and rules and regulations, all of which shall be binding upon each Owner, his heirs, personal representatives, family, guests, Occupants, tenants, successors, assigns, and everyone having an interest in the Lot without the necessity of inclusion of an express provision in the instrument of conveyance or encumbrance.

Section 10.2. Enforcement. The Association, the Declarant (only so long as the Declarant owns any Lot) or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to all other remedies, the Board of Directors shall have the right, after notice and opportunity for hearing, to impose upon any Owner a fine not to exceed One Hundred Dollars (\$100.00) per occurrence for any breach by that Owner of the provisions of this Declaration, the Bylaws and/or the Association's rules and regulations. All rights and remedies provided in this Declaration are distinct and cumulative to any other right or remedy hereunder or afforded by law or equity, and may be exercised concurrently, independently or successively.

Section 10.3. Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of any such provision. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently, independently or successively without effect or impairment upon one another.

Section 10.4. Severability. Invalidation of any portion of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 10.5. Conflicts of Provisions. In case of conflict between this Declaration and the Articles of Incorporation, the Bylaws or any rules and regulations adopted by the Association, this Declaration shall control.

Section 10.6. Duration and Amendment.

(a) Each and every provision of this Declaration shall be binding upon each and every Owner, his heirs, successors, assigns and personal representatives and shall run with and bind the land for a term of thirty (30) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended, modified or terminated by an instrument signed by not less than 51% of the Owners, duly recorded in the office of the Clerk and Recorder of El Paso County.

(b) Declarant hereby reserves the right, for a period of ten (10) years, following the date of recordation of this Declaration, to amend this Declaration, without vote of the Owners, as set forth below. Each Owner and each Mortgagee by accepting a deed, mortgage or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments. Declarant's reserved right to amend the Declaration shall include:

(i) amendments as may be required and approved by primary or secondary lending institutions, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Department of Veterans Affairs, or agencies, or insurers or as may be required to induce such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Property;

(ii) amendments as may be required to correct any typographical or clerical error; or

(iii) amendments as may be required, in Declarant's sole discretion, to correct legal descriptions of the real property to be subject to this Declaration.

Section 10.7. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for routine notices, all other notices or demands intended to be served upon an Owner shall be sent by certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at his address filed with the Secretary of State of the State of Colorado, together with a copy addressed to the Secretary of the Association at his registered address.



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Section 10.8. Assignment of Declarant's Rights. The Declarant may assign its rights and authority hereunder, in whole or in part, by express written assignment, duly recorded.

Section 10.9. Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 10.10. Captions. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration nor the intent of any provisions herein.

Section 10.11. Association to Resolve Ambiguities. If any doubt or question shall arise concerning the true intent or meaning of any of this Declaration, the Board of Directors of the Association shall, by resolution, determine the proper construction of the provision in question and such resolution shall fix and establish the meaning, effect and application of the provision. However, this provision shall not apply to any such question concerning Declarant, unless Declarant has given its specific prior written authorization for the Board of Directors to make the determination.

Section 10.12. Governing Law. This Declaration of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with the statutes and laws of the State of Colorado.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first above written.

Ute Valley, LLC,  
a Colorado Limited Liability Company,  
by its Manager, Schuck Trustees, Inc.  
d/b/a Schuck Communities, Inc.

By: William D. Schuck, Inc.  
Name: William D. Schuck  
Its Manager/President

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by \_\_\_\_\_ as manager of Ute Valley, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Notary Public

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## LEGAL DESCRIPTION:

A TRACT OF LAND BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 15 AND OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 13 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BOUNDED ON THE SOUTHERLY AND WESTERLY SIDES BY MOUNTAIN SHADOWS FILING NO. 24, RECORDED IN PLAT BOOK C-5 AT PAGE 89, RECORDS OF EL PASO COUNTY, COLORADO, BOUNDED ON THE NORTHERLY SIDE BY MOUNTAIN SHADOWS COMMERCIAL FILING NO. 1, RECORDED IN PLAT BOOK C-5 AT PAGE 149, BOUNDED ON THE SOUTHERLY AND EASTERLY SIDES BY A PARCEL OF LAND RECORDED UNDER RECEPTION NO. 94901117, BEING DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE PLAT OF MOUNTAIN SHADOWS FILING NO. 24, RECORDED IN PLAT BOOK C-5 AT PAGE 89, RECORDS OF EL PASO COUNTY, COLORADO.

