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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
THE FAIRWAYS AT POLE CREEK

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TABLE OF EXHIBITS

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**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR THE FAIRWAYS AT POLE CREEK**

**THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FAIRWAYS AT POLE CREEK** (this "Declaration") is made as of \_\_\_\_\_, 1997, by The Fairways at Pole Creek Development, LLC, a Texas limited liability company ("Declarant").

RECITALS

WHEREAS, Declarant is the owner of the real property legally described on Exhibit A attached hereto, which property Declarant has caused to be platted and subdivided as The Fairways at Pole Creek, Grand County, Colorado; and

WHEREAS, Declarant is desirous of imposing upon the Properties (as that term is hereafter defined) a set of mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, which will establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties; and

WHEREAS, Declarant has incorporated under the laws of the State of Colorado, as a nonprofit corporation, The Fairways at Pole Creek Homeowners Association, Inc., for the purpose of administering and enforcing the covenants, conditions and restrictions contained in this Declaration.

DECLARATION

NOW, THEREFORE, in consideration of the foregoing Declarant hereby declares that the property legally described on Exhibit A, together with any Additional Property which may be subjected to this Declaration by Supplemental Declaration (as those terms are defined in Article 2.00)(collectively, the "Properties"), shall be a Planned Community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes ("C.R.S.") §38-33.3-101, et seq., as the same may be amended from time to time, and shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the Properties subjected to this Declaration. This Declaration shall run with title to the Properties and shall be binding upon all persons and entities having any right, title or interest in and to the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. All capitalized terms used herein which are not otherwise defined shall have the meanings assigned thereto in Article 2.00 of this Declaration.

**ARTICLE 1.00  
GOALS, PURPOSES AND PHILOSOPHY**

It is the intent of Declarant to create The Fairways at Pole Creek as a quality residential community development which is controlled by this Declaration. This Declaration sets forth general provisions applicable to all Properties. By duly adopted Supplemental Declaration, certain limited provisions contained herein may be varied from one portion of the Properties to another depending upon the location, unique characteristics and intended use of each. Any reference contained herein to "this Declaration" shall be deemed to include any Supplemental Declaration so adopted.

It is the purpose of this Declaration that the beauty of the Pole Creek area, the harmony of design, and the views from within the Properties shall always be protected insofar as is possible in connection with the uses and structures permitted by this Declaration.

The Properties are subjected to this Declaration for the purpose of insuring the best use and the most appropriate development and improvement of each building site within the Properties; to protect the owners of building sites against improper use of surrounding building sites; to preserve, so far as practicable, the natural beauty of the Properties; to ensure development in accordance with the plans of Declarant; to encourage the construction on the Properties of proportioned, attractive structures and structures built of materials, textures and colors compatible with the natural surroundings; to obtain harmonious color schemes; to secure and maintain proper setbacks from streets, and adequate space between structures to ensure privacy; and, in general, to provide for high quality improvements on the Properties and thereby to enhance the value of all building sites within the Properties.

**ARTICLE 2.00  
DEFINITION OF TERMS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

"Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as the same may be amended from time to time. Undefined terms contained herein shall have the definitions set forth in the Act.

"Additional Property" shall mean any additional real property which may be subjected to this Declaration in the future by filing a Supplemental Declaration pursuant to the provisions of Section 15.05(A). As used herein, the term shall only include (a) those lands comprising the New Golf Course legally described on Exhibit B attached hereto, and (b) certain other currently unspecified additional real property which is permitted to be subjected to this Declaration pursuant to §38-33.3-222 of the Act, so long as the area of the same does not exceed ten percent



(10%) of the total area of the real property legally described on Exhibit A attached hereto.

“**Allocated Interests**” shall mean the allocation of liability for Common Expenses and voting rights in the Association to and among each Lot as further described herein.

“**Area of Common Responsibility**” shall mean the Common Areas, together with those other areas or matters which by the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract, or agreement with any Neighborhood, Special District, or Grand County, Colorado, are or will become the responsibility of the Association.

“**Articles of Incorporation**” or “**Articles**” shall mean the articles of incorporation of The Fairways at Pole Creek Homeowners Association, Inc. as filed with the Colorado Secretary of State.

“**Association**” shall mean The Fairways at Pole Creek Homeowners Association, Inc., a Colorado nonprofit corporation, its successors or assigns.

“**Base Assessment**” shall mean assessments levied on all Lots subject to assessment as provided herein to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 7.01 and 7.02.

“**Basement**” shall mean any area of which fifty percent (50%) or more is underground and does not have an exterior entrance at ground level. A garden level walk out area is not deemed a basement.

“**Board of Directors**” or “**Board**” shall mean the body responsible for the administration of the Association, selected as provided in the Bylaws and serving as the board of directors of the Association under Colorado corporate law.

“**Builder**” shall mean any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person’s business.

“**Building Envelope**” shall mean the area designated on the Plat as the location on each Lot for all improvements; provided, however, a well, an Individual Sewage Disposal System, and such ancillary structures incidental to such uses as may be approved by the DRC, may be located outside the Building Envelope. The area designated as the Building Envelope on each Lot may be further limited by setback, shape or other restrictions set forth on the Plat.

“**Bylaws**” shall mean the Bylaws of The Fairways at Pole Creek Homeowners Association, Inc., as the same may be amended from time to time.

“**Common Areas**” shall mean any real property which the Association owns, leases or

otherwise holds possessory or use rights in for the common use or enjoyment of the Owners. The initial Common Areas are designated on the Plat. Except as otherwise provided herein, Common Areas do not include either the New Golf Course or the Old Golf Course.

**“Common Expenses”** shall mean expenditures made or liabilities incurred by or on behalf of the Association for the general benefit of all Owners, including any reasonable reserves as the Board may find necessary or appropriate pursuant to this Declaration, the Bylaws and the Articles.

**“Community-Wide Standard”** shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board and the DRC.

**“Declarant”** shall mean The Fairways at Pole Creek Development, LLC, or any successor, successor-in-title, or assign who takes title to any portion of the Properties for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. Persons and/or entities other than The Fairways at Pole Creek Development, LLC, or any successor, successor-in-title, or assign, may with the consent of the Declarant, submit property to the terms of this Declaration. Any such person and/or entity shall not, however, be a “Declarant” under this Declaration unless such person and/or entity is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

**“Design Review Guidelines”** shall mean the design guidelines for the Properties and the application and review procedures which have been adopted by Declarant and which may be amended as set forth herein. These guidelines shall be followed by all Builders, developers, Owners and residents of the Properties. The DRC shall follow the Design Review Guidelines in its review of plans submitted to it for approval as provided herein.

**“DRC”** shall mean the Design Review Committee.

**“Guest House”** shall mean a single family residence constructed on a Permitted Guest House Lot in accordance with Grand County, Colorado zoning regulations, but which is not the primary single family residence constructed on such Lot. The total floor area of a Guest House shall not exceed thirty percent (30%) of the total floor area of the primary single family residence constructed on the same Permitted Guest House Lot, exclusive of garages, decks, terraces, walkways, roof overhangs, and Basements. The minimum floor area of any Guest House shall be 600 square feet. The number of bedrooms and baths of an approved Guest House shall not exceed two of each. A Guest House may not be constructed prior to construction of the primary residence unless special provision has been made by the DRC, however simultaneous construction is allowed. No more than twelve (12) Guest Houses shall be allowed within the Properties unless a greater number is approved by Grand County, Colorado.

“Home Occupation” shall mean any activity which is defined as a business and which requires the issuance of a business license pursuant to the ordinances, regulations or rules of Grand County, Colorado.

“Individual Sewage Disposal System” shall mean the sanitary sewer system initially installed by each Owner as part of the construction of improvements on each such Owner’s Lot. Each Individual Sewage Disposal System installed within the Properties shall be designed in accordance with sound professional engineering criteria and specifications for the type of soils within which each such Individual Sewage Disposal System will be installed. The design of each Individual Sewage Disposal System shall include an inspection port to facilitate the annual inspection of the same.

“Lot” shall mean a portion of the Properties which is intended for Single Family Residential Use, whether improved or unimproved, and which may be independently owned and conveyed. The term shall refer to the land, if any, which is part of the Lot as well as any improvements located thereon, but shall not include Common Areas or property dedicated to the public. The boundaries of each Lot located upon and within the Properties are depicted on the Plat and labeled similarly as “Lot x-y,” where “x” represents the phase within which the Lot is located and “y” represents the Lot number within that phase. The Declarant reserves the right to create up to 300 Lots within the Properties.

“Member” shall mean any person or entity entitled to membership in the Association.

“Mortgage” shall mean a mortgage, deed of trust, a deed to secure debt, or any other form of security deed.

“Mortgagee” shall mean a beneficiary or holder of a Mortgage.

“Mortgagor” shall mean any Person who gives a Mortgage.

“Neighborhood” shall mean each separately developed residential area within the Properties, whether or not governed by a Neighborhood Association, in which the Owners of Lots may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each single-family detached housing development may constitute a separate Neighborhood, or a Neighborhood may be composed solely of Permitted Guest House Lots or some other grouping of Lots that share common features. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood subject to division into more than one Neighborhood upon development.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the Bylaws) or Neighborhood Association (as defined in Section 4.04) having concurrent jurisdiction over the property within

the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 4.04.

**“Neighborhood Assessments”** shall mean assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 7.01 and 7.03.

**“Neighborhood Association”** shall mean any association of Owners having concurrent (but subordinate) jurisdiction with the Association over any part of the Properties as described in Section 4.04.

**“Neighborhood Expenses”** shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Lots within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to the Neighborhoods.

**“New Golf Course”** shall mean Golf Parcels 1 through 4 designated on the Plat and legally described on Exhibit B attached hereto upon which a new nine-hole golf course shall be constructed by Declarant. The New Golf Course may become part of the Common Areas in the future as hereinafter described.

**“Old Golf Course”** shall mean the Pole Creek Golf Course owned and maintained by the Fraser Valley Metropolitan Recreation District, as the same exists at the time of recording of this Declaration or as it may be expanded in the future to include areas other than the New Golf Course.

**“Owner”** shall mean any Person who holds record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**“Pedestrian Purposes”** shall mean walking, hiking, snowshoeing, cross country skiing and mountain biking.

**“Permitted Guest House Lot”** shall mean any of the Lots designated on the Plat upon which a Guest House is permitted to be constructed.

**“Person”** shall mean a natural person, a corporation, a partnership, a trustee, or any other legal entity.

**“Plat”** shall mean the Final Plat for The Fairways at Pole Creek recorded in the Grand County, Colorado real property records at Reception No. \_\_\_\_\_. The Plat also satisfies

the requirements of the Act with respect to the contents of a "map" or "plat."

"**Properties**" mean the real property described on Exhibit A to this Declaration, together with the Additional Property that is subjected to this Declaration in accordance with Section 15.05.

"**Public View**" shall mean the view of property or improvements on Lots from roads within the Properties, a neighboring Lot, or Common Areas.

"**Rules and Regulations**" shall mean the various rules, regulations and requirements adopted from time to time by the Association, acting through the Board, which govern or control various aspects of living within and use of the Properties.

"**Security Deposit**" shall have the meaning assigned thereto in Section 10.05.

"**Single Family Residential Use**" shall mean the permitted development, use and occupancy of one single family residence (and one Guest House where permitted), together with a garage and customary permitted accessory uses, on a Lot.

"**Special Assessment**" shall mean assessments levied in accordance with Section 7.05.

"**Special District**" shall mean any service and utility district created as a special purpose unit of local government in accordance with Colorado law which is capable of providing certain community services to some or all of the Properties.

"**Specific Assessment**" shall mean assessments levied in accordance with Section 7.06.

"**Supplemental Declaration**" shall mean an amendment or supplement to this Declaration filed pursuant to Section 15.05 which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described.

## **ARTICLE 3.00 PROPERTY RIGHTS**

**3.01 Common Areas.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Areas, subject to:

- A. This Declaration and any other applicable covenants;
- B. Any restrictions or limitations contained in any instrument conveying such property to the Association or granting the Association possessory or use rights therein;

C. The right of the Association, acting through the Board, to adopt Rules and Regulations concerning the use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Areas;

D. The right of the Association, acting through the Board, to suspend the right of an Owner to use facilities within the Common Areas (1) for any period during which any charge against such Owner's Lot remains delinquent, and (2) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of this Declaration, any applicable Supplemental Declaration, the Bylaws, or the Rules and Regulations of the Association after notice and a hearing pursuant to Section 6.12 of the Bylaws;

E. The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Areas pursuant to Section 5.02 and in accordance with the Act;

F. The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, use, or other fees for the use of any facility situated upon the Common Areas;

G. The right of the Board to permit use of any facilities situated on the Common Areas by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

H. The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred in accordance with the Act and subject to such approval as may be required by Section 17.02;

I. The rights and obligations of the Association, acting through the Board, to restrict, regulate or limit Owners' and occupants' use of the Common Areas for environmental preservation purposes, including, without limitation, wildlife corridors, winter wildlife ranges and natural wildlife habitat; and

J. The rights and obligations of the Association, acting through the Board, to perform its functions and responsibilities, if any, in the water augmentation plan as approved by the District Court in and for Water Division 5 in Case No. 96CW175.

**3.02 Use of Common Areas by Other Persons.** Any Owner may extend such Owner's rights of use and enjoyment to the Common Areas described herein to the members of such Owner's family, or to such Owner's lessees and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases the Owner's Lot shall be deemed to assign all such rights to the lessee of such Lot. An Owner who extends or assigns its rights of

use and enjoyment to the Common Areas as described herein shall be responsible for ensuring that all members of such Owner's family, and such Owner's lessees and social invitees, as applicable, shall comply with the terms and conditions of this Declaration and the Rules and Regulations.

## **ARTICLE 4.00 MEMBERSHIP AND VOTING RIGHTS**

**4.01 Membership.** Every Owner shall be a Member of the Association. No Owner, whether one or more Persons, shall have more than one membership per Lot owned. If a Lot is owned by more than one Person, all co-Owners shall be entitled to the privileges of membership, subject to the restrictions on voting set forth in Section 4.02 and in the Bylaws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. Upon transfer of fee title to any Lot, the new Owner shall provide the Board with a copy of the deed of conveyance and of any trust deed or mortgage and the Board shall then record the transfer in the books of the Association.

**4.02 Meetings of Members; Voting.** Those Members appearing in the records of the Association at 9:00 a.m. Mountain Time on the day preceding the date of any meeting of the Members, shall be entitled to attend any such meeting, either in person or by proxy. Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 4.01. The Allocated Interest of each Member for voting purposes shall be one vote per Lot. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

### **4.03 Declarant Control of Board of Directors.**

A. The Declarant shall have all of the powers reserved in C.R.S. §38-33.3-303(5) of the Act to appoint and remove officers and members of the Board during the period of Declarant control permitted therein. The period of Declarant control shall expire no later than either sixty (60) days after conveyance to Lot Owners other than Declarant of seventy-five percent (75%) of the Lots that may be created, two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business, or two (2) years after any right to add new Lots was last exercised, whichever occurs first.

B. Not later than sixty (60) days after conveyance to Lot Owners other than Declarant of twenty-five percent of (25%) the Lots that may be created, at least one (1)

member and not less than twenty-five percent (25%) of the members of the Board must be elected by Lot Owners other than the Declarant.

C. Not later than sixty (60) days after conveyance to Lot Owners other than Declarant of fifty percent (50%) of the Lots that may be created, not less than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the members of the Board must be elected by Lot Owners other than the Declarant.

#### 4.04 Neighborhoods.

A. Every Lot shall be located within a Neighborhood. The Lots within a particular Neighborhood may be subject to additional covenants and/or the Lot Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except as otherwise required by law. Any Neighborhood which does not have a Neighborhood Association may elect a Neighborhood Committee, as described in Section 7.09 of the Bylaws, to represent the interests of Owners of Lots in such Neighborhood.

B. Each Neighborhood may require that the Association provide a higher level of service or special services for the benefit of Lots in such Neighborhood upon the affirmative vote, written consent, or a combination thereof, of sixty-seven percent (67%) of the Owners of Lots within the Neighborhood. In such event, the Association shall provide the requested services. The cost of such services shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to Sections 7.01 and 7.03.

C. Exhibit A to this Declaration, and each Supplemental Declaration filed to subject Additional Property to this Declaration, shall initially assign the property described therein to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. This Declaration or any Supplemental Declaration may be amended from time to time to redesignate Neighborhood boundaries; provided, however, two or more Neighborhoods shall not be combined without the consent of Owners of sixty-seven percent (67%) of the Owners of Lots in the affected Neighborhoods.

D. Sixty-seven percent (67%) of the Owner(s) of Lots within any Neighborhood may at any time submit an application to the Board to divide the property comprising the Neighborhood into two or more Neighborhoods. Such application shall be in writing and shall include the items required by the Act, including without limitation, a survey plat of the entire parcel indicating the boundaries of the proposed Neighborhood(s) or otherwise identifying the Lots to be included within the proposed Neighborhood(s); evidence sufficient to the Board that the applicant(s) have complied with all rules and ordinances of Grand County, Colorado and that the proposed relocation of Neighborhood boundaries does not violate the terms of any document evidencing a



security interest; the proposed reallocation of Allocated Interests, if any; and the proposed Supplemental Declaration which will implement the change. Such application shall be granted upon the filing of all required documents with the Board and the Board's recordation of a Supplemental Declaration as required by the Act, unless the Board denies the petition, in its sole discretion, in writing within thirty (30) days of its receipt. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

## **ARTICLE 5.00 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

**5.01 Common Areas.** Subject to the rights of the Owners set forth in this Declaration, the Association shall manage and control the Common Areas and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep such areas in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard. Property conveyed as Common Areas to the Association by or on behalf of Declarant shall be accepted by the Association subject to the terms of this Declaration and the Act, and such property shall thereafter be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed. Declarant shall convey the initial Common Area designated on the Plat to the Association prior to the conveyance of a Lot to any Person.

**5.02 No Reduction of Common Areas.** The Common Areas and the other portions of the Area of Common Responsibility shall not be reduced by amendment of this Declaration, by dedication to Grand County, Colorado, a Special District, or to any other local, state or federal governmental or quasi-governmental entity, or by any other means except in accordance with the Act and subject to such approval as may be required by Section 17.02.

**5.03 Maintenance of Other Property.** The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. By way of illustration and not by way of limitation, the Association may maintain and repair those roads within the Properties which have been dedicated to Grand County, Colorado until such time as Grand County formally assumes responsibility for the same.

**5.04 Enforcement.** The Association may enforce this Declaration, the Bylaws, or the Rules and Regulations in accordance with the terms and conditions of Article 14.00 hereof.

**5.05 Indemnification.** The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be made a party by reason of being or having been an officer, director, or committee member. The officers, directors, and

committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**5.06 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designated to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND THE DRC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE DRC MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON

ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

**ARTICLE 6.00  
MAINTENANCE AND ADMINISTRATION OF  
THE AREA OF COMMON RESPONSIBILITY**

**6.01 Association's Responsibility.** The Association shall maintain and keep in good repair the Common Areas and the other portions of the Area of Common Responsibility, and shall perform its other obligations and responsibilities with respect to the same, which shall include, but need not be limited to:

A. Maintaining and keeping in good repair all landscaping and other flora, parks, lakes, structures and improvements, including any private streets, bike and pedestrian pathways or trails, situated upon the Common Areas and the other portions of the Area of Common Responsibility, including without limitation, administering the Association's interest in Gaylord Reservoir and paying the Association's proportionate share of Gaylord Reservoir's annual operation and maintenance costs;

B. Maintaining and keeping in good repair all landscaping within public rights-of-way within or abutting the Properties, and landscaping and other flora within any utility easement within the Properties (subject to the terms of any easement agreement relating thereto);

C. Maintaining and keeping in good repair such portions of any Additional Property included within the Common Areas as may be dedicated by this Declaration or any Supplemental Declaration;

D. Maintaining and keeping in good repair additions to the Area of Common Responsibility by a covenant to share costs, or any contract or agreement for maintenance thereof;

E. Maintaining and keeping in good repair all wells, ponds, streams and/or wetlands located within the Properties or which are included in the Area of Common Responsibility by a covenant to share costs, or any contract or agreement for maintenance thereof, and which serve as part of the residential water, fire protection, drainage and storm water retention systems for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith;

F. Maintaining and keeping in good repair any property or facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and the Owners, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as the Declarant revokes such privilege of use and enjoyment by written notice to the Association;

G. Maintaining and keeping in good repair any environmental reserves and administering any other responsibilities assigned to the Association in connection therewith, including, without limitation, creating and maintaining wildlife corridors, winter wildlife ranges and natural wildlife habitats;

H. Administering the operation, accounting, compliance and amendment of the residential component of the water augmentation plan as approved by the District Court in and for Water Division 5 in Case No. 96CW175 (a copy of which is recorded in the Grand County, Colorado real property records at Reception No. 97007862), including, without limitation, enforcing the restrictions contained in the residential component of the water augmentation plan limiting diversions from each residential well to 15 gallons per minute and limiting irrigation of outside areas on each Lot to 1,000 square feet; collecting annual water reports from each Lot Owner on forms supplied by the Association which certify diversions from such Lot Owner's residential well; compiling the information contained in each Lot Owner's annual water report and summarizing the same in the Association's annual water report to be submitted to the Division Engineer using forms substantially similar to those attached to the augmentation plan; and enforcing the requirement that each Owner, at its own expense, install an operational water meter on the Owner's residential well, as verified by the State Water Commissioner, prior to the issuance of a certificate of occupancy for any dwelling constructed on the Properties, and thereafter maintain and monitor the same as may be deemed necessary by the Division Engineer to administer the terms of the residential water rights decree;

I. Until such time, if ever, the Properties are properly included within a Special District that provides sewage collection and treatment services for all Lots, administering the requirement that the design of each Individual Sewage Disposal System installed within the Properties be in compliance with sound professional engineering criteria and specifications for the type of soils within which each such Individual Sewage Disposal System will be installed, including the requirement that the design of each Individual Sewage Disposal System incorporate an inspection port to facilitate the annual inspection of the same;

J. Until such time, if ever, the Properties are properly included within a Special District that provides sewage collection and treatment services for all Lots,

administering the requirement that each Individual Sewage Disposal System installed within the Properties be inspected annually;

K. Until such time, if ever, the Properties are properly included within a Special District that provides sewage collection and treatment services for all Lots, enforcing the requirement that the Owner of each Lot upon which an Individual Sewage Disposal System is installed perform necessary maintenance and repair of the same (including pumping) when indicated by such inspections, when required by the recommendations of the designer of each such Individual Sewage Disposal, or otherwise when required by those applicable Colorado Department of Health maintenance and repair guidelines adopted by Grand County, Colorado from time to time;

L. Until such time, if ever, the Properties are properly included within a Special District that provides sewage collection and treatment services for all Lots, administering the Properties' participation in the Pole Creek Water Quality Monitoring Program, maintaining the Association's membership on the East Grand Water Quality Board, including the payment of the Association's annual membership assessment thereto, so long as the same remains in existence, and administering annual water quality inspection of each Owner's well to determine compliance with safe drinking water quality standards; and

M. Adopting Rules and Regulations dealing with the provisions of this Declaration, establishing procedures to provide equitable enforcement, and providing appropriate penalties for violations.

**6.02 Association Right to Contract.** By contract or agreement, the Association may, but shall not be obligated to, assign any of its obligations and responsibilities for maintenance, repair, replacement, inspection or administration described in this Article 6.00 to any properly qualified Person, including, without limitation, Grand County, Colorado, a Special District, and the East Grand Water Quality Board.

**6.03 Common Expenses.** Except as otherwise specifically provided herein, all costs associated with the maintenance, repair, replacement, inspection or administration of the Common Areas and the other portions of the Area of Common Responsibility, including all costs associated with the Association's performance, either directly or indirectly, of its other obligations and responsibilities with respect to the same, shall be Common Expenses to be allocated among all Lots as part of the Base Assessments, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for portions of the Common Areas or the Area of Common Responsibility pursuant to this Declaration, a covenant to share costs, other recorded covenants, or agreements with the owner(s) thereof.

## ARTICLE 7.00 ASSESSMENTS

### 7.01 Creation of Assessments.

A. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Lots within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 7.05; and (d) Specific Assessments as described in Section 7.06. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

B. All assessments, together with interest (at a rate not to exceed the highest rate allowed by the Act) as computed from the date the delinquency first occurs, fees, charges, late charges, costs, fines and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 7.07. Each such assessment, together with interest, fees, charges, late charges, costs, fines and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, a first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued after the date of recording of its Mortgage only to the extent provided in the Act.

C. The Association shall furnish to a Lot Owner or such Owner's designee, or to a holder of a Mortgage or other security interest or its designee, upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, properly addressed to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board, and every Lot Owner. If no statement is furnished to the Lot Owner, a holder of a Mortgage or other security interest, or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, properly addressed to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

D. Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more

installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on such Owner's Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

E. No Owner may exempt himself from liability for assessments, by non-use of Common Areas, abandonment of the Owner's Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes, except as otherwise provided in the Act.

F. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

#### **7.02 Computation of Base Assessment.**

A. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 7.04.

B. The Base Assessment shall be levied equally against all Lots in accordance with the Allocated Interest formula set forth in Section 7.02(C). The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of the Base Assessment, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under Section 7.08 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

C. Base Assessments shall be allocated equally among all Lots regardless of their size. Each Lot Owner shall be liable for a percentage of the Base Assessment applicable to such Owner's Lot determined by multiplying the Base Assessment by a fraction, wherein one (1) is the numerator representing a Lot, and the total number of Lots is the denominator. The total number of Lots is subject to change in the event Declarant exercises its reserved annexation or withdrawal rights described in Section 15.05, but the foregoing formula shall apply regardless of the number of Lots. Any overpayments that have been made in advance shall be credited to the following fiscal

year or, at the Board's discretion, refunded to each Lot Owner according to the Owners' respective Allocated Interest in the Common Expenses.

D. So long as the Declarant has the right unilaterally to annex Additional Property pursuant to Section 15.05, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

E. Within thirty (30) days after adoption of any proposed budget for the Properties, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget and notice of the amount of the proposed Base Assessment for the following year to all Lot Owners and shall set a date for a meeting of the Lot Owners to consider ratification of the budget and the Base Assessment not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting at least seventy-five percent (75%) of all Lot Owners vote to reject the budget and the Base Assessment, the budget and Base Assessment shall be ratified, whether or not a quorum is present. In the event that the proposed budget and the Base Assessment are rejected, the periodic budget and the Base Assessment last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget and Base Assessment proposed by the Board.

### **7.03 Computation of Neighborhood Assessments.**

A. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year, including a capital contribution to establish a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood, in accordance with a budget separately prepared in accordance with Section 7.04. The Board shall be entitled to set each Neighborhood's budget only to the extent that this Declaration, any Supplemental Declaration, or the Bylaws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to that Neighborhood's budget.

B. Neighborhood Expenses shall be allocated equally among all Lots within the Neighborhood benefitted thereby regardless of their size. Each Lot Owner included



within a Neighborhood shall be liable for a percentage of the Neighborhood Assessment applicable to such Owner's Lot determined by multiplying the Neighborhood Assessment by a fraction, wherein one (1) is the numerator representing a Lot, and the total number of Lots included within the Neighborhood is the denominator. The total number of Lots within a Neighborhood is subject to change in the event of any of the permitted changes to a Neighborhood described in Section 4.04 is implemented, but the foregoing formula shall apply regardless of the number of Lots within a Neighborhood. Any overpayments that have been made in advance shall be credited to the following fiscal year or, at the Board's discretion, refunded.