COMMENCING AT THE MOST EASTERLY CORNER OF LOT 18 IN SAID MOUNTAIN SHADOWS FILING NO. 24, SAID POINT BEING THE POINT OF BEGINNING, THENCE WESTERLY, ON THE NORTHERLY LINES OF LOTS 18 THROUGH 14 OF SAID FILING NO. 24, THE FOLLOWING FIVE (5) COURSES:

1. N58°29'24"W, A DISTANCE OF 201.02 FEET;
2. N51°27'58"W, A DISTANCE OF 142.15 FEET;
3. N71°11'56"W, A DISTANCE OF 140.51 FEET;
4. S87°58'00"W, A DISTANCE OF 141.49 FEET;
5. S69°08'29"W, A DISTANCE OF 141.89 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF WILSON ROAD AS PLATTED IN SAID MOUNTAIN SHADOWS FILING NO. 24;

THENCE NORTHERLY, ON SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING FIVE (5) COURSES:

1. N20°51'31"W, A DISTANCE OF 433.00 FEET TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE RIGHT, HAVING A DELTA OF 02°23'01", A RADIUS OF 2373.50 FEET, A DISTANCE OF 98.74 FEET TO A POINT OF TANGENT;
3. N18°28'30"W, A DISTANCE OF 324.67 FEET TO A POINT OF CURVE;
4. ON THE ARC OF A CURVE LEFT, HAVING A DELTA OF 21°57'57", A RADIUS OF 357.37 FEET, A DISTANCE OF 137.01 FEET TO A POINT OF TANGENT;
5. N40°26'27"W, A DISTANCE OF 3.00 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF SAID MOUNTAIN SHADOWS COMMERCIAL FILING NO. 1;

THENCE EASTERLY, ON SAID BOUNDARY LINE, THE FOLLOWING SEVEN (7) COURSES:

1. N49°33'33"E, A DISTANCE OF 40.00 FEET TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE RIGHT, HAVING A DELTA OF 46°00'17", A RADIUS OF 220.00 FEET, A DISTANCE OF 176.65 FEET TO A POINT OF TANGENT;
3. S84°20'10"E, A DISTANCE OF 332.69 FEET TO A POINT OF CURVE;
4. ON THE ARC OF A CURVE RIGHT, HAVING A DELTA OF 28°05'42", A RADIUS OF 270.00 FEET, A DISTANCE OF 132.39 FEET TO A POINT OF TANGENT;
5. S56°20'28"E, A DISTANCE OF 237.92 FEET TO A POINT OF CURVE;
6. ON THE ARC OF A CURVE LEFT, HAVING A DELTA OF 14°05'57", A RADIUS OF 330.00 FEET, A DISTANCE OF 81.21 FEET TO A POINT OF TANGENT; PAGE 2 -2 3
7. S70°26'25"E, A DISTANCE OF 288.21 FEET TO A POINT THE MOST NORTHERLY CORNER OF SAID PARCEL OF LAND RECORDED UNDER RECEPTION NO. 94901117;

THENCE SOUTHERLY AND WESTERLY, ON THE WESTERLY BOUNDARY LINE OF SAID PARCEL OF LAND THE FOLLOWING TEN (10) COURSES:

1. S10°08'51"E, A DISTANCE OF 344.63 FEET;
2. S69°58'30"E, A DISTANCE OF 319.33 FEET;
3. S44°28'30"E, A DISTANCE OF 241.86 FEET;
4. S68°31'30"W, A DISTANCE OF 193.64 FEET;
5. S00°01'30"W, A DISTANCE OF 170.00 FEET;
6. S24°01'30"W, A DISTANCE OF 80.00 FEET;
7. N88°09'30"W, A DISTANCE OF 89.19 FEET;
8. N41°00'00"W, A DISTANCE OF 123.24 FEET;
9. N89°19'37"W, A DISTANCE OF 155.66 FEET;
10. N69°29'45"W, A DISTANCE OF 118.59 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 26.935 ACRES.

Exhibit "A"