C. Within thirty (30) days after adoption of any proposed budget for a Neighborhood, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Neighborhood budget and notice of the amount of the proposed Neighborhood Assessment for the following year to all Owners of Lots located within the Neighborhood which is the subject of the Neighborhood Assessment, and shall set a date for a meeting of such Lot Owners to consider ratification of the Neighborhood budget and the Neighborhood Assessment not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting at least seventy-five percent (75%) of the Owners of Lots located within the Neighborhood which is the subject of the Neighborhood Assessment vote to reject the Neighborhood budget and the Neighborhood Assessment, the Neighborhood budget and Neighborhood Assessment shall be ratified, whether or not a quorum is present. In the event that the proposed Neighborhood budget and the Neighborhood Assessment are rejected, the periodic Neighborhood budget and the Neighborhood Assessment last ratified by the Owners of Lots located within the Neighborhood which is the subject of the Neighborhood Assessment shall be continued until such time as such Lot Owners ratify a subsequent Neighborhood budget and Neighborhood Assessment proposed by the Board.

**7.04 Reserve Budget and Capital Contribution.** The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the budget period.

**7.05 Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least sixty-seven percent (67%) of

the total votes allocated to Lots which will be subject to such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**7.06 Specific Assessments.** The Board shall have the power to specifically assess expenses of the Association against Lots that (a) receive benefits, items, or services not provided to all Lots within a Neighborhood or within the Properties that are incurred upon request of the Owner of a Lot for specific items or services relating to the Lot, or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests. The Association may also levy a Specific Assessment against any Lot or Neighborhood to reimburse the Association for costs incurred in bringing the Lot or Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and/or the Rules and Regulations, provided the Board gives prior notice to the Lot Owner or the Neighborhood Committee, as applicable, and an opportunity to cure the alleged lack of compliance.

**7.07 Lien for Assessments.** Upon the recordation of this Declaration, the Association shall have a perfected lien against each Lot to secure payment of delinquent assessments, as well as interest, fees, charges, late charges (subject to the limitations of the Act), costs of collection (including attorneys' fees), and fines. Such lien shall be superior to all other liens and encumbrances on a Lot, except those liens and encumbrances described in the Act as being prior and superior to the lien described in this paragraph. Such lien, when delinquent, may be enforced by suit, judgement, and judicial or nonjudicial foreclosure in the manner provided in the Act, or by deed in lieu of foreclosure. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same. The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments except as otherwise provided in the Act.

**7.08 Date of Commencement of Assessments.** The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article 7.00, whichever is later. The first Base Assessment and Neighborhood Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

**7.09 Failure to Assess.** Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice as may be required by the Act shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments, if any, on the same basis as for the last year for which an

assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

**7.10 Capitalization of Association.** Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to \$200.00 per Lot for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment or Neighborhood Assessment, if any, and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

**7.11 Exempt Property.** The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- A. All Common Areas and any other property owned by the Association from time to time;
- B. Any property dedicated to and accepted by any governmental authority or public or private utility provider; and
- C. Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

## ARTICLE 8.00 INSURANCE AND CASUALTY LOSSES

### 8.01 Association Insurance.

A. Commencing not later than the time of the first conveyance of a Lot to a Person other than a Declarant, the Association, acting through its Board or its duly authorized agent, shall obtain and thereafter maintain, to the extent reasonably available, the following insurance coverages:

- 1. Property insurance on the Common Areas through a so-called blanket "risks of direct physical loss" property insurance policy, if reasonably available, covering all insurable improvements on the Common Areas and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If blanket "risks of direct physical loss" coverage is not generally available at reasonable cost, then "broad form" coverage, including coverage for vandalism and malicious mischief, shall be

obtained. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property, less applicable deductibles, at the time the insurance is purchased and each renewal date. In determining the face amount of the property insurance policy required pursuant to this paragraph, land, excavations, foundations and other items normally excluded from property insurance policies shall be excluded from the calculation of full replacement cost.

2. If requested by a Neighborhood and at the Association's option (unless mandated by a Supplemental Declaration applicable to the Neighborhood), property insurance on common properties within such Neighborhood through a so-called blanket "risks of direct physical loss" property insurance policy, if reasonably available. If blanket "risks of direct physical loss" coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. Such coverage may be in such form as the Board deems appropriate. The face amount of the policy shall be sufficient to cover the full replacement cost of all structures to be insured. The costs thereof shall be charged to the Owners of Lots within the benefitted Neighborhood as a Neighborhood Assessment. All policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood Association, if any.

3. Commercial general liability insurance on the Common Areas and the other Areas of Common Responsibility, insuring the Board, the Association, the Association's management agent, if any, and their respective employees, agents and all other Persons acting as agents, against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas and the other Areas of Common Responsibility. The Declarant shall be included as an additional insured on the commercial general liability policy in its capacity as both a Lot Owner and a member of the Board. The other Lot Owners shall be included as additional insureds only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas and the other Areas of Common Responsibility. The commercial general liability policy shall specifically cover claims of one or more insured parties against other insured parties. If generally available at reasonable cost, the "commercial liability insurance" policy shall have at least a \$1,000,000.00 combined single limit as respects bodily injury and property damage and at least a \$3,000,000.00 limit per occurrence and in the aggregate. The Board may increase these limits if, in its reasonable judgement, it determines the limits are no longer sufficient.

B. If the insurance coverages described in Section 8.01(A) are not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association, through its Board, shall promptly cause notice of that fact to be hand delivered or sent prepaid by United

States mail to all Lot Owners, or to all Lot Owners within an affected Neighborhood, as the case may be.

C. Except as otherwise provided above with respect to property within a Neighborhood, premiums for all insurance on the Common Areas and the other portions of the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

D. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 6.12 of the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Lot Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 7.06.

E. All insurance coverages obtained by the Board shall:

1. Be written with a company authorized to do business in Colorado which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the closest equivalent rating available;

2. Be written in the name of the Association as trustee for the benefitted parties with such additional named insured endorsements as required by Section 8.01(A) or the Act. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Lots within the Neighborhood, and their Mortgagees, as their interests may appear;

3. Vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;

4. Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees and exclude individual Owner's policies from consideration under any "other insurance" clause so that if, at the time of a loss under any Association policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the Association's insurance policy, the Association's insurance shall provide primary insurance;

5. Have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Grand County area;

6. Waive subrogation as to any claims against the Association's Board, officers, employees, and its manager (if any), the Owners or members of the Owner's household, and their tenants, servants, agents, and guests;

7. Provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the Association policy or be a condition to recovery under the policy; and

8. Commit to issue certificates or memoranda of insurance to the Association and, upon request, to any Lot Owner or holder of a Mortgage or other security interest, reciting that the insurer issuing the policy may not cancel or refuse to renew the policy until thirty (30) days after the proposed cancellation or nonrenewal has been mailed to the Association, and each Lot Owner and holder of a Mortgage or other security interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

F. The Board shall be required to use reasonable efforts to secure insurance policies containing endorsements that:

1. Waive the insurer's rights to repair and reconstruct instead of paying cash; and

2. Preclude cancellation, invalidation, suspension, or nonrenewal by the insurer on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure.

G. The Association shall also obtain, as a Common Expense: worker's compensation insurance if and to the extent required by law; directors' and officers' liability coverage, if reasonably available; and flood insurance, if advisable.

H. The Association also shall obtain, as a Common Expense, a fidelity bond or bonds or fidelity insurance covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to the greater of \$50,000.00 or one-sixth of the annual Base Assessments on all Lots for the current fiscal

year plus reserves on hand. Bonds or insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

I. The Association may carry any other insurance it considers appropriate, including insurance on Lots it is not obligated to insure, to protect the Association or the Lot Owners.

J. All insurance policies required by law to be obtained and maintained by the Association shall comply in all respects with the requirements of the Act which are in effect from time to time.

#### **8.02 Owners Insurance.**

A. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "risks of direct physical loss" property insurance on such Owner's Lot(s) and structures thereon providing full replacement cost coverage less a reasonable deductible.

B. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on a Lot, the Owner thereof shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 10.00 of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

C. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and the standards for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

#### **8.03 Damage and Destruction.**

A. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction; provided, however, the insurance proceeds for the loss related to such damage or destruction shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage or other security interest. Repair or reconstruction, as used in

this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

B. Any damage to or destruction of the Common Areas shall be repaired or reconstructed unless the Lot Owners representing at least eighty percent (80%) of the total votes of the Association decide within sixty (60) days after the loss not to repair or reconstruct.

C. Any damage to or destruction of the common property of any Neighborhood Association shall be repaired or reconstructed unless the Lot Owners representing at least eighty percent (80%) of the total votes of the Neighborhood Association decide within sixty (60) days after the damage or destruction not to repair or reconstruct.

D. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Areas or common property of a Neighborhood Association shall be repaired or reconstructed, except as otherwise provided in the Act.

E. If determined in the manner described above that the damage or destruction to the Common Areas or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

F. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed as provided in the Act.

G. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the amount of any shortfall shall be a Common Expense and the Board shall be entitled to levy assessments to cover the amount of the shortfall in accordance with the provisions of Article 7.00.



**ARTICLE 9.00  
CONDEMNATION**

If any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least eighty percent (80%) of the total votes in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

A. If the taking involves a portion of the Common Areas on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Areas to the extent available, unless within sixty (60) days after such taking at least eighty percent (80%) of the total votes of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 8.03 regarding funds for the repair of damage or destruction shall apply.

B. If the taking does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed as permitted by the Act.

**ARTICLE 10.00  
DESIGN REVIEW COMMITTEE**

**10.01 Philosophy and General Rule**

A. The area of in which the Properties are located is one of great natural beauty which Declarant intends to protect and enhance. While recognizing that development of the Properties as described in this Declaration will inevitably entail disturbance of local ecosystems, it is the goal of Declarant that this disturbance be minimized to the greatest extent reasonably possible and that structures and other improvements within the Properties be designed and constructed so as to further this goal.

B. No structure shall be placed, erected, or installed upon any Lot, and no improvements (including, without limitation, staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and approval of the DRC as provided herein.

C. Any Owner may remodel, paint or redecorate the interior of structures on such Owner's Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the

Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

D. All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer. Building permit applications submitted to the Grand County Building Department for construction of dwellings on the Properties shall include plans and specifications for engineered building foundations and under-foundation drain systems.

E. This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Areas by or on behalf of the Association.

#### **10.02 The DRC and Its Functions.**

A. The members of the DRC shall be appointed by the Board for one year terms. Initially, the Board shall appoint at least three, but not more than five, persons as DRC members. Members need not be Owners or representatives of Owners and may, but need not, include architects, engineers and similar professionals. Members of the DRC shall serve at the pleasure of the Board; their tenure may be terminated at any time, with or without cause.

B. The members of the DRC shall not be entitled to any compensation for services performed as members of the DRC but shall be entitled to reimbursement of expenses incurred. Notwithstanding the foregoing, however, nothing contained herein shall preclude any member of the DRC from performing services for the DRC in any capacity other than as a member of the DRC (such as an architect or engineer performing detailed professional evaluations of proposed building plans) and receiving compensation therefor, so long as the arrangement has been approved by a majority of disinterested DRC members.

C. The DRC shall have exclusive jurisdiction and responsibility for administration of the Design Review Guidelines and for the review of applications for construction and modifications under this Article 10.00. The Board may establish and charge reasonable fees for the DRC's review of applications hereunder and may require such fees to be paid in full to the DRC prior to review. In addition, the DRC may impose, in connection with any particular review, an additional fee to cover its anticipated expenses for conducting such review, including the anticipated cost of obtaining professional guidance from a licensed architect or other appropriate licensed professional. In the event such an additional fee is imposed, the Board may require that the additional fee be paid in full prior to DRC review.

### 10.03 Design Review Guidelines and Procedures

A. The Declarant shall prepare the initial Design Review Guidelines which shall apply to all construction activities within the Properties that are subject to review as provided in Section 10.01. The Design Review Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use thereof.

B. The DRC shall adopt the Design Review Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Review Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

C. The DRC shall make the Design Review Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Review Guidelines. In the Declarant's discretion, the Design Review Guidelines may be recorded in the public records of Grand County, Colorado, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Review Guidelines was in effect at any particular time.

D. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements, shall be submitted to the DRC for review and approval (or disapproval). In addition, information concerning domestic water and irrigation systems, a plan for an Individual Sewage Disposal System, drainage, lighting, plans and specifications for an engineered building foundation and under-foundation drain system and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the DRC may consider, among other things, the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation.

E. In the event the DRC fails to approve or to disapprove any application within sixty (60) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Review Guidelines unless a variance has been granted in writing by the DRC pursuant to Section 10.03(G).

F. Approval of proposals, plans and specifications, or drawings for any work

done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans, and specifications, drawings, or other matters subsequently or additionally submitted for approval.

G. The DRC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (1) be effective unless in writing; (2) be contrary to this Declaration; or (3) estop the DRC from denying a variance in other circumstances. For purposes of this paragraph, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### 10.04 Enforcement.

A. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a Specific Assessment.

B. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Review Guidelines, other than the Declarant, may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

C. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the DRC.

**10.05 Security Deposit.** Prior to the commencement of any work approved by the DRC, the Person wishing to commence such work shall pay to the DRC, in addition to the fees described in Section 10.02(C), a deposit (the "Security Deposit") which shall secure that Person's prompt and faithful compliance with the terms and conditions of this Article, including, without limitation, the requirement that any construction or modification be completed according

to the plans approved by the DRC, and that any damage done to the roads, easements or Common Areas will be properly repaired and revegetated, if required. In the event such damage or revegetation has not been accomplished within thirty (30) days following the issuance of a Certificate of Occupancy for the dwelling or, in the event there is no dwelling involved, within thirty (30) days after substantial completion, as determined by the DRC, then the deposited funds may be used by the DRC to repair the damage or complete the revegetation. Prior to the use of such funds, however, the DRC shall give the Person making the Security Deposit ten (10) days' written notice of its intention to make use of the Security Deposit. Notice shall be given by certified mail to the address or any address shown on the plans and shall be posted on the Lot. Should the deficiency be remedied during the ensuing ten (10) days, then the Security Deposit shall be refunded. The Security Deposit shall initially be in the amount of \$2,000.00 but the DRC may, by rule, adopt a greater or lesser amount, or may adopt a formula to determine an amount, as experience dictates. The DRC may also provide for different amounts for different types of projects and may provide for retention of the Security Deposit for a period not to exceed one (1) year after substantial completion in the event revegetation is required.

**10.06 Limitation of Liability.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the DRC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. Any Owner or other person or entity submitting plans to the DRC for approval, by doing so, agrees and covenants that such Owner will not bring any action or suit against the Board, the DRC, its members, or their advisers, employees, or agents which in any way relates to such plans or the decision of the DRC in relation thereto.

## **ARTICLE 11.00 DESIGN REQUIREMENTS AND ARCHITECTURAL STANDARDS**

The DRC has the right to review, in its reasonable discretion, all development described in Section 10.01(B) for conformance with the general purposes of this Declaration, including but not limited to the following:

**11.01 Setbacks.** No structure shall be located on any Lot outside the Lot's designated Building Envelope; provided, however, a well, an Individual Sewage Disposal System, and such ancillary structures incidental to such uses as may be approved by the DRC, may be located outside the Building Envelope if approved by the DRC. In no case shall any structure be located less than thirty (30) feet from any Lot boundary line, unless the Plat reflects a greater or lesser setback with respect to a particular Lot. Structures on Lots which are adjacent to either the Old Golf Course or the New Golf Course shall be set back at least fifty (50) feet from the common

boundary between the Lot and such golf course.

**11.02 Fences and Walls.** In order to maintain the open character of the Properties and to minimize interference with the natural movement of wildlife, fencing shall be limited and is generally discouraged. Fencing shall be permitted by the DRC only around the perimeter of limited areas within Lots but is strictly prohibited for the entire perimeter of Lots. Notwithstanding anything to the contrary contained herein, no fencing shall be permitted along any Lot line contiguous to either the Old Golf Course or the New Golf Course. No fence or wall shall be permitted to extend within the minimum building setback area set forth in Section 11.01 without the approval of the DRC as provided in this Article 11.00. Fences shall not exceed a height of 42" unless used as a screen wall adjacent to structures.

**11.03 Signs.** Street signs of no more than two (2) square feet each shall be provided by the Declarant, as well as an entry sign with an area no greater than fifty (50) square feet. There shall be no other signs except signs used to identify the residential addresses and/or names of occupants based on a standard approved by the DRC and directional signs on trails, Common Areas and intersections provided by the Association. The area of any such sign shall not exceed six (6) square feet on any Lot or four (4) square feet on any Common Area. "For Sale" signs shall be permitted only on a temporary basis so long as they do not exceed four (4) square feet. Other man-made structures located along the roads for delivery or identification such as mailbox pedestals, entry monuments, gates, etc., shall only be permitted if approved by the DRC and shall be standardized for all Lots.

#### **11.04 Architectural Standards.**

A. In its review of architectural plans, the DRC shall be guided by the basic precepts set forth in Article 1.00 and Section 10.01(A). The DRC shall encourage architectural design incorporating the use of natural materials, steep roof pitches, colors that blend with the landscape and ~~design elements~~ that adapt to the topography and vistas of the site. These design criteria discourage imported design styles better suited to other regions, cultures or geography such as Tudor, Colonial, Southwestern, Victorian, etc.

B. The following design standards shall be followed for all structures:

1. **Building Siting.** All structures shall conform to the Building Envelope and setback criteria set forth in the Plat and in this Declaration. To the extent practicable, residences constructed on Lots located north of Pole Creek and along the west boundary of the Properties will be sited, and the trees on the Lots preserved, so as to screen the residences constructed on such Lots from the view of the adjoining property currently owned by YMCA of the Rockies, a Colorado nonprofit corporation.

2. Driveway Access and Parking. Driveways shall be constructed on each Lot by the Lot Owner with no more than one access opening (except in the case of a circular driveway two access opening shall be permitted) in a location approved by the DRC. Driveway clearings should be not more than sixteen (16) feet in width and constructed to provide all-weather access to the building site. No dwelling shall be constructed unless there is concurrently provided on the same lot adequate off-street parking for at least four automobiles. The placement of the spaces shall be shown on the plans submitted to the DRC prior to construction. All driveways and parking areas shall be asphalt paved.

3. Structures. Materials, colors and building mass shall be generally regulated by the following standards:

a. Natural materials of solid wood siding (preferably horizontal or diagonal), stone, textured concrete, brick, colored stucco and/or glass shall be used on building exteriors. Roof materials may include heavy-weight asphalt shingles, raised metal seam sheeting or concrete tile, or comparable non-combustible materials. Metal or plastic trim, chimney flues, etc. shall be colored or painted to blend into the building materials and the DRC may require the enclosure of such flues. Similarly, synthetic materials may be permitted if they are colored and textured to represent natural materials as solely determined by the DRC. Log homes which use full-length dimensionally-cut logs are acceptable. The Design Review Guidelines may allow the use of other materials for wall and roof surfaces, provided such materials are designed and located in harmony with surrounding structures and natural land features, and shall not be offensive in color in the opinion of the DRC.

b. Colors shall include a limited range of natural wood tones ranging from rust red, brown, ochre, gray, and green. Color hues shall be dark enough to blend into the landscape. Wood may have a clear finish or stain, but shall not be painted.

c. Building mass shall provide for varied architectural forms and relief. Simple geometric masses such as saltbox or A-frame are not consistent with these standards. Roof pitches shall be a minimum of 6/12. Except for log homes described in Section 11.04(B)(3)(a) above, modular homes and any other homes that are constructed off-site and assembled on a Lot are prohibited unless the DRC, in its sole discretion, determines that any such home is consistent with these architectural standards and the Community-Wide Standard. In no event shall mobile homes be permitted within the Properties except as otherwise permitted by this Declaration in connection with active ongoing construction on a Lot.

**11.05 Architectural Guidelines.** Certain architectural guidelines, in addition to the Design Review Guidelines, shall be used by the DRC to evaluate the suitability of plans and, although subjective, shall be the basis for approving plans that do not clearly adhere to the standards.

A. If the structure is effectively screened from Public View and from the view from Building Envelopes of adjoining Lots, the DRC may accept variation from the standards in the use of materials, colors and building mass.

B. Although architectural homogeneity is not a standard, the intent of plan review shall be to ensure uniform standards of high quality in the use of materials and workmanship.

**11.06 Landscaping.** Landscaping on Lots and around buildings shall be subject to approval by the DRC. There shall be a minimum of tree removal along driveways and in areas open to Public View. Irrigated areas shall be limited to entry and yard locations adjacent to buildings and kept to a minimum to limit water consumption. In no case shall irrigated areas exceed 1,000 square feet per Lot. Irrigation or lawn watering is prohibited in the vicinity of Individual Sewage Disposal Systems.

**11.07 Clearing Plan.**

A. Declarant has provided initial clearing on each Lot to accommodate construction of buildings within such Lot's Building Envelope and for views from the Building Envelope. Additional selective clearing of trees on Lots for completion of site improvements and/or providing views from a Lot's Building Envelope shall be permitted upon submittal of a clearing plan to, and approval by, the DRC. Any proposed tree removal plan shall be subject to compliance with any wildfire mitigation plan adopted by Grand County, Colorado from time to time, and shall give proper consideration to the privacy of adjacent Lot Owners and Public Views.

B. Those trees proposed to be removed shall be marked with bright plastic ribbons at the time of submittal of the clearing plan, allowing adequate time for inspection by the DRC. After receiving written notice from a Lot Owner to clear trees outside of a Building Envelope, the DRC shall have thirty (30) days to give written approval to the clearing plan and to confirm with spray paint markers which trees may be removed. Failure by the DRC to approve or modify the clearing plan within thirty (30) days shall represent approval of the clearing plan. Request for approval of a clearing plan may be submitted at the time architectural building plans are submitted to the DRC for approval. The DRC may require revegetation or screen plantings in cleared areas as part of an approved plan. Any trees over 6 inches in diameter measured 18 inches from the ground removed without DRC approval as either part of the building plans, a clearing plan, or by written consent of the DRC, shall be in violation of this Declaration and the



Owner of any Lot that is in violation shall be subject to a mitigation assessment of up to \$500 per tree as determined by the DRC and/or by a revegetation requirement at the DRC's sole discretion, but after notice and opportunity for hearing pursuant to Section 6.12 of the Bylaws. Notwithstanding the foregoing, however, Owners may remove dead and diseased trees, brush or lifeless limbs without DRC approval. When notified in writing by the DRC of diseased vegetation or trees, fallen trees or trees damaged by natural causes, an Owner shall remove such within a reasonable time and at the Owner's expense. If an Owner fails to comply, the Board or the DRC may remove or cause such trees to be removed and charge the Owner for the cost thereof as a Specific Assessment.

**11.08 Cleanup.** In the event trees or brush are allowed to be felled or trimmed as provided herein, the Owner shall remove the remnants, including slash, from the Lot. Trees cut into firewood, stacked neatly and screened shall be deemed to meet the requirement of removal from the Lot. Stumps may be left if cut off to ground level, or they shall be removed and hauled away. In the event an Owner does not properly remove and cleanup, after notice and an a reasonable opportunity to cure, the Board or the DRC may perform the cleanup and charge the Owner for the cost thereof as a Specific Assessment.

**11.09 Noxious Weed Control.** The Association shall enforce the removal of noxious weeds as defined by the Grand County Noxious Weed Control provisions and requirements as recorded in the Grand County, Colorado real property records at Reception No. 96003640, and notify appropriate public agencies when enforcement measures are required.

**11.10 Continuity of Construction.** The entire exterior of any building shall be completed within twelve months from ground breaking. In the event there is a violation of this requirement, or if construction is abandoned for a period in excess of ninety (90) days, the DRC may assess a Specific Assessment against the Owner in an amount not less than \$100.00 per day. Such an assessment may only be made after notice and opportunity for hearing pursuant to Section 6.12 of the Bylaws. At such hearing the only defense shall be that the failure to complete construction on a timely basis, or the abandonment, was caused by a circumstance beyond the Owner's control.

## ARTICLE 12.00 OVERALL RESTRICTIONS AND REQUIREMENTS

### 12.01 General Use Restrictions.

- A. Lots shall be used only for Single Family Residential Use.
- B. No noxious or offensive trade or activity shall be carried on upon any building site nor shall anything be done thereon which may be or become an annoyance or nuisance to any Neighborhood or the users of either the Old Golf Course or the New Golf Course as determined by the Board.

C. No trailers, tents, shacks, or any temporary buildings or structures shall ever be permitted on any portion of the Properties, except an actual construction trailer or trailers may be permitted by the DRC in connection with ongoing construction on any Lot. In no event shall any such temporary building or structure at any time be used for human habitation temporarily or permanently.

D. The minimum floor area permitted for primary residences constructed upon any Lot shall be 2,200 square feet, exclusive of garages, Basements, cellar or attic area, decks, porches, terraces, walkways or roof overhangs. In the case of a two story primary residence, the minimum ground floor area shall be 1,800 square feet. The DRC may allow minor deviation from these requirements upon a finding of special circumstances. The minimum floor area permitted for a Guest House shall be 600 square feet.

E. No building shall exceed 35 feet in height. The height of a building will be determined from the average height of the roof line to the average grade of the ground under the building. Should the height restriction imposed by Grand County, Colorado (or the formula used for calculating the same) conflict with this height restriction or formula, the more restrictive shall apply.

F. All lighting within the Properties shall use low wattage bulbs or lamps. All lighting shall be directed away from adjoining Lots and Public Views. Except for signage lighting permitted within the Common Areas, uplighting is strictly prohibited within the Properties.

G. No animals or poultry of any kind other than house pets shall be kept or maintained on any part of a Lot without the approval of the Board. No animals may be raised, bred or kept for any commercial purposes. House pets may be any domesticated animal that is normally kept with human habitation such as a dog, cat, bird, or other small mammal as well as non-poisonous reptiles. The number of pets in each household shall be maintained at a level where they are under complete control and care by the occupant and are of no nuisance from noise, odor or trespass to any other portion of the Properties. Any complaint shall be brought before the Board and the Board shall have the right to limit the activity of such pets on any Lot or prohibit them from continued habitation on the Lot if further complaints occur. Animals within the Properties must be either kept within an enclosure, on a leash being held by a person capable of controlling the animal, or under command control. Pets shall be allowed to accompany Owners and their guests on trails when under leash or command control, but Owners shall bear full responsibility for animals not under leash. Each Owner, and such Owner's guests or tenants, shall have the duty and responsibility to clean up after an animal when on or off such Owner's Lot.

H. Oil drilling, oil development operations, refining, mining operations of any kind, or quarrying shall not be permitted upon or in any of the Properties, nor shall

oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any of the Properties.

I. With the exception of the vehicles described in the immediately succeeding paragraph, no motorized vehicle whatsoever may be kept or placed upon any portion of the Properties except in an enclosed garage or other storage structure screened from Public View in a manner approved by the DRC. Parking of commercial vehicles, recreational vehicles, mobile homes, boats or other watercraft, or other oversized vehicles, stored vehicles, unregistered vehicles or inoperable vehicles, with or without wheels, in places other than enclosed garages or approved screened storage structures, is prohibited. This restriction shall not prohibit commercial or construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to the Properties, and shall not apply to the initial construction by Declarant or by other Owners. Garages shall be attached to or part of the main dwelling. The DRC may permit a detached garage if the DRC determines that a detached garage is reasonably required due to site conditions. Garage doors are to be kept closed when the garage is not in active use.

J. No automobile or pickup or utility truck (van) with a capacity of one-half ton or less, may be parked outside of the parking spaces specified in the plans submitted to the DRC pursuant to Section 10.03, except in an enclosed garage or other storage structure screened from Public View in a manner approved by the DRC.

K. No site shall be used for any type or kind of exterior storage of construction equipment or materials, except during construction. Such materials and equipment shall be expeditiously removed upon completion of the construction and in no case shall such external storage be permitted longer than two (2) years after a permit is issued or construction begins, whichever is earlier.

L. No business or commercial enterprise shall be allowed to operate within the boundaries of the Properties, except for Home Occupations as long as they provide adequate off-street parking and do not primarily engage in direct sale of goods or services on the premises (whether at retail or wholesale), and provided that the following additional conditions are observed or satisfied:

1. All operations shall be conducted entirely within the dwelling unit, and/or accessory structure, with the exception of child care services, which are strictly prohibited;
2. The Home Occupation shall be conducted exclusively by the permanent residents of the dwelling unit;
3. The Home Occupation must clearly be a secondary use of the

residence;

4. There shall be no permanent evidence outside of the home, visible or audible, including signs, that a Home Occupation is being conducted therein; and

5. There shall be no excess vehicular traffic, deliveries or trash. The determination of what constitutes excess vehicular traffic, deliveries or trash shall be made solely by the Board.

M. Common Areas shall be used only for Pedestrian Purposes or for such other uses as may be permitted by the Board pursuant to its Rules and Regulations.

N. Except for a primary residence and a Guest House (if permitted), no outbuildings shall be constructed or erected on any Lot without the prior written approval of the DRC. In making a determination to approve or deny an outbuilding, the DRC shall assess the impacts to neighboring Lots as to size, location and design consistent with the primary residence. If allowed, all outbuildings shall be constructed of the same exterior siding and roofing materials as the primary residence.

O. All utilities, including but not limited to electricity, natural gas, telephone, and cable, shall be installed underground. In the event an Owner does not properly remove and clean up any residual debris after construction or installation of any utility, the Board or the DRC is hereby authorized to cause the cleanup to be done at the Owner's expense and, if not timely paid, the Board may collect the unpaid sum in the same manner as a Specific Assessment.

P. All equipment, service yards, woodpiles, above ground storage, trash containers, satellite dishes and the like on any Lot shall be screened by adequate planting or fencing so as to conceal them from Public View. All rubbish and trash shall be regularly removed and shall not be allowed to accumulate. In the case of a violation, the Board may go on the Lot and remove such rubbish and trash, or cause it to be removed, and charge the Owner all costs therefor as a Specific Assessment. Trash shall be stored in "bear-proof" containers as approved by the North American Bear Society or by the Division of Wildlife of the State of Colorado. Individual trash receptacles shall be stored inside dwelling units or behind screening and out of Public View except on the day of trash pick-up.

Q. Burning is prohibited except with a valid burn permit issued by the governmental agency with jurisdiction and in burners approved by the Board or the DRC as to location, design, materials and construction. Burning is strictly prohibited except at such hours as may be established by the Board consistent with the burn permit.

R. Each Lot, including all structures, parking areas, Individual Sewage Disposal Systems, and other improvements comprising the Lot, shall be maintained in good condition by the Lot Owner as required by the Rules and Regulations and this Declaration. The responsibility for maintenance shall include the responsibility for repair and replacement, as necessary. Without limiting the generality of the foregoing, the Owner of each Lot upon which an Individual Sewage Disposal System is installed shall perform necessary maintenance and repair of the same (including pumping) when indicated by such inspections, when required by the recommendations of the designer of each such Individual Sewage Disposal, or otherwise when required by those applicable Colorado Department of Health maintenance and repair guidelines adopted by Grand County, Colorado from time to time.

## 12.02 Utilities.

A. Wastewater Treatment. The design of each Individual Sewage Disposal System installed within the Properties shall be in compliance with sound professional engineering criteria and specifications for the type of soils within which each such Individual Sewage Disposal System will be installed. The design of each Individual Sewage Disposal System shall incorporate an inspection port to facilitate the annual inspection of the same. Individual Sewage Disposal Systems shall be subject to annual inspection by the Association or its designee in accordance with this Declaration and the Rules and Regulations. No Individual Sewage Disposal System shall be constructed, altered or allowed to remain or to be used on any Lot without the Owner thereof first having applied for and received the necessary approvals from the appropriate local and state agencies. Only standard or engineered septic systems and leach fields shall be permitted Individual Sewage Disposal Systems within the Properties. The design engineer of each Individual Sewage Disposal System shall provide supervision during the installation of the same and verify to Grand County, Colorado that the system has been installed in accordance with its intended design. An engineering report which includes information concerning soils profile holes, deep boring holes, representative percolation tests and percolation rates for each representative percolation test, has been prepared and is on file at the Grand County Department of Planning and Zoning. All prospective buyers of Lots are strongly encouraged to review this report prior to making their purchase decision. By purchasing a Lot, each Owner shall be deemed to have determined the constructability of the Individual Sewage Disposal System which could be constructed upon their Lot.

B. Water. Concurrently with the transfer by the Declarant of the Common Areas to the Association, the Declarant shall transfer all of Declarant's right, title and interest in and to the residential component of the water augmentation plan approved by the District Court in and for Water Division 5 in Case No. 96CW175, a copy of which is recorded in the Grand County, Colorado real property records at Reception No. 97007862, together with sufficient water rights to satisfy the residential requirements of

the Properties as set forth in the water augmentation plan. Upon such conveyance, the Board shall have sole jurisdiction over the operation, accounting, compliance and amendment of the water augmentation plan. The approved water augmentation plan provides, *inter alia*, that water to each Lot shall be provided by a well constructed upon such Lot, and that each Lot Owner shall be responsible for maintaining the well constructed upon such Owner's Lot. The water augmentation plan and applicable Colorado law requires that prior to the drilling of any well, a well permit must be obtained by the Lot Owner from the Colorado Division of Water Resources. The water augmentation plan allows each Lot Owner to obtain a permit to drill a well to serve a single family residence on the Lot and to irrigate up to one thousand (1,000) square feet of outside area thereon. The Owner of a Permitted Guest House Lot upon which a Guest House is allowed by the terms of this Declaration shall be entitled to drill a well capable of serving a single family residence, a Guest House and one thousand (1,000) square feet of outside irrigation area. Each Owner, at its own expense, shall install an operational water meter on the Owner's residential well, as verified by the Colorado Water Commissioner, prior to the issuance of a certificate of occupancy for any dwelling constructed within the Properties, and thereafter each Owner shall maintain and monitor the same as may be deemed necessary by the Division Engineer to administer the terms of the residential water rights decree applicable to the Properties. No more than 15 gallons per minute may be diverted from any residential well constructed on the Properties. Each Owner is obligated to make annual water reports to the Association on forms supplied by the Association certifying diversions from the Owner's residential well. The Association shall be responsible for compiling the information contained in each Lot Owner's annual water report and summarizing the same in the Association's annual water report to be submitted to the Division Engineer.

**12.03 Sanitation District.** Each Owner shall utilize the services and facilities of any Special District with which the Association contracts as provided herein, and each Owner shall be responsible for compliance with all rules and regulations, and paying all fees, charges and rates as may be determined by the Special District from time to time. In the event the Association contracts with any Special District to provide inspection, maintenance or other services within the Properties, Owners shall utilize such services in accordance with the terms of such contract. If at any time Grand County, Colorado requires all Lots within the Properties to connect to a central sanitary sewer system owned and operated by a Special District, all Owners shall be required to consent to inclusion within such Special District and to connect their household sanitary sewer system to the Special District's central sanitary sewer system. Upon such inclusion and connection, the Association shall have no further responsibility to enforce any sanitary sewer design, inspection, maintenance, repair or water quality monitoring obligation imposed upon the Association by this Declaration or the Plat, or for paying any costs associated therewith.

**12.04 Guest House Limitations.** Guest Houses may be constructed on a maximum of 12 of the Permitted Guest House Lots as designated by Declarant. Such designation shall be in

the deed by which Déclarant transfers the Permitted Guest House Lot to an Owner or in a separate written instrument acknowledged by the Declarant and in recordable form, either of which contains the following legend:

*This Lot is approved for construction of Guest House #x of 12*

whereby "x" represents the number of Guest Houses then approved for construction within the Properties. The Declarant shall be responsible for providing written notification to the Grand County Department of Planning and Zoning of each such approval.

**12.05 Restricted Activities.** The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

- A. Capturing, trapping, hunting or killing of wildlife within the Properties and the discharge of fire arms, except in circumstances posing an imminent threat to the safety of persons using the Properties;
- B. Any activity which materially disturbs or destroys the vegetation, wildlife, wetlands, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;
- C. Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent;
- D. Subdivision of a Lot into two or more Lots after a subdivision plat which includes such Lot has been approved and filed;
- E. Conveying or encumbering less than the entirety of any Lot after a subdivision plat including such Lot has been approved and filed;
- F. Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years;
- G. Conversion of any carport, garage, attic or other unfinished space, other than a Basement, to finished space for use as an apartment or other integral part of the living area on any Lot, or the construction of a guest house on any Lot not approved for construction of a Guest House in the manner set forth in Section 12.04;

H. Any construction, erection, or placement of a thing, permanently or temporarily, on the outside portions of a Lot whether such portion is improved or unimproved, unless approved by the DRC as set forth in Article 10.00.

I. The use of the exterior portion of any Lot for the storage of any materials related to any business or commercial use or enterprise;

J. Allowing concrete suppliers and contractors to clean their equipment other than at a location designated for that purpose by the DRC;

K. The use of surface water for construction; and

L. The installation or display of signs of any kind except those required by law and those allowed by this Declaration.

Notwithstanding the foregoing to the contrary, the Board may prohibit any activity, business or otherwise, which, in the sole discretion of the Board, constitutes a nuisance, or a hazardous or offensive use, or threatens the security, safety, or quiet enjoyment of other residents of Properties.

## **ARTICLE 13.00 EASEMENTS**

**13.01 Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. In no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association. Notwithstanding anything to the contrary contained herein, there shall also be an easement of encroachment on Lot 1-1 in favor of the Fraser Valley Metropolitan Recreation District, its successors, successors-in-title, and assigns ("FVMRD") in the location depicted on the Plat, permitting the encroachment and use of the FVMRD's maintenance improvements thereon, together with the right of FVMRD to construct and thereafter maintain a fence around the same.

### **13.02 Easements for Utilities, Etc.**

A. There are hereby reserved unto the Declarant (so long as the Declarant owns any property described on Exhibit A or B of this Declaration), the Association, and the designees of each (which may include, without limitation, Grand County, Colorado, a



Special District and any utility provider) non-exclusive access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. The Declarant further hereby reserves an easement in favor of itself, the Association, and the designees of each, upon, across, over, and under all of the Properties for the creation, use, and maintenance of trail systems for Pedestrian Purposes, and for the creation, use and maintenance of wildlife corridors, winter wildlife ranges, and natural wildlife habitats. The foregoing easements may traverse the private property of any Owner; provided, however, an easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of an easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

B. The Declarant specifically reserves the right to convey to a Special District and any electric company, natural gas supplier, and cable television or communications systems supplier, easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Lot, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or the Declarant.

C. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Properties.

### **13.03 Easements for Lake and Pond Maintenance and Flood Water.**

A. Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Common Areas and the other portions of the Area of Common Responsibility to (1) install, keep, maintain, and replace wells, pumps and other items associated with the residential components of the water augmentation plan in order to provide water for fire protection purposes and residential water uses

permitted by the water augmentation plan, including the irrigation of any of the Area of Common Responsibility; (2) construct, maintain, and repair any bulkhead, wall dam, or other structure retaining water; and (3) remove trash and other debris therefrom and fulfill their maintenance responsibilities, if any, with respect thereto. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

B. There is further reserved herein for the benefit of the Declarant, the Association, and their designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Areas and Lots (but not the dwellings thereon) adjacent to or within one hundred feet of lake beds, ponds, and streams within the Properties, in order to (1) temporarily flood and back water upon and maintain water over such portions of the Properties; (2) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (3) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; and (4) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make the Declarant or any other Person liable for damage resulting from flooding due to high winds, heavy rainfall, or other natural disasters.

**13.04 Easements to Serve Additional Property.** The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, designees, successors, assigns, licensees, and mortgagees, an easement over the Common Areas for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction of roads and for connecting and installing utilities on such Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic connected with development of such Additional Property. Declarant further agrees that if the easement is exercised for permanent access to such Additional Property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such Additional Property.

### 13.05 Easements for Golf Courses.

A. Every Lot, the Common Areas, and the common property of any Neighborhood are burdened with an easement permitting golf balls unintentionally to come upon the Lots, the Common Areas, or common property immediately adjacent to the Old Golf Course and the New Golf Course and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of a Lot, the Common Areas, or common property to retrieve errant golf balls. However, if any Lot is fenced or walled, the golfer must obtain the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant, the Association, or its Members (in their capacity as such); FVMRD, its successors, successors-in-title to the Golf Course, or assigns; any successor Declarant, or any other Person submitting property to this Declaration; any Builder or contractor (in their capacities as such); any officer, director, or partner of any of the foregoing, or any officer or director of any partner of the foregoing. The foregoing exclusion from liability shall not apply in the event a protected Person actually struck the errant ball.

B. The owner(s) of the Old Golf Course and the New Golf Course, their respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary for the operation, maintenance, repair and replacement of such golf courses.

C. The Properties immediately adjacent to the Old Golf Course and the New Golf Course are hereby burdened with a non-exclusive easement in favor of such golf courses for overspray of water from any irrigation system serving the same. Under no circumstances shall the Association or the owner(s) of the Old Golf Course or New Golf Course be held liable for any damage or injury resulting from overspray or the exercise of this easement.

**13.06 New Golf Course Open Space Easement.** Unless and until the New Golf Course is conveyed by Declarant to FVMRD, the New Golf Course shall be encumbered with an open space easement permitting the operation of a golf course thereon. The open space easement shall benefit all Lots, but neither the New Golf Course nor the open space easement shall be included in the Common Areas. If and when the New Golf Course is conveyed to FVMRD, the open space easement shall terminate and FVMRD shall thereafter operate the New Golf Course in accordance with the terms of the instrument or instruments by which FVMRD acquired title thereto. If FVMRD does not accept the conveyance of the New Golf Course, or ever ceases to operate the New Golf Course following acceptance of conveyance, the New Golf Course shall be conveyed by Declarant to the Association. Upon recordation of a Supplemental Declaration executed by Declarant as required by the Act, the New Golf Course shall be included in the Common Areas and if the New Golf Course ever ceases to be operated as a golf course following

conveyance to the Association, the land comprising the same shall be subject to compliance with Grand County, Colorado's open space regulations.

**13.07 Right of Entry.** The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance upon any Lot if an Owner fails to do the same as provided in this Declaration, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and the Rules and Regulations, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner except by emergency personnel acting in their official capacities.

**13.08 Septic Systems.** In connection with its rights and obligations relating to the monitoring and enforcement of water quality, an easement is reserved by Declarant and hereby transferred to the Association over and across all Lots in the Properties. This easement shall be for the purpose of enabling and facilitating such inspections, repairs, maintenance and replacement of such systems as are necessary for the Association to fulfill the obligations established or imposed by this Declaration or by law.

**13.09 Easements Shown on the Plat.** In addition to the easements granted pursuant to the terms of this Article 13.00, there shall also be the easements benefitting and burdening those portions of the Properties described on the Plat. No easement, right of use, or right of entry is granted or conveyed by this Declaration on, over, across or through any property not otherwise included within the Properties, including, without limitation, property owned by the YMCA of the Rockies and the Fraser Valley Metropolitan Recreation District. Any entry upon such property without the permission of the affected landowner shall be deemed a trespass.

## **ARTICLE 14.00 ENFORCEMENT OF COVENANTS**

**14.01 Violations.** The Association may impose sanctions for violations of this Declaration, the Bylaws, or the Rules and Regulations in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use any facilities within the Common Areas. In addition, the Association, through the Board, in accordance with Section 6.12 of the Bylaws, may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Association, by contract or other

agreement, may enforce county and city ordinances, if applicable, and permit Grand County, Colorado to enforce ordinances on the Properties for the benefit of the Association and its Members. In addition, the Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.

#### **14.02 Dispute Resolution.**

A. The Association and its members, the Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Section 14.02 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association Rules and Regulations, or the Articles of Incorporation (collectively "Claim"), except for those Claims exempt in Section 14.02(B), shall be resolved using the procedures set forth in Section 14.02(C), in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

B. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 14.02(C):

1. Any suit by the Association against any Bound Party to enforce the provisions of Article 7.00 (Assessments);
2. Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article 10.00 (Design Review Committee), Article 11.00 (Design Requirements and Architectural Standards) and Article 12.00 (Overall Restrictions and Requirements);
3. Any suit between Owners (other than the Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the law of the State of Colorado in the absence of a claim based on the Declaration, Bylaws, Articles, or Rules and Regulations of the Association, if the amount in controversy exceeds \$25,000.00;
4. Any suit by the Association in which similar or identical claims are asserted against more than one Bound Party; and

5. Any suit by a Bound Party for declaratory or injunctive relief which seeks a determination as to applicability, clarification or interpretation of any provision of this Declaration.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.02(C), but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 14.02(C) shall require the approval of the Association.

C. All Claims other than Exempt Claims shall be resolved using the following procedures:

1. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(a) The nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

(b) The basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles, Rules and Regulations, or other authority out of which the Claim arises);

(c) What Claimant wants Respondent to do or not do to resolve the Claim; and

(d) That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

2. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

3. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

4. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be

agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, the Colorado chapter of the Community Association Institute, or such other independent agency providing mediation services upon which the Parties may mutually agree.

5. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

6. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the parties met, that the Parties are at an impasse, and the date that mediation was terminated.

7. Each Party shall, within five (5) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

8. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the appropriate rules of the American Arbitration Association, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings. If the American Arbitration Association ceases to exist then a similar organization shall be designated by the Association.

9. The immediately preceding paragraph is an agreement of the

Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

10. If the Claims are resolved through negotiation or mediation as provided in Sections 14.02(C)(2) through (7), each Bound Party shall bear all of its own costs incurred in resolving the Claims, including its attorneys fees and mediation expenses, unless the Bound Parties otherwise agree; if the Claims are not resolved through negotiation or mediation as provided in Sections 14.02(C)(2) through (7), and the Claims go to binding arbitration as provided in Section 14.02(C)(8), the "Prevailing Party" shall receive as a part of its Award from the opposing party(ies) all of its costs, including attorneys fees, costs for other representatives in resolving each Claim, and any expenses incurred as a result of the dispute resolution procedures of this Section 14.02.

11. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 14.02(C) and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.02(C). In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

## **ARTICLE 15.00 DEVELOPMENT CONSIDERATIONS**

**15.01 Limitation on Number of Lots.** The maximum number of Lots which the Declarant reserves the right to create within the Properties is 300. The boundaries of each Lot affected by this Declaration, including the Lot's identifying number, are set forth in the Plat. If Additional Property is subjected to this Declaration, a final plat will be recorded for each filing showing the boundaries of each Lot and all other matters required by Grand County, Colorado and the Act.

**15.02 Duration.** This Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for



successive periods of ten (10) years, unless an instrument in writing, signed by a majority of then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

**15.03 Assignment of Powers.** Any or all of the rights, powers and reservations of Declarant may be assigned to any individual or entity which assumes the duties of Declarant pertaining to the particular assignment. When such assignee has evidenced consent in writing to accept such assignment and assume such duties, it shall, to the extent of the assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Declarant.

**15.04 Declarant's Right to Use of Common Areas.** During the construction phase of the Properties, which shall end on December 31, 2017, the Declarant may use the Common Areas for purposes related to construction of subdivision improvements. Declarant shall reasonably restore the Common Areas following such use and shall be responsible for any and all costs of such restoration. The Declarant may maintain signs on the Common Areas advertising the Properties subject to the provisions of any local sign ordinance.

**15.05 Annexation and Withdrawal of Property.**

**A. Annexation.**

**1. Annexation of Specified Real Estate.** Declarant is the Owner of the real property described on Exhibit B, which constitutes Additional Property which may be subjected to this Declaration in the future. Until all of the Additional Property described on Exhibit B has been subjected to this Declaration or December 31, 2087, whichever first occurs, Declarant may from time to time unilaterally subject all or any portion of the Additional Property described on Exhibit B to the provisions hereof. No assurances are made as to the portion of such Additional Properties which may be subjected to this Declaration or the order in which such Additional Property may be so subjected. Declarant may transfer this right to annex specified property so long as such transfer is accomplished by a written instrument executed by Declarant and recorded in the real property records of Grand County.

**2. Annexation of Unspecified Real Estate.** Declarant reserves the right to amend this Declaration, at any time prior to December 31, 2087, to subject Additional Property, the location of which is not described in this Declaration, to this Declaration. The area of any Additional Property subjected to this Declaration pursuant to this reserved right may not exceed ten percent (10%) of the total area of the portion of the Properties described in Exhibit A, and in no event may the total number of Lots subject to this Declaration exceed 300. No

assurances are made as to the portion of such Additional Properties which may be subjected to this Declaration or the order in which such Additional Property may be so subjected.

3. **Procedure for Annexation.** Annexation shall be accomplished by filing a Supplemental Declaration in the real property records of Grand County annexing such Additional Property. Such Supplemental Declaration shall be sufficient if it: (a) describes the Additional Property to be annexed; (b) states that such Additional Property shall thereafter be subject to the terms of this Declaration; and (c) is properly acknowledged by Declarant or by the transferee of such annexation right.

B. **Withdrawal of Properties.** The Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Section 15.05, without prior notice and without the consent of any Person, for the purpose of removing from the coverage of this Declaration Lots 3-1 through 3-75 and/or Lots 4-1 through 4-60 as depicted on the Plat if then owned by the Declarant or its affiliates or designees, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties, provided such withdrawal is consistent with the Act.

**15.06 Additional Development Rights And Special Declarant Rights.** In addition to any such rights described above, the Declarant reserves the following Development Rights and Special Declarant Rights until December 31, 2087. If any Development Right is exercised in any portion of the Properties subject to that Development Right, that Development Right does not have to be exercised in all or in any other portion of the Properties:

A. The right to complete or make improvements indicated on the Plat or maps;

B. The right to exercise any Development Right described in this Declaration;

C. The right to maintain sales models on Lots, but not more than two models totaling 5,000 square feet or less each at any one time. Any such models may be located on any Lot and shall be deemed to be part of the Lot, provided, however that no sales or management offices, temporary or permanent, are permitted;

D. The right to maintain signs on the Properties to advertise the Lots so long as such signs conform to the local sign code;

E. The right to use, and to permit others to use, easements through the Properties as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration;

F. The right to appoint or remove any officer of the Association or any Director during the Declarant control period consistent with the Act;

G. The right to provide view corridors and/or view easements on any Lots prior to the date such Lot is sold and conveyed by instrument, properly recorded;

H. The right to designate which Permitted Guest House Lots shall be permitted to include a Guest House pursuant to Section 12.04;

I. The right to transfer any one or all of the rights reserved herein subject to the requirements of the Act.

J. Subject to applicable law, the right to execute a petition or other required instruments, on behalf of one hundred percent (100%) of the owners of Lots, to bring about the inclusion of the Properties, including all Lots, within the boundaries of any Special District organized pursuant to the Special District Act of Colorado, as in effect on the date hereof or as the same may hereafter be amended or modified.

## **ARTICLE 16.00 AMENDMENT**

### **16.01 Amendment By Declarant.**

A. In that Article 33.3 of Title 38 of the Colorado Revised Statutes provides that the provisions of that Article may not be varied by agreement and rights conferred by that Article may not be waived, for a ten (10) year period from the date this Declaration is recorded, Declarant reserves the right to unilaterally amend this Declaration to comply therewith in the event any provision of this Declaration is determined not to comply with the Act.

B. For a period of ten (10) years from the date this Declaration is recorded, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of any Owner or Mortgagee.

C. For so long as it owns any real property described in Exhibit A or Exhibit B, Declarant may unilaterally amend this Declaration if such amendment is (1) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (2) necessary to enable any title insurance company to issue title insurance coverage on the Lots; (3) required by an institutional or governmental lender or purchaser of Mortgage loans to enable such lender or purchaser to make or purchase Mortgage loans on the Lots; (4) necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Lots; or (5) otherwise necessary to satisfy the requirements of any governmental agency. No such

amendment may adversely affect the title to any Lot unless the Owner thereof consents thereto in writing.

#### **16.02 Amendment By Owners and Mortgagees.**

A. Except as set forth above, this Declaration may be amended only by a written instrument signed by sixty-seven percent (67%) of the Owners and by at least fifty-one percent (51%) of the beneficiaries of first Mortgages encumbering Lots. So long as Declarant still has the right to subject Additional Property to this Declaration, the written consent of Declarant to an amendment shall also be required.

B. Until December 31, 2087, no amendment may revoke, modify or eliminate any right or privilege of the Declarant without the written consent of Declarant or of the assignee of any such right or privilege.

### **ARTICLE 17.00 SPECIAL MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**17.01 Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

A. Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

B. Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first Mortgage, upon written request to the Association at any time, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days;

C. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

D. Any proposed action which would require the consent of a specified percentage of Eligible Holders.

**17.02 Special FHLMC Provision.** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or at least eighty percent (80%) of the total Association votes entitled to be cast consent, the Association shall not:

A. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Areas which the Association owns, directly or indirectly (the granting of easements for public utilities or similar purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this paragraph);

B. Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (provided, however, a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration);

C. By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Areas (provided, however, the issuance and amendment of Design Review Guidelines, architectural standards, procedures, Rules and Regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

D. Fail to maintain insurance, as required by this Declaration; or

E. Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**17.03 Other Provisions for First Lien Holders.** To the extent possible under, and in addition to other requirements set forth in the Act:

A. Any restoration or repair of the Properties after a partial condemnation or

damage to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

B. Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

**17.04 Amendments to Documents.** The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 17.03(A) and (B), or to the addition or withdrawal of land in accordance with Section 15.05.

A. The consent of at least sixty-seven percent (67%) of the total Association votes entitled to be cast, and the approval of the Eligible Holders of first Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a Mortgage appertain, shall be required to terminate the Association.

B. The consent of at least sixty-seven percent (67%) of the total Association votes entitled to be cast, and the approval of Eligible Holders of first Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

1. Voting;
2. Increases in assessments that raise the previously assessed amount by more than twenty five percent (25%), assessment liens, or the priority of assessment liens;
3. Reductions in reserves for maintenance, repair, and replacement of the Common Areas;
4. Hazard or fidelity insurance requirements;
5. Rights to use the Common Areas;
6. Convertibility of Lots into Common Areas or vice versa;

7. Responsibility for maintenance and repair of the Properties;
8. Expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
9. Boundaries of any Lot;
10. Leasing of Lots;
11. Imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey its, his or her Lot;
12. Establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
13. Any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

**17.05 No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

**17.06 Notice to the Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**17.07 Amendment by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

**17.08 Applicability of Article 17.00.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or the Act for any of the matters set forth in this Article 17.00.

**17.09 Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

**ARTICLE 18.00**  
**PRINCIPLES OF INTERPRETATION**

**18.01 Interpretation of the Declaration.** Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the covenants and provisions hereof.

**18.02 Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable, in whole or in part, shall not affect the validity and enforceability of any other provisions hereof.

**18.03 Disclaimer of Representations.** Notwithstanding anything to the contrary in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Properties can or will be carried out or that any land now owned or hereafter acquired by the Declarant is or will be subjected to this Declaration, is or will be committed to or developed for a particular use, or that, if such land is once used for a particular use, such use will continue in effect.

**18.04 Successors and Assigns of Declarant.** Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

**18.05 Captions and Titles.** The captions and titles of headings of Articles and Sections in this Declaration are solely for the purpose of reference and convenience and shall not be deemed or construed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

**18.06 Masculine and Feminine, Singular and Plural.** As used in this Declaration, when the context so requires, the masculine shall include the feminine, the singular the plural; and vice versa.

**18.07 Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**18.08 Litigation.** No dispute resolution, judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent



(75%) of the Members. This Section shall not apply, however, to (A) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (B) the imposition and collection of assessments as provided in Article 7.00; (C) proceedings involving challenges to ad valorem taxation; or (D) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**18.09 Cumulative Effect; Conflict.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

**18.10 Use of the Words "Fairways at Pole Creek" or Logo.** No Person shall use the words "The Fairways at Pole Creek" or any derivative thereof or the logo of the development in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "The Fairways at Pole Creek" in printed or promotional matter where such term is used solely to specify that particular property is located within The Fairways at Pole Creek, and the Association shall be entitled to use the words "The Fairways at Pole Creek" in its name.

**18.11 Compliance.** Every Owner and occupant of any Lot shall comply with this Declaration, the Bylaws, and the Rules and Regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Lot Owner.

**18.12 Notices.** All Owners of each Lot shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representatives of the Owners of a Lot shall furnish such registered address to the Secretary of the Association within ten (10) days after transfer of title to the Lot to such Owner or Owners. Such registrations shall be in written form and signed by all of the Owners of a Lot or by such persons as are authorized to represent the interests of all Owners of the Lot. If no address is registered or if all of the Owners cannot agree, then the address of the Lot shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Lot. Any transferor of a Lot shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. All notices and demands intended to

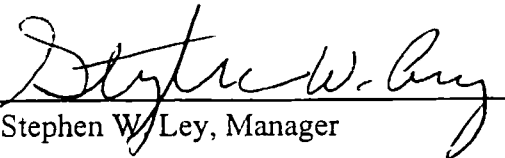
be served upon the Association shall be sent to the following address or such other address as the Association may designate from time to time by notice to the Owners:

The Fairways at Pole Creek Homeowners Association  
c/o Mountain Valley Investment Corporation  
P.O. Box 3128  
Pine Tree Plaza, Suite 103  
Winter Park, Colorado 80482

**18.13 Cooperation with Special District.** The Association shall have the power, and is hereby authorized, to contract with and to cooperate with any Special District in order to ensure that their respective responsibilities are discharged. The Association is further authorized to act on behalf of its Members to ensure that the level of services provided by any such Special District to all Lots within the Properties is consistent with the Community-Wide Standard. Each Owner, by acceptance of a deed or recorded contract of sale to a Lot, is deemed, subject to applicable law, to covenant and consent to inclusion within any Special District that will provide central sanitary sewer collection and treatment services to all Lots within the Properties, and to executing a separate document so consenting to such inclusion if requested to do so by the Declarant.

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

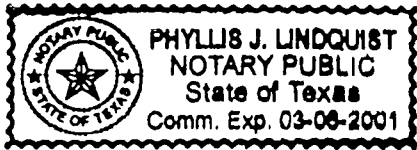
**THE FAIRWAYS AT POLE CREEK  
DEVELOPMENT, LLC**, a Texas limited liability  
company

By:   
Stephen W. Ley, Manager

STATE OF TEXAS )  
 )ss.  
COUNTY OF HARRIS )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of November, 1997, by Stephen W. Ley, as Manager of THE FAIRWAYS AT POLE CREEK DEVELOPMENT, LLC, a Texas limited liability company, on behalf of the company.

Witness my hand and official seal.



Phyllis J. Lindquist  
Notary Public

My Commission Expires:

March 6, 2001

**EXHIBIT A**  
**PROPERTY SUBJECTED TO THIS DECLARATION**

All that portion of Sections 4, 5, 8, and 9, Township 1 South, Range 76 West of the Sixth Principal Meridian, County of Grand, State of Colorado, described as follows:

The Basis of Bearings is the east line of the southeast one quarter of Section 4, Township 1 South, Range 76 West, of the Sixth Principal Meridian, as monumented with a found marked stone at the east one quarter corner of said Section 4 and a found aluminum cap at the southeast corner of said Section 4, and is assumed to bear S 00°27'43"E.

Commencing at the southeast corner of said Section 4, a found aluminum cap PLS 22097;

Thence N 00°27'43" W, along the east line of the southeast one-quarter of said Section 4, a distance of 20.04 feet to a point on the northerly right-of-way of County Road 519, said point being the Point of Beginning;

Thence N 87°10'06" W, along said right-of-way line, 20 feet distant and parallel to the south line of Section 4, a distance of 1325.87 feet to the east line of the southwest one-quarter of the southeast one-quarter of said Section 4;

Thence N 00°53'27" W, along said east line, a distance of 231.57 feet;

Thence S 82°45'43" W, departing said east line, a distance of 269.52 feet;

Thence N 86°53'31" W a distance of 448.26 feet;

Thence S 03°06'29" W a distance of 471.63 feet to a point on the northerly right-of-way line of County Road 519, said point being that of non-tangent curvature;

Thence along said northerly right-of-way line and along a curve to the right a distance of 97.56 feet, said curve having a radius of 305.00 feet, a delta angle of 18°19'39", and a chord which bears N 78°00'17" W a distance of 97.15 feet to a point of reverse curvature;

Thence continuing along said northerly right-of-way line and along a curve to the left a distance of 123.15 feet, said curve having a radius of 385.00 feet, a delta angle of 18°19'39", and a chord which bears N 78°00'17" W a distance of 122.63 feet to a point of tangency;

Thence N 87°08'39" W, continuing along said northerly right-of-way line, a distance of 891.67 feet to a point of curvature;

Thence continuing along said northerly right-of-way line and along a curve to the left a distance of 254.32 feet, said curve having a radius of 1360.00 feet, a delta angle of 10°42'51", and a chord which bears S 87°28'29" W a distance of 253.95 feet to a point of tangency;

Thence S 82°07'03" W, continuing along said northerly right-of-way line, a distance of 34.68 feet;

Thence N 01°59'41" E, departing said northerly right-of-way line, a distance of 314.29 feet;

Thence N 87°16'57" W a distance of 399.54 feet;

Thence N 02°15'33" E a distance of 161.64 feet;

Thence N 87°42'40" W a distance of 203.08 feet;

Thence S 18°11'07" E a distance of 226.68 feet;

Thence S 17°20'31" E a distance of 359.98 feet to a point on the northerly right-of-way line of County Road 519;

Thence S 82°07'03" W, along said northerly right-of-way line, a distance of 105.16 feet to a point on the east line of the northwest one-quarter of the northwest one-quarter of said Section 9;

Thence S 00°30'03" E, along said east line, a distance of 955.53 feet to the northwest one-sixteenth corner of said Section 9;

Thence N 87°06'57" W, along the south line of the northwest one-quarter of the northwest one-quarter of said Section 9, a distance of 1327.00 feet to the north one-sixteenth corner common to said Section 8 and said Section 9;

Thence S 00°30'04" E, along the east line of the southeast one-quarter of the northeast one-quarter of said Section 8, a distance of 1313.26 feet to the east one-quarter corner of said Section 8;

Thence S 89°24'36" W, along the south line of the northeast one-quarter of said Section 8, a distance of 1363.24 feet to the center-east one-sixteenth corner of said Section 8;

Thence S 89°24'36" W, continuing along said south line, a distance of 681.62 feet to the center-west-east 1/64th corner of said Section 8;

Thence N 00°16'04" W, along the west line of the east one-half of the southwest one-quarter of the northeast one-quarter of said Section 8, a distance of 1316.40 feet to the center-west-northeast 1/64th corner of said Section 8;

Thence N 00°16'04" W, along the west line of the east one-half of the northwest one-quarter of the northeast one-quarter of said Section 8, a distance of 1316.40 feet to the west-east 1/64th corner common to said Section 8 and said Section 5;

Thence N 01°12'42" W, along the west line of the east one-half of the southwest one-quarter of the southeast one-quarter of said Section 5, a distance of 1336.84 feet to the center-west-southeast 1/64th corner of said Section 5;

Thence N 01°12'42" W, along the west line of the east one-half of the northwest one-quarter of the southeast one-quarter of said Section 5, a distance of 1336.84 feet to the center-west-east 1/64th corner of said Section 5;

Thence N 01°08'29" W, along the west line of the east one-half of Government Lot 10 of said Section 5, a distance of 1325.85 feet;

Thence N 01°08'29" W, along the west line of the east one-half of Government Lot 7 of said Section 5, a distance of 1325.85 feet;

Thence N 01°08'29" W, along the west line of the east one-half of Government Lot 2 of said Section 5, a distance of 1639.50 feet to a point on the north line of said Section 5;

Thence S 89°29'49" E, along said north line, a distance of 682.11 feet to the northwest corner of Government Lot 1 of said Section 5;

Thence S 89°29'49" E, continuing along said north line, a distance of 1364.22 feet to the northwest corner of said Section 4;

Thence S 00°57'50" E, along the west line of said Section 4, a distance of 1617.81 feet to the northwest corner of Government Lot 5 of said Section 4;

Thence S 88°48'25" E, along the north line of said Government Lot 5, a distance of 1334.63 feet to the northwest corner of Government Lot 6 of said Section 4;

Thence S 88°48'25" E, along the north line of said Government Lot 6, a distance of 940.22 feet to a point;

Thence S 48°33'59" W, departing said north line, a distance of 134.81 feet;

Thence S 46°45'26" E a distance of 234.15 feet;

Thence N 40°57'32" E a distance of 188.41 feet to a point on the southerly right-of-way line of County Road 5;

Thence S 53°08'09" E, along said southerly right-of-way line, a distance of 593.05 feet to a point of curvature;

Thence along said southerly right-of-way line and along a curve to the right a distance of 336.99 feet, said curve having a radius of 440.00 feet, a delta angle of 43°52'55", and a chord which bears S 31°11'42" E a distance of 328.81 feet to a point of reverse curvature;

Thence continuing along said southerly right-of-way line and along a curve to the left a distance of 330.73 feet, said curve having a radius of 275.00 feet, a delta angle of 68°54'24", and a chord which bears S 43°42'27" E a distance of 311.15 feet to a point of reverse curvature;

Thence continuing along said southerly right-of-way line and along a curve to the right a distance of 183.00 feet, said curve having a radius of 3420.00 feet, a delta angle of 03°03'57", and a chord which bears S 76°37'40" E a distance of 182.98 feet to a point of tangency;

Thence S 75°05'42" E, continuing along said southerly right-of-way line, a distance of 533.77 feet to a point on the east line of Government Lot 7 of said Section 4;

Thence S 00°57'00" E, departing said southerly right-of-way line and along said east line, a distance of 272.61 feet to the northeast corner of Government Lot 10 of said Section 4;

Thence S 01°03'38" E, along the east line of said Government Lot 10, a distance of 1379.03 feet to the center-east one-sixteenth corner of said Section 4;

Thence S 87°07'17" E, along the north line of the northeast one-quarter of the southeast one-quarter of said Section 4, a distance of 1333.29 feet to the east one-quarter corner of said Section 4;

Thence S 00°27'43" E, along the east line of the northeast one-quarter of the southeast one-quarter of said Section 4, a distance of 1331.34 feet to the south one-sixteenth corner common to said Section 4 and Section 3, Township 1 South, Range 76 West of the Sixth Principal Meridian;

Thence S 00°27'43" E, along the east line of the southeast one-quarter of the southeast one-quarter of said Section 4, a distance of 1311.30 feet to the Point of Beginning.

Containing a gross area of 1,037.535 acres more or less.

EXCEPT that 20.000 acre portion of said Section 8 described by instrument recorded at Book 192 Page 649 Recital IV.

And,

EXCEPT that 220.708 acre portion of said Sections 4, 5, 8, and 9, known as Pole Creek Golf Course, as described by instrument recorded at Book 281 Page 180 and Book 281 Page 185.

And,

EXCEPT that 82.488 acres of Golf Parcels 1, 2, 3, and 4 as depicted on the Plat.

Thus containing a net area of 714.339 acres more or less.

Said parcel being subject to any and all easements, rights of way, variances and agreements as of record may appear.

**EXHIBIT B**  
**ADDITIONAL SPECIFIED PROPERTY THAT MAY BECOME**  
**SUBJECTED TO THIS DECLARATION**

**LEGAL DESCRIPTION**

Parcel "1"

Golf Parcel-1

That portion of Sections 4 and 5, Township 1 South, Range 76 West, of the Sixth Principal Meridian, County of Grand, State of Colorado, described as follows:

The Basis of Bearings is the west line of Section 4, Township 1 South, Range 76 West, of the Sixth Principal Meridian, as monumented with a found marked stone at the west one quarter corner of said Section 4 and a found aluminum cap at the southwest corner of said Section 4, and is assumed to bear S 01°14'53" E.

Commencing at the west one quarter corner of said Section 4, a found marked stone;

Thence S 01°14'53" E, along the west line of said Section 4, a distance of 211.02 feet to the Point of Beginning;

Thence N 69°40'44" W, departing said west line, a distance of 190.74 feet to a point of curvature;

Thence along a curve to the left a distance of 66.36 feet, said curve having a radius of 150.00 feet, a delta angle of 25°20'51", a tangent distance of 33.73 feet, and a chord distance of 65.82 feet, which bears N 82°21'10" W;

Thence S 84°58'25" W a distance of 97.04 feet to a point of curvature;

Thence along a curve to the right a distance of 62.09 feet, said curve having a radius of 25.00 feet, a delta angle of 142°18'06", a tangent distance of 73.23 feet, and a chord distance of 47.32 feet, which bears N 23°52'32" W;

Thence N 47°16'31" E a distance of 161.04 feet to a point of curvature;

Thence along a curve to the left a distance of 125.46 feet, said curve having a radius of 230.00 feet, a delta angle of 31°15'11", a tangent distance of 64.33 feet, and a chord distance of 123.91 feet, which bears N 31°38'56" E to a point of non-tangency;

Thence N 88°09'50" E a distance of 92.72 feet;

Thence S 79°54'01" E a distance of 177.10 feet;

Thence S 64°50'41" E a distance of 331.00 feet;

Thence S 23°23'37" E a distance of 873.30 feet;

Thence S 01°31'11" E a distance of 124.69 feet;

Thence N 84°37'59" W a distance of 180.35 feet;

Thence N 30°52'28" W a distance of 817.03 feet;

Thence N 69°40'44" W a distance of 150.64 feet to the Point of Beginning.

Containing 9.01 acres, more or less.



SEC 5

SEC 4

Drawing File Location: \\PDL\ERK\DWG\A\Sub\15\15011.dwg

Scale 1:20000 Date 10/14/99 Time 16:14:33

Rad=230.00  
Length=125.46  
Delta=31°15'11"  
CB=N31°38'56"E

N88°09'50"E 92.72'  
S79°54'01"E 177.10'

W 1/4 SECTION 4  
FOUND MARKED STONE  
WITH PIN AND CAP LS 2682

Rad=25.00  
Length=62.09  
Delta=142°18'06"  
CB=N23°52'32"W

N47°16'31"E 161.04'

S64°50'41"E 331.00'

Total Area  
9.01 ac. m/l

S84°58'25"W 97.04'

Rad=150.00  
Length=66.36  
Delta=25°20'51"  
CB=N82°21'10"W

N69°40'44"W 190.74'

N69°40'44"W 150.64'

Proposed Trail

P.O.B.

S23°23'37"E 871.30'

N30°52'28"W 817.03'

N84°37'50"W 180.35'

S01°31'11"E 124.69'



Parcel 1



## LEGAL DESCRIPTION

Parcel "2"  
Golf Parcel-2

That portion of Sections 4 and 5, Township 1 South, Range 76 West, of the Sixth Principal Meridian, County of Grand, State of Colorado, described as follows:

The Basis of Bearings is the west line of Section 4, Township 1 South, Range 76 West, of the Sixth Principal Meridian, as monumented with a found marked stone at the west one quarter corner of said Section 4 and a #6 rebar and cap LS 22097 at the northwest corner of said Section 4, and is assumed to bear N 00°57'50" W.

Commencing at the west one quarter corner of said Section 4, a found marked stone;

Thence N 00°57'50" W, along the west line of said Section 4, a distance of 1547.84 feet to the Point of Beginning.

Thence N 78°48'50" W, departing said west line, a distance of 98.31 feet;

Thence S 89°36'57" W a distance of 277.39 feet;

Thence S 67°39'44" W a distance of 149.65 feet;

Thence S 55°59'06" W a distance of 255.86 feet;

Thence S 03°25'09" E a distance of 477.84 feet;

Thence S 26°55'43" W a distance of 792.24 feet;

Thence N 87°19'45" E a distance of 362.24 feet to a point of curvature;

Thence along a curve to the right a distance of 122.09 feet, said curve having a radius of 100.00 feet, a delta angle of 69°57'03", a tangent distance of 69.96 feet, and a chord distance of 114.64 feet, which bears S 57°41'44" E to a point of non-tangency;

Thence N 81°38'07" E a distance of 36.89 feet to a point of curvature;

Thence along a curve to the right a distance of 107.39 feet, said curve having a radius of 220.00 feet, a delta angle of 27°58'04", a tangent distance of 54.79 feet, and a chord distance of 106.33 feet, which bears S 84°22'51" E, to a point of reverse curvature;

Thence along a curve to the left a distance of 235.30 feet, said curve having a radius of 824.18 feet, a delta angle of 16°21'29", a tangent distance of 118.46 feet, and a chord distance of 234.50 feet which bears S 78°34'34" E to a point of non-tangent curvature;

Thence along a curve to the right a distance of 23.83 feet, said curve having a radius of 170.00 feet, a delta angle of 08°01'49", a tangent distance of 11.93 feet, and a chord distance of 23.81 feet, which bears S 36°32'33" W to a point of non-tangent curvature;

Thence along a curve to the right a distance of 227.94 feet, said curve having a radius of 844.18 feet, a delta angle of 15°28'15", a tangent distance of 114.67 feet, and a chord distance of 227.25 feet, which bears N 78°07'57" W to a point of reverse curvature;

Thence along a curve to the left a distance of 97.63 feet, said curve having a radius of 200.00 feet, a delta angle of 27°58'04", a tangent distance of 49.81 feet, and a chord distance of 96.66 feet, which bears N 84°22'51" W;

Thence S 81°38'07" W a distance of 33.89 feet to a point of non-tangent curvature;

Thence along a curve to the right a distance of 150.32 feet, said curve having a radius of 100.00 feet, a delta angle of 86°07'31", a tangent distance of 93.46 feet, and a chord distance of 136.56 feet, which bears S 31°57'01" W;

Thence S 75°17'53" W a distance of 461.48 feet to a point of curvature;

Thence along a curve to the right a distance of 335.24 feet, said curve having a radius of 155.00 feet, a delta angle of 123°55'23", a tangent distance of 291.04 feet, and a chord distance of 273.62 feet, which bears N 42°44'25" W;

Thence N 19°13'16" E a distance of 887.98 feet;

Thence N 02°52'07" W a distance of 367.77 feet to a point of curvature;

Thence along a curve to the right a distance of 130.65 feet, said curve having a radius of 150.00 feet, a delta angle of 49°54'22", a tangent distance of 69.80 feet, and a chord distance of 126.56 feet, which bears N 22°05'04" E;

Thence N 47°02'15" E a distance of 190.05 feet;

Thence N 35°26'57" W a distance of 608.65 feet;

Thence N 59°25'26" W a distance of 371.34 feet;

Thence N 52°15'08" W a distance of 123.56 feet;

Thence N 35°16'17" W a distance of 205.06 feet;

Thence S 77°11'19" W a distance of 278.94 feet;

Thence N 01°08'29" W a distance of 668.12 feet to a point of curvature;

Thence along a curve to the right a distance of 121.27 feet, said curve having a radius of 245.00 feet, a delta angle of 28°21'35", a tangent distance of 61.90 feet, and a chord distance of 120.03 feet, which bears N 13°02'18" E to a point of non-tangency;

Thence N 89°00'52" E a distance of 204.79 feet;

Thence S 80°28'31" E a distance of 48.28 feet;

Thence N 28°02'28" E a distance of 178.91 feet;

Thence N 04°29'48" W a distance of 278.32 feet to a point of non-tangent curvature;

Thence along a curve to the right a distance of 26.17 feet, said curve having a radius of 85.00 feet, a delta angle of 17°38'19", a tangent distance of 13.19 feet, and a chord distance of 26.06 feet, which bears S 27°03'19" E to a point of reverse curvature;

Thence along a curve to the left a distance of 39.26 feet, said curve having a radius of 1103.83 feet, a delta angle of 02°02'16", a tangent distance of 19.63 feet, and a chord distance of 39.26 feet, which bears S 19°15'18" E to a point of non-tangency;

Thence S 04°29'48" E a distance of 222.12 feet;

Thence S 28°02'28" W a distance of 178.05 feet;

Thence S 80°28'31" E a distance of 17.89 feet;

Thence S 34°18'24" E a distance of 26.17 feet;  
Thence S 10°23'36" E a distance of 536.21 feet;  
Thence S 60°17'31" E a distance of 756.43 feet;  
Thence N 71°22'32" E a distance of 74.77 feet;  
Thence N 18°58'49" E a distance of 298.95 feet;  
Thence N 04°27'07" E a distance of 100.81 feet;  
Thence N 44°37'48" E a distance of 154.37 feet to a point of non-tangent curvature;  
Thence along a curve to the left a distance of 42.64 feet, said curve having a radius of 170.00 feet, a delta angle of 14°22'20", a tangent distance of 21.43 feet, and a chord distance of 42.53 feet, which bears S 31°51'49" E;

Thence S 39°02'59" E a distance of 124.65 feet;  
Thence S 04°11'42" E a distance of 637.92 feet;  
Thence S 49°50'43" E a distance of 260.82 feet,  
Thence S 74°06'47" E a distance of 255.04 feet;  
Thence S 88°42'47" E a distance of 639.31 feet;  
Thence S 71°50'20" E a distance of 174.54 feet;  
Thence S 56°25'21" E a distance of 155.83 feet;  
Thence S 53°56'10" E a distance of 158.82 feet;  
Thence S 48°57'17" E a distance of 142.26 feet;

Thence S 03°56'16" E a distance of 320.45 feet to a point of non tangent curvature;

Thence along a curve to the left a distance of 180.21 feet, said curve having a radius of 225.00 feet, a delta angle of 45°53'28", a tangent distance of 95.25 feet, and a chord distance of 175.44 feet, which bears S 80°32'09" W to a point of non-tangency;

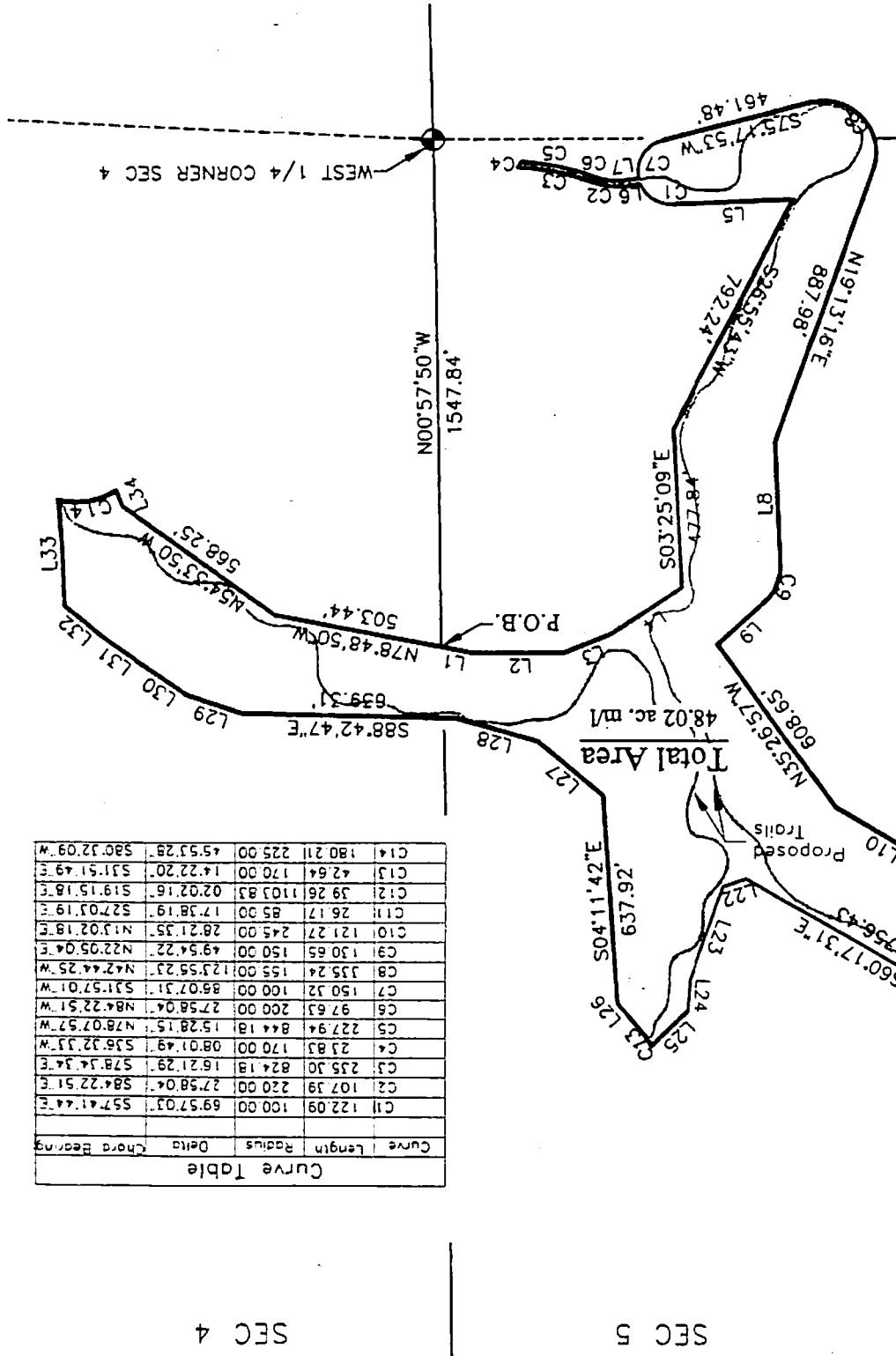
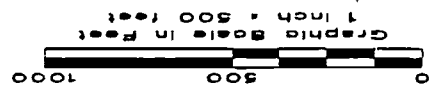
Thence N 20°49'10" W a distance of 50.00 feet;

Thence N 54°33'50" W a distance of 568.25 feet;

Thence N 78°48'50" W a distance of 503.44 feet to the Point of Beginning.

Containing 48.02 acres, more or less.

Parcel 2



Line	Length	Bearing
L1	98.31	N78°48'50"W
L2	277.39	S89°36'57"W
L3	149.65	S67°39'44"W
L4	255.86	S55°59'06"W
L5	362.24	N87°19'45"E
L6	36.89	N81°38'07"E
L7	33.89	S81°38'07"W
L8	367.77	N02°52'07"W
L9	190.05	N47°02'15"E
L10	371.34	S59°25'26"W
L11	123.56	N52°15'08"W
L12	205.06	N35°16'17"W
L13	278.94	S77°11'19"W
L14	204.79	N89°00'52"E
L15	48.28	S80°28'31"E
L16	178.91	N28°02'28"E
L17	278.32	N04°29'48"W
L18	222.12	S04°29'48"E
L19	178.05	S28°02'28"W
L20	17.89	S80°28'31"E
L21	26.17	S34°18'24"E
L22	74.77	N71°22'32"E
L23	298.95	N18°58'49"E
L24	100.81	N04°27'07"E
L25	154.37	N44°37'48"E
L26	124.65	S39°02'59"E
L27	260.82	S49°50'43"E
L28	255.04	S74°06'47"E
L29	174.54	S71°50'20"E
L30	155.83	S56°23'21"E
L31	158.82	S53°56'10"E
L32	142.26	S48°57'17"E
L33	320.45	S03°56'16"E
L34	50.00	N20°49'10"W

Curve	Length	Radius	Delta	Chord Bearing
C11	122.09	100.00	69.57°03'	S57°41'44"E
C2	107.39	220.00	27.58°04'	S84°22'51"E
C3	235.30	824.18	16.21°29'	S78°34'34"E
C4	23.83	170.00	08.01°49'	S36°32'33"W
C5	227.94	844.18	15.28°15'	N78°07'57"W
C6	97.63	200.00	27.58°04'	N84°22'51"W
C7	150.32	100.00	86.07°31'	S31°57'01"W
C8	335.24	155.00	123.55°23'	N47°44'25"W
C9	130.65	150.00	49.54°22'	N22°05'04"E
C10	121.27	245.00	28.21°35'	N13°02'18"E
C11	26.17	85.00	17.38°19'	S27°03'19"E
C12	39.26	1103.83	02.02°16'	S19°15'18"E
C13	42.64	170.00	14.22°20'	S31°51'49"E
C14	180.21	225.00	45.53°28'	S80°32'09"W

SEC 4

SEC 5



Date: 9/10/1997  
 Line: 162227  
 Scale: 1:5000(PS)  
 Drawing File: c:\users\VPD1\Documents\Drawings\162227.dwg DWG